





European Platform Undeclared Work

Cross-border cooperation on minimum wage violations

Belgium

	Summary <p>The Belgian Labour Inspectorate carries out investigations on whether employers from other Member States, whose employees work in Belgium, are compliant with the Belgian minimum wage. Sharing the findings allows the authorities in other Member States to ensure these employers are paying the correct amount of tax and social contributions.</p>
Name(s) of authorities/bodies/organisations involved	<ul style="list-style-type: none"> The Belgian Labour Inspectorate (<i>Contrôle des Lois Sociales (CLS) / Toezicht op de Sociale Wetten (TSW)</i>).
Sectors	All
Target groups	<ul style="list-style-type: none"> The competent authorities in other Member States (directly targeted through the Internal Market Information System (IMI)); Employers from other Member States (directly targeted); Cross-border workers (indirectly targeted).
Purpose of measure	Deterrence: improve detection

	Aims and objectives <p>The aims are to ensure cross-border workers in Belgium receive the minimum wage and social security which they are entitled to. It also ensures fair competition and deters undeclared work.</p>
Background context	<p>Investigations by the Belgian Labour Inspectorate revealed that some employers in other Member States try to avoid paying tax and social contributions on the difference between their minimum wage and the Belgian minimum wage when posting workers in Belgium. The employer in the other Member State proceeds as follows:</p> <ul style="list-style-type: none"> To their own tax authorities: the employer states that they pay their employees the local minimum wage (which is subject to tax and social contributions) plus an additional subsistence allowance to cover 'real costs' (e.g. transport,



European Platform Undeclared Work

	<p>accommodation etc). The employer is not required to pay contributions on the additional allowance;</p> <ul style="list-style-type: none"> • To the Belgium authorities: the employer states that the subsistence allowance is actually part of the wage, which then meets the (higher) Belgian minimum wage. <p>The investigations are triggered through the usual day-to-day business of the Labour Inspectorate e.g. through its national contact point for fair competition, random checks, data mining and matching, or direct reports by employees.</p>
Key objectives of the measure	<p>The main objective is the safeguarding of workers' rights. In particular:</p> <ul style="list-style-type: none"> • The rights of workers from other Member States who are working in Belgium to receive the Belgian minimum wage; • The rights of workers from other Member States to social security. Without intervention, workers and their employers pay lower contributions in the other Member State on the (lower, incorrect) wage declared there. As a result, workers do not build up their social rights commensurate to the minimum wage they should rightfully earn in Belgium. <p>Other important objectives include the following:</p> <ul style="list-style-type: none"> • Ensuring fair competition which is at risk when foreign companies pay their employees less than the legal minimum wage; • Deterring companies from providing wrong information by showing that authorities in different countries share information.
Main activities	<p>Once a risk of irregularity in the pay of posted workers is identified, the Belgian Labour Inspectorate asks for proof from the employers that shows the allowance does not cover a real cost. If it does not cover a real cost, the allowance is accepted as part of the minimum wage. If the allowance does cover a real cost, the employer must adjust the employees' wages to adhere to the Belgian minimum wage. In both cases, the employees' wages increase, and the authorities receive more contributions.</p> <p>The decision to share the findings with the country of origin is based on a cost-benefit analysis, considering the administrative cost of sharing the information versus the benefits resulting from the additional amount of wage paid.</p> <p>The information, including the corrected taxable wage, is shared through an IMI request or through multilateral</p>



European Platform Undeclared Work

	<p>agreements with Benelux countries. On receipt, the other Member State may want to take voluntary action.</p> <p>After a trial year (in 2015/16) in one region, team leaders from the Belgian Labour Inspectorate across all regions have now adopted this measure. Approximately 15 such requests are made per month.</p>
Funding/organisational resources	No additional funding is needed.

	<p>Outcomes</p> <p>Sharing information with other Member States has ensured minimum wages for workers in Belgium and increased social security receipts for other Member States. The practice is fully transferable with the correct legal mandate.</p>
Achievement of objectives	<p>The information has led to successful investigations in other Member States: for example, investigation of a Spanish employer who was paying below the Belgian minimum wageⁱ has led to increased social security receipts for the other Member State (in this example, Spain) and ensured minimum wages for the employees working in Belgium.</p>
Lessons learnt and success factors	<ul style="list-style-type: none"> • The IMI request to the other Member State should clearly state that it does not require a compulsory response but rather is meant to inform; • Requests via IMI have a 35-day maximum response time. This is occasionally not enough for other Member States to complete their own investigations based on the information received from Belgium and report back to the Belgian Labour Inspectorate; • Inspectorates of the other Member States must have the capacity to act on the information provided; • It is important for the other Member States to have the right mandate to share the relevant information with other Member States. Article 54 of the Belgian Social Criminal Codeⁱⁱ allows the Inspectorate to share information with other administrations where this is deemed necessary for investigations.
Transferability	<p>This practice is fully transferable to other Member States where:</p> <ul style="list-style-type: none"> • The relevant institution has the capacity to send the information to other Member States and;



European Platform Undeclared Work

	<ul style="list-style-type: none"> The relevant institution has the legal mandate to share sensitive information with other administrations.
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------

Further information	
Contact	<p>Belgian Labour Inspectorate</p> <p>Email: SPOC.LabourInspection@employment.belgium.be</p>
Useful sources and resources	<p>Information on the Belgian Labour Inspectorate:</p> <p>http://www.employment.belgium.be/defaultTab.aspx?id=41528#AutoAnchor1</p> <p>The Internal Market Information (IMI) System homepage:</p> <p>http://ec.europa.eu/internal_market/imi-net/index_en.htm</p>

ⁱ Investigations were carried out by the Belgian Labour Inspectorate which showed that wages of Spanish workers working in Belgium for a Spanish employer were below the Belgian minimum wage. The Belgian Labour Inspectorate demanded that the Spanish employer pay the Belgian minimum wage. The employer did so and sent pay slips showing the correct amount to the Belgian Inspectorate. This information was then shared through an IMI request, asking the Spanish Labour Inspectorate's point of contact to check whether the company had paid social security contributions commensurate to the newly imposed wage - their records found that the company had not done so. The Spanish Labour Inspectorate has since demanded payment of the extra contributions from the company resulting from the wage difference.

ⁱⁱ The Social Criminal Code (Sociaal Strafwetboek (nl); Code pénal social (fr)) is available from:
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2010060607