





European Platform tackling undeclared work

Evolution of the Labour Code's provisions governing the exchange of information in the fight against illegal workⁱ

France

	Summary <p>The Labour Code now permits authorities responsible for combating undeclared work to exchange information on the persons involved (employers and employees). It also authorises the transmission of information to the competent authorities within foreign countries.</p>
Name(s) of authorities/bodies/organisations involved	<ul style="list-style-type: none"> • The Labour Inspectorate (<i>Inspection du travail</i>); • The Judicial Police and the National Gendarmerie (<i>Police judiciaire et la gendarmerie nationale</i>); • Tax Administration and Customs (<i>Direction Générale des Finances Publiques et Direction Générale des Douanes et Droits Indirects</i>); • Social security organisations (<i>Unions de Recouvrement des cotisations de Sécurité Sociale et d'Allocations Familiales : URSSAF et caisses de mutualité sociale agricole</i>); • Maritime administrations (<i>Direction des affaires maritimes</i>); • The regional directorates for the environment, planning and housing (<i>Les directions régionales de l'environnement, de l'aménagement et du logement en charge du contrôle des transports terrestres (DREAL)</i>); • Public Employment Service (<i>Pôle emploi</i>); • Directorate General of Civil Aviation (<i>Direction générale de l'aviation civile</i>).
Sectors	All
Target groups	<ul style="list-style-type: none"> • All national authorities/agencies outlined above responsible for combatting undeclared work and permitted to exchange information in this regard (directly targeted).
Purpose of measure	Deterrence: improve detection

	Aims and objectives <p>The aim was to ensure that the provisions in the French Labour Code reflect wider changes to European legislation in order to ensure that the national authorities could better</p>
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	tackle cases of fraud, particularly in a cross-border posted worker context.
Background context	<p>Between 2008 and 2016, provisions of the labour code relating to the control of work and the fight against illegal work were amended to improve the detection of fraud.</p> <p>These changes came in the context of a three-fold increase of posted workers to France from 2006-08. Abuses of posting rules led to unfair competition, particularly in some sectors (e.g. construction, transport, agriculture, temporary work, etc.).</p> <p>Fraud became more sophisticated, requiring joint investigations between different agencies and with foreign countries. The need to improve coordination and exchange of information between different bodies became apparent. However, legal constraints inhibited the exchange of information.</p>
Key objectives of the measure	<p>General objective:</p> <ul style="list-style-type: none">• To strengthen the exchange of information on undeclared work between different national authorities and with foreign authorities. <p>Specific objectives:</p> <ul style="list-style-type: none">• To introduce legislation to allow the exchange of information to combat illegal work;• To improve data exchange and coordination between national bodies with information relevant to the fight against undeclared work and authorities responsible for undeclared work in other EU Member States.
Main activities	<p>Article L.8271-1-2 of the Labour Code was introduced in 2011 and amended in 2013 and 2016. It specifies eight different organisations responsible for the control of illegal work.</p> <ul style="list-style-type: none">• The amendment introduced in 2016 provides labour inspectors with broadened powers. They can now carry out control actions on their own initiative (Article L.8112-1);• The competences of the organisations in charge of tackling illegal work are reinforced as they can now also inspect subcontractors (Article L.8271-1-1 since 2011);• Within the framework of their missions, the various enforcement bodies (mentioned in Article L.8271-1-2) can now share any information and documents they consider necessary (Article L.8271-2);• Their fields of investigation are widened allowing them to access information held by bodies or administrations not covered by Article L.8271-1-2



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	<p>such as local authorities, prefectures, cultural affairs directorates, etc;</p> <ul style="list-style-type: none"> • Agreements and partnership agreements are signed between the various organisations. They determine the objectives to be achieved and the methods of access and transmission of personal data; • In terms of international cooperation, French labour control agents may exchange information with their foreign counterparts (Article L.8271-6) directly or through the European and International Social Security Liaison Centre (Article L.8271-5-1).ⁱⁱ
Funding/organisational resources	<p>The budget for cooperation is included in the operating budget of the organisations involved. European funding may be requested for specific projects to combat illegal work. Each organisation may need to dedicate a team of screening officers to conduct joint investigations with domestic or foreign partners.</p> <p>Coordination is carried out by the national steering body of the Anti-Undeclared Work National Labour Plan, which groups together the DGT (<i>Direction générale du travail</i> or the General Directorate of Labour in the Ministry of Labour) and the DNLF (<i>Délégation nationale de lutte contre les fraudes</i>, or National agency against fraud in the Ministry of Finance) who are all actors responsible for leading the policy against illegal work and fraud and fostering engagement of stakeholders.</p>

	<p>Outcomes</p> <p>Since the changes to the Labour Code were introduced, organisational cooperation between national agencies responsible for the fight against illegal work has increased, as has the cooperation with international counterparts. However long delays in transmitting information with other Member States remain. Partnership agreements are a crucial component to successful cooperation.</p>
Achievement of objectives	<p>The 2018 evaluation of the national policy against illegal work by the Ministry of Labour reports the following;</p> <ul style="list-style-type: none"> • There was an increase in the number of operational cooperation activities between the various organisations. Of the 70 500 companies audited in 2017, more than one third (35%) came within the purview of joint cooperation between these organisations; • In terms of international cooperation, the number of information exchanges has increased significantlyⁱⁱⁱ;



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	<ul style="list-style-type: none"> • There was a decrease in the number of controlled foreign companies (-27%) in 2017 after a strong increase (+ 75%) in 2016; • Fraud detection, however, also fell with 15% of audited companies in 2017 being sanctioned, compared to around 18% on average between 2013-16; • A decrease in the amount of the social security contributions clawed back (-3%); the number of fines and criminal prosecutions also fell by 14% between 2016 and 2017. <p>This decline may be explained in two ways: an increasing sophistication of fraud which makes it more difficult to detect, and a decline in fraudulent activities due to prevention caused by a tightening-up of the national and European legal framework.</p>
Lessons learnt and success factors	<ul style="list-style-type: none"> • The success of information exchange depends on the quality of the operational cooperation between the different organisations - agreements between the various partners are important to formalise this cooperation^{iv}; • The involvement of the tax department in this cooperation is crucial because it provides other partners with sensitive data. • In addition, certain data are still not available or difficult for controllers to access (in the case of employee data). • Taking the field knowledge gained by controllers to improve the exchange of information into account is important; for example, identifying relevant data to be exchanged by sector or type of fraud.
Transferability	<p>The existence or creation of a national coordinating body to coordinate the actions of the various control bodies involved is important.</p>

Further information	
Contact	<p>Liaison Office, French Labour Inspectorate</p> <p>Email: Bureau.Liaison@travail.gouv.fr</p>
Useful sources and resources	<p>Articles : L8271-1 à L8271-6-4 Labour Code</p> <p>Website : Legifrance.gouv.fr</p>



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ⁱ The expression "illegal work", legally enshrined in Law n ° 2005-882 of 2 August 2005, groups together a set of major frauds which are precisely planned and defined by the labour code. These frauds have in common to violate basic rules related to the exercise of an independent professional activity, in own name or in company, as well as those related to the hiring and the employment of the employees. They include: Undeclared work (French : *travail dissimulé* which relates to the fact of not declaring one's employment); illicit employee subleasing/illicit loan of personnel/ (illicit labour force lending) i.e. the prohibition of supplying labour on a profit-making basis when it has the effect of causing loss or harm to the employee or evading legal rules and collectively agreed provisions (that is, a form of illicit subcontracting); the employment of a foreigner without a work permit; the irregular accumulation of jobs (while it is possible to have several jobs or professional occupations including temporary work, it is illegal to work more than the maximum legal hours of work as an employee); and finally, replacement incomes fraud, which is the act of improperly and knowingly receiving unemployment allowances

The notion of illegal work is, therefore, large and includes these different elements. Undeclared work is included in this broader legal definition.

See <https://travail-emploi.gouv.fr/droit-du-travail/lutte-contre-le-travail-illegal-10802/article/qu-est-ce-que-le-travail-illegal>

ⁱⁱ The modalities for the exchange of information are defined by the bilateral agreements between France and these states.

ⁱⁱⁱ However, the delay in transmitting information on posted work between Member States is long in some cases. In 2017, the length of time it took to receive a response to a request for information via the Internal Market Information system (IMI) was 43 days for Germany, 36 days for Portugal, 33 days for Bulgaria and 27 days for Poland.

^{iv} Signed agreements outline for example the objectives to be achieved, the provision of human resources (including labour inspectors) to partners, and specify the terms of access or transmission of personal data.