





European Platform Undeclared Work

Joint and several liability in sub-contracting chains

Belgium

	<p>Summary</p> <p>Joint and several liability in sub-contracting chains involves monitoring the chain of subcontractors in order to prevent undeclared work and ensure the payment of social and fiscal debts. To achieve this, Belgium introduced three electronic monitoring and control systems – Declaration of Works (DOW), checkinhoudingplicht.be, and CheckInAtWork– which are used in specific sectors.</p>
<p>Title of the practice in original language</p>	<p><i>Inhoudingplicht en hoofdelijke aansprakelijkheid in combinatie met C@W en Aangifte van werken</i></p>
<p>Name(s) of authorities/bodies/organisations involved</p>	<ul style="list-style-type: none"> • National Social Security Office (NSSO); • Federal Public Service Employment, Labour and Social Dialogue (FPS).
<p>Sectors</p>	<p>Construction sector, the meat industry, and security services</p>
<p>Target groups</p>	<ul style="list-style-type: none"> • Principal/main contractors (directly targeted); • Sub-contractors (indirectly targeted).
<p>Purpose of measure</p>	<p>Prevention</p>

	<p>Aims and objectives</p> <p>To create a more attractive work environment for (construction) workers whilst ensuring that employers and employees in that specific sector meet their legal obligations.</p>
<p>Background context</p>	<p>Under an act introduced in June 1969 (Article 30bis §4), principal contractors, contractors and subcontractors who perform certain activities must check whether their contractors or subcontractors have any tax or social security debts.ⁱ If this is the case, the principal contractor must withhold a certain percentage of a contractor's invoiced amount and pay it to the NSSO (social debts) or the FPS Finance (tax debts).ⁱⁱ</p> <p>According to the same act (Article 30bis § 7) the principal contractor must declare the works before they start. Failure to declare will result in the payment of fines.</p>




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	<p>Joint and several liability is a mainstream measure implemented at national level, encompassing domestic and foreign workers, as well as contractors.</p>
<p>Key objectives of the measure</p>	<p>General objectives:</p> <ul style="list-style-type: none"> • To deter, prevent, detect and fight fraud; • For Belgium authorities to access information on undeclared workers. <p>Specific objectives:</p> <ul style="list-style-type: none"> • To introduce electronic monitoring and control systems for undeclared workers in Belgium.
<p>Main activities</p>	<p>Three services are used in parallel to help employers and employees meet their legal requirements under the Act. The latter includes:</p> <ul style="list-style-type: none"> • The Declaration of Works (DOW), an electronic declaration of work submitted to the NSSO by the main contractor before the commencement of the workⁱⁱⁱ and concerning all information associated with the construction site, contractors and subcontractors; • Checking the withholding obligation for the existence of fiscal and social debts of the co-contractor via the website 'Check inhoudingsplicht' at https://www.checkinhoudingsplicht.be/ and the internal database of the NSSO;^{iv} • CheckInAtWork http://www.checkinatwork.be/ (in French) introduced in April 2014, it is an online service for the registration of the presence of workers in the immovable property sector and for activities related to the meat sector^v.
<p>Funding/organisational resources</p>	<p>DOW and CheckInAtWork are nationally funded. Other organisations involved in delivering and monitoring the above systems include:</p> <ul style="list-style-type: none"> • NSSO; • Federal Public Service Employment, Labour and Social Dialogue; • Federal Public Service Finance; • Social partners (sectoral employers organisations and employees unions).



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	<p>Outcomes</p> <p>Feedback suggests there has been an increase in the protection of workers' rights and the recuperation of non-paid social security contributions. The system appears to be a more efficient and faster way to identify targets for inspection.</p>
<p>Achievement of objectives</p>	<p>Outputs and results achieved by the systems include the following:</p> <ul style="list-style-type: none"> • Increased awareness of undeclared work in the construction, meat, and security services sectors using these systems; • Faster location of possible targets for inspection at construction sites and thus more effective inspections at high-risk sites; • The use of available data collected via DOW and CheckInAtWork for data mining projects; • Recuperation of non-paid social security contributions; • The protection of workers' rights; • Exclusion of fraudulent companies from the market. The phenomenon of gangmasters in these sectors has disappeared; • In 2016 there were 291 default notices. Joint liability amounted to EUR 2 377 610, deductions of withholding tax to EUR 1 093 007 and sanctions totalled EUR 799 764;^{vi} • In 2017 there were 261 default notices. Joint liability was EUR 1 517 402, deductions of withholding tax EUR 734 224, and sanctions totalled EUR 705 046.^{vii} <p>The introduction of electronic monitoring and control systems for UDW in Belgium has allowed authorities to meet their legal requirements under the 1969 Act by allowing access to information to prevent undeclared work and ensure the payment of social and fiscal debts. No official evaluations have yet been carried out on the joint and several liability system. However, based on feedback received from the NSSO, the systems are successful in tackling undeclared work on large-scale construction sites. The success of the databases has also led to interest from other sectors in adopting a similar model for inspection, such as the security services and meat processing industry.</p>
<p>Lessons learnt and success factors</p>	<ul style="list-style-type: none"> • The success factors and key lessons learnt include the following: • Through collaboration with social partners and policy makers, it has been possible to introduce the administrative obligations attached to the DOW and



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	<p>CheckInAtWork on the construction sector despite the accompanying administrative cost;</p> <ul style="list-style-type: none"> • User-friendly IT solutions and effective administrative structures are key to tackling undeclared work; • The legislation concerning liability is complex, so it was important to raise awareness to develop understanding. This was made easier with input from social partners (via joint roadshows); preventative actions through inspectors; and effective communications via a website and social media; • The NSSO faced difficulty in defining the exact social security obligations owed by foreign entities.
<p>Transferability</p>	<p>Transferability of the legislation to other sectors is possible but there are a number of key factors to be considered:</p> <ul style="list-style-type: none"> • The time and financial resources required to introduce it into other sectors, although the tools already exist e.g. CheckInAtWork; • The need for political willingness within government and among policy-makers; • Using the knowledge of social partners to develop an instrument that is adapted to their needs; • Investment in awareness raising.

<p>Further information</p>	
<p>Contact</p>	<p>Nele DE KNOP, Legal Advisor, NSSO Email: Nele.deknop@rsz.fgov.be</p>
<p>Useful sources and resources</p>	<p>Information on withholding obligation (in French): https://www.socialsecurity.be/site_fr/employer/applics/30bis/index.htm and https://www.socialsecurity.be/site_fr/employer/applics/ddt/documents/pdf/Avis_aux_entrepreneurs_et_commettants_F.pdf</p> <p>Smartphone demonstration for CheckInAtWork: https://www.youtube.com/watch?v=GvmAE3x3mdU</p> <p>Information for CheckInAtWork (in French): http://www.checkinatwork.be/</p>

ⁱ See https://www.socialsecurity.be/site_fr/employer/applics/30bis/index.htm (in French)



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ⁱⁱ See presentation entitled *Joint Liability for the debts of the contractor. An effective measure in tackling social fraud?* by NOSS at EU Platform Undeclared Work Seminar on Agriculture January 2019. Also, see https://www.socialsecurity.be/site_fr/employer/applics/30bis/index.htm (in French)

ⁱⁱⁱ Small assignments with a total value of less than EUR 30 000 are exempt.

^{iv} Subcontractors with social security debts are registered on the social security portal (www.socialsecurity.be). Main contractor's withholding obligations depends on the existence of subcontractors' debts, while sanctions for failure to comply with the obligations depends on the point at which debt is discovered. For information on the withholding obligation (in French), see above.

^v Registration is mandatory and occurs daily (every work day). Ways of registering a worker's presence include. online (via desktop); using mobile smartphones; via a Gateway webservice. The database is managed by the NSSO on behalf of the FPS. It helps to tackle fraud by showing who is present on a construction site, when and for whom the work is carried out, and under which status (employee or self-employed).

^{vi} Source: NSSO

^{vii} Source: NSSO