



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper – Belgium

All hands on deck in the fight against undeclared work in complex chains of activity

**Peer Review on “Control and prevention of undeclared
work in complex chains of economic activity”**

Slovakia, 4-5 May 2021

Written by Philippe Vanden Broeck.

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1 Introduction

This paper has been prepared for the Peer Review on "Control and prevention of undeclared work in complex chains of economic activity" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country and the situation in Belgium. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Situation in the peer country

Belgium does not have any available hard data on the scale of undeclared work and no recent estimations have been conducted. The underground economy in Belgium is estimated at some 3.8% of gross domestic product (GDP) or EUR 12.9 billion¹.

The only concrete and reliable indicators available are the results of the inspections operated in the different sectors. 39% of the controls in 2020 ended with positive results (meaning that infringements detected). The main types of fraudulent behaviours detected in the inspections in Belgium are undeclared work (whole or partially undeclared), employment of foreign workers in an irregular situation, workers with a false status (bogus self-employment, volunteers or trainees) or working in bogus sham constructions, trafficking in human beings, social dumping, and social benefit fraud. The main sectors where undeclared work is detected are the construction sector and the HORECA sector (Hotels, Restaurants and Catering), the meat processing, cleaning, transport and security sectors.

The most complex forms of undeclared work appear in (often cross-border) subcontractor chains, often in the context of posting of workers, under the umbrella of letterbox companies, involving fraudulent temporary agency work and recruitment agencies, supplying labour force to the lowest levels of the chain in the context of non-genuine posting of workers. Organised fraudulent networks are also operating via fictitious constructions aiming at domicile fraud, identity fraud, forgery of documents evasion of social contributions and fraud of social benefits. Payment by wage envelopes has become less of a problem since the payment of wages in cash is prohibited by law since the end of 2016.

3 National policies and measures

3.1 Key aspects for tackling undeclared work occurring in complex chains of economic activity in Belgium

Definition

The Belgian Social Criminal Code² provides only a very general and vague definition of "social fraud" and "illegal work", contrary to the Slovakian legislation. Several provisions though are specifically aiming at concrete provisions related to undeclared work. These provisions are the **hard-core** provisions falling under the (shared) competence of most federal enforcement services. In these legal domains, **the inspection services at the federal level have the same competences**, may share their findings, information and gather evidence. Each of these services may use and fully exploit them without loss in probative value.

These hard-core provisions encompass for instance:

¹ Source: <https://socialsecurity.belgium.be/fr/ampleur-de-la-fraude-sociale-et-fiscale-sublec>

² Available in French, see article 1:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2010060607&table_name=loi

- DIMONA (mandatory declaration of the start or end of a labour relationship);
- LIMOSA³ (mandatory declaration of posted workers and self-employed);
- A database for the declaration of building sites and subcontractors (real estate and building sector with at least one sub-contractor or with a contract value of at least EUR 30 000);
- DMFA (multifunctional quarterly declaration of wages, working time etc.);
- Checkin@work⁴ (the daily registration of workers in the real estate and building sector);
- Control measures on Part-time work;
- Employment of Third Country Nationals (with or without work permit, legally residing or not).

To complement this, a system of online electronic penal reports has been put in place ("e_PV"). All relevant services, inspectors, public prosecutors, and service of administrative fines have access to this system. A database "Ginaa" (with detailed follow-up regarding prosecution and conviction up to the final payment of fines) is also available for all of those partners.

Temporary work agencies⁵ (TWA)

TWAs play an important role in the supply of labour force in complex chains of activity in particular in a cross-border context. In Belgium, TWAs, also the ones operating from another country, are subject to prior authorisation without which a TWA cannot lawfully engage in temporary agency work activities. The latter is only possible for the execution of types of temporary work permitted by law (Act of 24 July 1987): for the replacement of a permanent employee, to meet the demands of a temporary increase in work or to ensure the execution of exceptional work. If these conditions are not met or fraudulent intentions were detected, both the agency and user are liable for wages and social contributions and risk penal or administrative sanctions.

(direct) Hiring out of workers⁶

A law in Belgium⁷ forbids the (direct) hiring-out of a worker (from company A to company B) without the intermediation of a registered and licenced agency, except under very strict circumstances. The user undertaking is jointly liable for payment of remuneration, compensation, social benefits and social security contributions arising from the employment contract concluded by the workers who are hired out to him/her. This legislation is considered a useful instrument for labour inspectors to combat fictitious subcontractors in the chain (FPS, n.d.), as user undertakings can only hire temporary workers via a registered and licensed TWA and infringements on the prohibition of direct hiring-out are easy to detect and evidence.

Bogus self-employment

There are only two employment statuses under Belgian Labour Law⁸: either the status of employee or self-employed. The Law provides the criteria to make the distinction between an employee and an independent self-employed worker. These criteria may be sector-specific and are often used in the case-law of labour courts and tribunals. The red line for distinction is to know whether a relationship of subordination to the employer

³ https://www.international.socialsecurity.be/working_in_belgium/en/home.html

⁴ <https://ec.europa.eu/social/BlobServlet?docId=18322&langId=en>

⁵ See <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/temporary-agency>

⁶ See <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/hiring-out>

⁷ Act of 24.07.1987 on temporary work.

⁸ Act of 27.12.2006 on the nature of the labour relations.

exists (referred to as the relationship of authority). The status they eventually fall under depends on the contractual stipulations in the contract between the worker and the employer or commissioner. If these qualifications do not correspond to the actual performance of the contract, the disputing party (ultimately, the labour inspectorate) would need to demonstrate incompatibility with the qualifications based on four general legal criteria:

- The will of the parties as expressed in their agreement in so far it corresponds with its execution;
- The freedom to organise working time;
- The freedom to organise the process of work; and
- The possibility to exercise hierarchical control.

These points, which must be applied on a case-by-case basis, indicate the existence or absence of legal subordination, which takes precedence over socio-economic subordination. In some specific risk sectors (e.g. transport), however the socio-economic criteria take precedence and can be disputed based on these four general points.

However, this distinction is difficult to draw in some economic activities, such as the platform companies (in the context of the gig Economy). Indeed, a number of proceedings have been launched questioning the status of independent workers associated with platform companies. As a result, Belgian courts are expected to rule on the status of these workers on the basis of their contractual qualifications and the four legal criteria mentioned above.

On the other hand, labour inspectors are often faced with bogus self-employed workers (or even bogus shareholders) in complex chains of subcontractors. However, most of the time it is possible to deal with this, as workers found at the lowest level are often unaware of the nature of their status (often they sign a document without understanding the meaning of such a contract). Moreover, the labour inspectorates use guidelines, checklists and interview forms in different languages to uncover such bogus self-employed relationships. Foreign self-employed workers coming to work in Belgium in construction, meat and cleaning sector must declare their activity in *Limosa*. This gives the opportunity for inspectors to identify and detect them and make an assessment of their real employment status.

Joint and several liability

Several legal provisions impose joint liability on both the formal employer and user undertaking (or contractor) with regard to the payment of wages and social security contributions. This liability is applied in the case of TAW, hiring-out, wages (e.g. of posted workers), subcontracting in the construction sector and wages of third country nationals. These provisions are often applied in practice of enforcement authorities⁹. Liability for posted worker wages are more difficult to enforce in practice. But around half of the employers pay voluntarily at last under pressure of the main contractor who wants to avoid being liable.¹⁰

Social Information and Investigation Service (SIIS)

In Belgium, the fight against undeclared work and the broader aspects of social fraud is primarily the responsibility of the government and subsequently of *federal* labour inspection authorities (the Federal Public Service Employment, National Social Security

⁹ See a Good practice fiche - Belgium: Joint and several liability in [sub-contracting chains](#)

¹⁰ Learning resource paper from the thematic review workshop on cross-border sanctions in the area of undeclared work 28 and 29 January 2020, Paris – ELA virtual library: <https://ec.europa.eu/social/BlobServlet?docId=23098&langId=en>

Office, National Employment Office, National Institute for Health and Disability Insurance and National Institute for the Social Security of self-employed).

The SIIS is an umbrella organisation coordinating on the national but also the local level these inspection services to make the fight against social fraud more effective and create 'a well-oiled machine'. The strategic role of the SIRS is to execute the policy defined by the Council of Ministers. SIIS was integrated into the Social Criminal Code in 2010. The SIIS draws up an annual Action Plan to combat undeclared work, bogus self-employment, human trafficking and social dumping. It acts mainly as a coordinating body. SIIS is an expression of the policy intent that undeclared work, social fraud and exploitation can only be solved if the responsible bodies can work in a multidisciplinary way and work better together.

Annual National Strategic Action Plan.

The 2021 National Action Plan¹¹ for regional and federal enforcement authorities foresees 30 different actions, embedded within a series of strategic options. One of them relates to the fight against social fraud in the cross-border context. The Strategy acknowledges the importance of holistic approach and collaboration between national bodies, most commonly social security agencies and labour inspectorates. The strategic plan foresees a programming of the controls based on the risks. For each year, the National Action Plan records the number of joint inspections to be carried out by the various services (via the district cells). In 2020 it was 10 000 checks, in 2021 it is aimed to have 11 000 inspections.

Bogus LETTERBOX Companies (LBC)

The fight against fictitious letterbox companies operating from another country is very complex and hard, nearly impossible, to manage by labour inspectorates alone. Therefore, Belgium has developed a criminal approach with the help of judicial authorities and the labour prosecutor. For further details, please see annex 2.

Risk analysis

There is a clear shift in Belgium towards enforcement authorities using more risk analysis¹² and datamining for inspections which are conducted in the field. The Belgian Social Security Office (NSSO) has developed seven key e-government database projects since 1997.

The databases are accessible to various institutions and inspectorates. They provide real-time consultation and 'big data' for the use of datamining, defining risk indicators and red flags, predictive modelling, combining network analytics and datamining algorithms, ranking, visualizations, report elements, simulations, monitoring of over 50 undeclared work phenomena. The introduction of an advanced IT-based risk assessment system ensured that 90% of the top-risk 5% ranked companies by the risk assessment system showed infringements when inspected. Altogether, the system has allowed for the success rate of inspections to rise from 35% to 75-80% of all checks. A common platform for the Inspection Services also exists (the so-called 'Dolsis' shared database of inquiries).

3.2 Key aspects of control procedures in the complex chains involving several entities

Cooperation and information sharing as an integrated inspection strategy

The Belgian Social Criminal Code¹³ entitles the federal inspection services to inter-exchange all types of information as long as it is useful for application of the law.

¹¹ Available in French:

https://www.siod.belgie.be/sites/default/files/Downloads/Actieplan/SIRS_plandaction_2021_FR_Def.pdf

¹² For more details on risk assessment see: <http://ec.europa.eu/social/BlobServlet?docId=19924&langId=en>

¹³ See also <https://ec.europa.eu/social/BlobServlet?docId=18535&langId=en>

Undeclared work in complex chains cannot be tackled by a single operating labour inspector. Therefore, cooperation with other partners is needed as well as sharing findings, evidence and information. Inspections have to be carried out by joint multidisciplinary teams and supported by their respective institutions. This cooperation approach is embedded in the structures, strategies and inspection plans of the different inspectorates and social security offices. Cooperation agreements have also been concluded with the tax authorities and other public authorities.

Partnership agreements

Partnership agreements have been concluded with social partners and representatives of specific sectors (i.e. the construction sector, the meat sector, the cleaning sector, the transport sector, childcare services). For example, the tri-partite partnership agreement for countering undeclared work in the construction sector obliges the multi-disciplinary inspection teams to conduct a specific number of inspections within a twelve-month period (2 000 inspections). The inspections are followed by an analysis to assess their impact and a publicity campaign. The campaign is managed by the SIIS for the construction sector and statistical results are monitored by the SIIS too. For a complete [list of protocols and sectoral plans for a fair competition are available online](#).

Local District Cells

There are 21 mixed local cells, coordinated by SIIS, which conduct undeclared work related inspections twice a month. Each cell is composed of a representative of the various federal inspection and regional services, a representative of the FPS Finance, a labour prosecutor, and a member of the Federal Police. Each year, targets are set for the cells in the national action plan. These district cells also organise regular "announced flash controls¹⁴" in risk sectors with check-lists available on the website to pre-warn employers who will be checked during these flash controls. A follow-up is also foreseen.

International cooperation

Belgium uses bilateral agreements as much as possible to detect the cases of cross-border social fraud, sham constructions, criminal networks, non-genuine posting and letterbox companies. Several examples are published on the [SIIS website](#): as well in the European Platform tackling undeclared work virtual library: [The Netherlands¹⁵](#), [France](#), [BENELUX](#). Agreements were also concluded with Portugal, Luxemburg, Poland and Romania. These agreements have a real added value.

Specialised mixed network teams Covron – Gotot¹⁶

Specialised teams have been created to investigate undeclared work in particular when linked to cross-border employment and the posting of workers. These proved to be most successful.

Checklists and guidelines for employers¹⁷ to increase awareness

A range of checklists and guidelines are published on the SIIS website and disseminated amongst social partners of various sectors: "What can an inspector ask during an unannounced inspection?"

¹⁴ See also <https://www.altius.com/blog/888/focus-on-social-inspection-audits-in-the-construction-sector-what-to-expect-in-2021>

¹⁵ See also Annex 1.

¹⁶ See [Good practice fiche](#) - Belgium: COVRON and GOTOT teams.

¹⁷ For details in French see website SIOD: <https://www.siod.belgie.be/fr/checklists>

4 Additional considerations regarding the challenges of Slovakian enforcement authorities

Strategic commitment and empowerment on all levels and high-level back-up

The Belgian enforcement bodies have ensured a high-level political commitment for their efforts in tackling undeclared work. With this political back-up, they could take action to overcome legal and technical barriers by enacting a special Social Criminal Code, to ensure smooth communication between various authorities, receive extra budget, coordinate and steer all actions (at the national and local levels) by a **strategic coordinating body** (SIIS), to fulfil the engagements stipulated in the **annual action plan** with the aid of the social security databases and risk assessments. Systematic cooperation and information sharing amongst inspection services and Social Security Offices have developed into a common strategy and an integrated and holistic inspection approach. Changing the inspection strategy is a change in the inspection culture. **It is encouraging to note the creation of informal working groups in Slovakian inspectorate** to discuss the potential changes. This combination of bottom-up and top-down consultation fosters acceptance and motivation of labour inspectors while enhancing their co-ownership of a new inspection strategy.

How inspection authorities deal with appeals or comments to the initial inspection protocols

Belgium has no system of administrative "**protocols**" as practiced in Slovakia. The penal reports in Belgium differ in this respect significantly.

In line with ILO Convention No. 81 and 129 on Labour Inspection¹⁸, the labour inspectors in Belgium have a discretionary power¹⁹ to provide information and interpretations; to issue warnings; to grant the infringer a term to comply with the regulations; and to draw up penal reports (Social criminal code article 21). The penal reports²⁰ generally include the statement of the employer and workers or witnesses. The evidence gathered by the inspector has a legal value of proof until the contrary has been proven by the perpetrator. This counterproof can be developed before criminal court or in an appeal against an administrative fine. This system works very well, and has also a preventive effect²¹ and increases the accountability of the individual inspector and the acceptance by the violating employer. The question is whether there is space in the Slovakian Act on Labour Inspection for introducing such a kind of appreciation right (the right to choose the most appropriate response on an infringement) on the part of the inspectors.

Introduction of a two-stage evaluation of the inspection process on demand of the employer organisation

This proposal seems to be based on presumptions of inadequate actions of the individual labour inspector and/or a lack of trust. The proposal carries the risk of undermining the impact of the inspection and could be counterproductive. As mentioned in the previous section, a presumption of valid evidence by the inspector works better as long as the offender has the possibility to appeal against the sanction imposed. Such appeals apparently exist in Slovakia (on at least 2 different levels). To raise the trust in labour inspectors, the questions to reflect would be whether there is a code of conduct, training and guidelines for inspectors to increase this trust in their initial decisions.

¹⁸ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081 and https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312274:NO

¹⁹ The question emerges to Slovak colleagues if the Slovakian Act on Labour Inspections leave headroom for such a choice?

²⁰ Their recipients are the local labour prosecutor and the Service of the Administrative Fines of the Federal Public Service Employment (Ministry of Labour).

²¹ Via a warning and the possibility to regularize the violation the employer has a second chance while being avoided to be put on the list of violators.

The best ways to optimise the use of publicly available registers of violators

Unlike Slovakia, Belgium has no publicly available registers of violators related to infringements against labour law, social security or undeclared work.

Belgian labour inspectorate has tried more than once to convince the decision makers to develop a legally sound and publicly accessible "name and shame" register, but failed due to concerns over data protection and protection of privacy.

If in the future this issue should be on the agenda again, we may presume that strict conditions for such a database would be necessary: such as including a maximum period of time for mentioning names of persons (e.g. maximum 6 months), the decision must be final (no appeal possible anymore), no details on the infringement (only a "yes" or "no"), and a possibility for appeal, correction and the announcement on the website and disclaimers in the correspondence of the inspectors.

Definition of dependent work and competence of the Labour Inspectorate

In order to solve this difficult problem of Slovakia, it could be useful to look for common hardcore provisions for the infringements on the key provisions related to undeclared work which can be found in the existing legislation on illegal work and illegal employment. This could involve ensuring that the labour inspectorate, the Social Security inspections and all other relevant enforcement services are competent for this core set of provisions, by law. The challenge regarding the illegal employment could be avoided by making the labour inspection competent not only for formal written labour contracts, but for all types of dependent work regardless of the nature of the agreement. The (f)actual subordination and exercise of authority should be predominant. The hardcore provisions could also include illegal work or illegal employment by third country nationals and trafficking in human beings (tackling the problems of economical exploitation). Covering both domains would create a shared competence with the Border Police and regular Police (like in Belgium).

Direct hiring-out and TWAs in a cross-border context

Inspiration could be found in the description of the Belgian example as it works very well, also in a cross-border context. One should consider though that direct-hiring out from one employer to another should be prohibited (only exceptionally between mother company and daughter affiliate and only temporarily), that a TWA (national or foreign) cannot assign employees (eventually posted) without a licence and that only for its 100% pure TWA activity such employees may be assigned (not for any other business activity of the TWA). In case of posting of such temporary workers to Slovakia, the regulation regarding mandatory declaration prior to posting could also be made applicable for the sending TWA. In Belgium, the declaration of the TWA should also mention the name and address of the end-user (client/recipient) and this considered to be an effective practice.

Limited responsibilities in the chain of several employers

If the key challenge is to identify the recipient of the work, in cross-border posting the Belgian experience demonstrates the value of making the identification of the client as the end-user mandatory in the posting declaration. Furthermore, the provision stipulating the prohibition of the final recipient of the worker to accept the posted worker if he/she is employed illegally by another entity in the chain could be weakened too much by extending the period (in which the prohibition applies) from 5 to 30 days. The question is that if a legal appeal is possible against the allocation of financial liability, why should this extension be considered.

Centralising enforcement activities regarding undeclared work

The Slovakian proposal for the creation of a centralised coordinating body on the national level is an excellent one. One could think of a permanent body (such as a task force), enacted by law, accountable to the government, with representatives

of all authorities eligible to control a undeclared work hardcore, illegal work and illegal employment, including the Social Security Agency, the Police, Justice, Border Police, Trade Licensing offices. At the local level, a past/copy of this central body could activate the implementation of the policy of the central body, e.g. for the execution of national action plans.

The idea of shifting the power to impose sanctions to another administration is excellent. Another consideration would be to shift the new unit of the legal department of the Ministry of Labour, Social Affairs and the Family. In this way, the functions will be separated, as labour inspectors cannot be judge and party at the same time.

Specialised (joint) teams in monitoring third-country nationals and posted workers

As mentioned from the Belgian example, the creation of such teams of specialised labour inspectors may pay dividends.

Partnership agreements with relevant stakeholders and cooperation amongst authorities

As part of the strategy in Belgium addressing undeclared work, such agreements aiming at decreasing undeclared work, promoting fair competition, and "whitening" the black work are very useful. Preventive actions, better deterrence, increased visibility of the enforcement actions, and support for legal amendments are possible ingredients for the social dialogue menu. Collaboration with other public institutions who have interest in undeclared work (tax, municipalities, economic affairs, etc.) is a must to have a maximum of information sharing and willingness to develop fresh thinking on new measures.

MoUs or bilateral agreements for cross-border cooperation

Similar reflections apply to the cross-border cooperation. In particular, the example of the Benelux cooperation in fighting against fraudulent TWAs operating in a cross-border way has been very useful too for managing problems related to the posting of workers and the inflow of third-country nationals.

5 Questions

- Question on Act No. 82/2005 Coll (illegal employment as a situation when the employer did not register an employee within seven days from the beginning of his/her contractual relationship or at least until the date when the labour inspection commended.

The rule of "Within seven days" seems to hamper the effectiveness of this provision. Is there a willingness to introduce an obligation to register from the first day on of the start of the activity? In the current rule, it seems that employers might too easily bypass a correct truthful registration.

- Is there an option to discuss cooperation with the Social Security Agency and the Central Office of Labour with a view to developing a joint risk analysis based on hard data?
- Is there an option to consider a criminal approach? This is undoubtedly the most effective way to tackle such fictitious constructions. This obviously presupposes an adjustment of the powers and competence of the inspectorates, close cooperation with the Justice Department, the prosecutors and the police. One could refer to articles 230 to 235 of the Belgian Criminal Code²² where all Belgian

²² Breaches of forgery, the use of false documents, incorrect or incomplete statements and frauds in social criminal law: available in French: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2010060607&table_name=loi

social and labour inspectors are competent in this matter (see also Annex 3 for more information).

- Did trade unions showed an interest in tri-partite partnerships to fight against undeclared work?
- There is, to some extent, a type of interinstitutional co-operation between a range of Slovakian authorities. Who can take the lead to launch and promote the creation of a supra-national central coordinating body with support of the social partners?

6 List of references

Gig working, platform companies and the future: a global perspective from CMS Employment Lawyers in 15 countries: <https://cms.law/en/int/publication/gig-working-platform-companies-and-the-future-a-global-perspective-from-cms-employment-lawyers-in-15-countries>

Counteracting undeclared work and labour exploitation of third-country national workers: <https://ec.europa.eu/social/BlobServlet?docId=23573&langId=en>

Good practice fiche - Belgium: (Inter-)national institutional cooperation for the investigation of letterbox companies : <https://ec.europa.eu/social/BlobServlet?docId=19450&langId=en>

Good practice fiche - Belgium: COVRON and GOTOT teams: Specialised units of labour and national social security inspectors to investigate undeclared work especially when linked to cross-border employment: <https://ec.europa.eu/social/BlobServlet?docId=22386&langId=en>

Good practice fiche - Belgium: Cross-border co-operation between Belgian and Dutch enforcement authorities in the fight against fraudulent or illegally operating Temporary Work Agencies : <https://ec.europa.eu/social/BlobServlet?docId=19797&langId=en>

Good practice fiche - Belgium: Joint and several liability in sub-contracting chains: <https://ec.europa.eu/social/BlobServlet?docId=21424&langId=en>

Good practice fiche - Belgium: The Labour Auditor: dealing with labour-related frauds : <https://ec.europa.eu/social/BlobServlet?docId=21455&langId=en>

Good practice fiche - Benelux cross-border cooperation in detecting and tackling social fraud and error – pilot project in the construction sector: <https://ec.europa.eu/social/BlobServlet?docId=18526&langId=en>

Good practice fiche: Administrative cooperation agreement between Belgium and France: <https://ec.europa.eu/social/BlobServlet?docId=18510&langId=en>

Good practice fiche: Check-in @work: <https://ec.europa.eu/social/BlobServlet?docId=18322&langId=en>

Good practice fiche: The Belgian social criminal code <https://ec.europa.eu/social/BlobServlet?docId=18535&langId=en>

Good practice fiche: Cross-border co-operation between Belgian and Dutch enforcement authorities in the fight against fraudulent or illegally operating Temporary Work Agencies (TWA): <https://ec.europa.eu/social/BlobServlet?docId=19797&langId=en>

Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country

- Belgium faced with a high extent of cross-border related undeclared work (posting – influx of TCN)
- A central coordination body (SIIS) for all enforcement bodies
- A social criminal code covering all aspects of the fight against social fraud and undeclared work
- A system of joint liability in complex chains
- Sound legal provisions on TWA and direct-hiring-out of employees

National policies and measures

- Strategy of joint forces on the national level, steered by SIOD
- National strategic action plans
- Joint multi-disciplinary teams with holistic approach
- Far-reaching collaboration and information sharing between public agencies and inspection services
- Tri-partite partnership agreements and international Bilateral agreements (MoUs)

Considerations for future policies and initiatives

- Creation of a centralised authority steering actions against undeclared work: a positive aspect
- inspection protocols and two-stage inspections raise questions
- publicly available register of violations: some obstacles
- Extension of competences for Labour Inspectorate in the domain of illegal work and illegal employment (definition of dependent work in the Labour Code)
- Some possible measures for managing TWAs and direct hiring-out of employees in the cross-border context

Questions

- The rule of "Within seven days" seems to hamper the effectiveness of this provision. Is there a willingness to introduce an obligation to register from the first day on of the start of the activity?
- Is there an option to discuss cooperation with the Social Security Agency and the Central Office of Labour with a view to developing a joint risk analysis based on hard data?
- Is there an option to consider a criminal approach?
- Did trade unions showed an interest in tri-partite partnerships to fight against undeclared work?
- Who can take the lead to launch and promote the creation of a supra-national central coordinating body with support of the social partners?

Annex 2 Example of relevant practice

Name of the practice:	Fraudulent or illegally operating Temporary Work Agencies (TWA)
Year of implementation:	2014 and on permanent basis
Coordinating authority:	SIIS in Belgium and SIOD in The Netherlands, also backed up by a Benelux Treaty.
Objectives:	Fighting against cross-border social fraud committed by TWA's
Main activities:	Joint inspections, shared risk analysis, common strategy, common handbook, sharing hard data
Results so far:	<p>Positive in so far that the cooperation has become permanent.</p> <p>Established bilateral cross-border cooperation²³ between the enforcement bodies in Belgium and the Netherlands led to cross-border sanctions for fraudulent temporary work agencies operation in the Netherlands.</p> <p>Cases of fraudulent posting of workers or non-declaration to the Dutch social security or unregistered TAWs were reported by labour inspectorates from both countries. In addition, there are legal differences: temporary work agencies in Belgium need to obtain an operating licence but are only obliged to register in the Netherlands.</p> <p>If the enforcement bodies suspect fraud, they exchange information (e.g. comparing the Belgian Limosa declaration with the A1s delivered in the Netherlands) and set up a number of joint inspections between 2015 and 2019. The two countries established cooperation procedures in form of a roadbook used for inspecting fraudulent temporary employment agencies which sets out the specific case based on data sharing, clear responsibilities, relevant legislation and tasks on the day for joint inspections, as well as identifying stakeholder (such as regional social partners).</p> <p>During those inspections, the enforcement bodies discovered that several types of fraud occur in in fraudulent agencies, including fictitious employment relationships, and large-scale tax and social fraud²⁴:</p> <ul style="list-style-type: none"> • Fictitious employment relationships: One joint inspection found that workers in Belgium (mainly Bulgarians) were registered as self-employed without staff (ZZP) with the Dutch Tax Administration. In reality, they were employed as temporary workers, as all of the determining factors for establishing a working relationship were present (salary,

²³ There are two agreements between both countries: the Benelux joint declaration on cooperation in the fight against social dumping (Feb 2014), as well as the recommendation of the Benelux Committee of Ministers (September 2015) concerning the fight against social fraud at both Benelux and European level. The legal basis for cooperation and information exchange is derived from both the EU Directive on the posting of workers and the Enforcement directive

²⁴ See also: <https://www.inspectorateszw.nl/publications/reports/2020/01/06/state-of-decent-work-2019---risks-at-the-bottom-of-the-labour-market>

	<p>work, hierarchical relationship). This led to tax corrections and collections in the Netherlands. The SVB also withdrew A1 returns for controlled independents;</p> <ul style="list-style-type: none">• Fraudulent temporary agencies: Several temporary agencies did not comply with the current legislation in either Belgium or the Netherlands. In the Netherlands, mandatory WAADI registration was lacking, wage and VAT tax returns were absent or incomplete (failures in the administration of wages and turnover) and salaries were paid in cash to temporary workers (indicating the possible presence of undeclared work). In Belgium, registration and licence requirements were not met. One agency in Belgium was fined for non-compliance with registration requirements; and• Social benefit fraud: All investigations detected large-scale allocation fraud. Workers in Belgium generally received social security benefits in the Netherlands. This was a UWV allowance (unemployment or incapacity to work and/or assistance allowance for a communal social service (often The Hague). There were no payroll tax returns and social security contributions had been evaded. <p>Inspection findings are then reported to the regional competent prosecutor. In addition, social and tax authorities in both countries may also take action to recover social contributions owed and/or to recover benefits that have been claimed illegally.</p> <p>This has led to successful internal enquiries in the Netherlands (recovering wrongly claimed social benefits and/or unpaid social contributions). If Belgian clients are found to be knowingly involved in these practices, they are at risk of penal convictions, as well as the seizure and confiscation of bank accounts/assets.</p>
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Annex 3 Example of relevant practice

Name of the practice:	The criminal approach ²⁵ to fight against bogus letterbox companies (LBC)
Year of implementation:	From 2016 on – on a permanent basis
Coordinating authority:	Labour Prosecutor in consultation with labour inspectorates
Objectives:	Fighting social fraud from bogus Letterbox companies
Main activities:	A combination of inspection enquiries with support of the police forces and special investigative measures led by the Labour Prosecutor
Results so far:	<p>Most effective convictions, e.g. in transport sector and meat transformation.</p> <p>The Belgian social criminal code contains specific provisions to successfully tackle bogus LBC. These aim at detecting infringements concerning forgery, the use of forged documents, incorrect or incomplete statements and swindle or deceit in the social criminal law (articles 230 – 236), which is an exceptional and unique criminal offence in Belgian social law. This needs the intervention of the labour prosecutor.</p> <p><i>Criminal approach in most serious cases of undeclared work</i></p> <p>Belgium has a mixed system for prosecution of infringements. Administrative fines are applied only if the infringements are not prosecuted by a labour prosecutor or the labour prosecutor has not reached a settlement with the infringer. 25% of the total infringements on labour and social security law are prosecuted by labour prosecutors (criminal proceedings) and 75% result in administrative fines. The Labour prosecutor²⁶ plays an important role in the final choice.</p> <p>Judicial authorities have more weight in tackling complex cross-border cases via cooperation with the police and a framework for mutual assistance in criminal matters, such as support via EUROJUST or EUROPOL, the European Judicial Network, and the Carin network (for asset recovery, seizure and confiscation). Labour prosecutors may apply a follow-the-money approach: using international <i>letters rogatory</i> to obtain that information in the context of the judicial procedure, freezing and confiscating all financial return/yield of the fraudulent employer (the so-called: Unlawful profit).</p> <p>The federal police, the attorneys general and the Labour Inspection services recently reached framework agreement for setting up "Motems". This is a structural form of cooperation of inspectorates and the Federal Judicial Police to launch mixed ant-fraud investigation teams under the guidance of the Labor prosecutor.</p>

²⁵ See the [Good practice fiche](#): (Inter-)national institutional cooperation for the investigation of letterbox companies.

²⁶ See [Good practice fiche](#): The Labour Auditor: dealing with labour-related frauds.



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