



European Platform Undeclared Work

National and Bilateral Agreements and Memoranda of Understanding to Tackle Undeclared Work

Follow-up Visit to the Belgian Labour Inspectorate (Belgian Federal Public Service Employment, Labour and Social Dialogue)

26-27 June 2017

Summary Report

1. Introduction

This report summarises the information shared by the Belgian Labour Inspectorate with members of the European Platform Tackling Undeclared Work during a visit to their premises on 26 and 27 June 2017.

The visit was related to a Thematic Review Workshop on 'National and Bilateral Agreements and Memoranda of Understanding to Tackle Undeclared Work' which took place in April 2017 in Utrecht, the Netherlands. The workshop was hosted by the Inspectorate of Social Affairs and Employment of the Netherlands and brought together Platform members and observers from 18 EU Member States (MS) and Norway (EEA) – including representatives of national ministries, labour inspectorates, social security authorities, and tax and customs authorities. During the workshop, the participants shared working experiences and good practices on how to draft, implement, monitor, and improve national agreements (NAs), bilateral agreements (BAs) and memoranda of understanding (MoU) to tackle undeclared work (UDW).

After the workshop, the participants had the opportunity to nominate one country that seemed to be of particular interest regarding their practices in that area, and would be worthwhile a Follow-up Visit to discuss existing practice more in-depth. Belgium was selected through this process and agreed to host such a visit. Representatives from seven European countries took part in the Follow-up Visit.¹

2. Key Outcomes of the Thematic Review Workshop

During the Thematic Review Workshop, it was stated that establishing functioning collaboration among labour inspectorates, social security inspectorates and tax authorities is of particular importance for tackling undeclared work to improve implementation of government policy and promoting communication between responsible bodies. Moreover, facilitating cooperation between Member States is one of the main objectives of the Platform Tackling Undeclared Work.

The Thematic Review Workshop revealed that national and bilateral agreements and memoranda of understanding are useful tools to tackle undeclared work, but more needs

¹ Cyprus, Estonia, France, Lithuania, Ireland, Portugal, Romania.

to be done to strengthen cross border cooperation, which is one of the key objectives of the Platform. The following conclusions were drawn:²

1. The effectiveness of the cooperation outlined by the agreements depends on national strategies and legislation that regulate competences and data exchange to address undeclared work. They are often enhanced by stable or temporary bodies for cooperation such as working groups or committees.
2. Platform members have identified several key barriers to setting up national agreements successfully, such as the lack of legal provisions to enforce cooperation and/or the lack of political importance placed on encouraging cooperation between national authorities, as well as technical barriers to the exchange of information.
3. In order to implement national agreements effectively at the local level, financial and human resources, local flexibility, monitoring and continuous improvement of procedures are important.
4. The definition of clear targets and success indicators that are communicated across all levels of cooperation help to monitor, and update when necessary, the implementation of measures and activities in the NAs.
5. Bilateral agreements are usually more formal cooperation instruments between Member States which aim to clarify EU regulations and specify information needs, while memoranda of understanding are more flexible, and are often driven by current political priorities. Shared examples of BAs/MoUs between Platform members show that both documents should follow a clear structure and describe the aim of the cooperation, key partners and their legal competences, the areas covered by the agreement, the time frame, the cooperation activities and operational aspects, such as the way information is shared, contact points and budget provisions.
6. However, there are various implementation issues such as the differing legal competences, different working languages, and different ways of collecting data. In order to address these issues, the set-up of governance structures and contact points, regular staff exchange and other collaboration tools are needed.
7. On the other side, factors enabling the smooth implementation of BAs/MoUs include a common working language and similar legal systems, such as Ireland and UK, or Belgium and France.
8. A critical component of BAs or/and MoUs are the provisions for safe exchange of personal data and data protection issues which guarantees a better exchange of information.
9. NAs and BAs/MoUs exhibit a lot of similarities and, as a rule, countries that have stronger NAs are also more active in drafting and implementing BAs/MoUs.³

On the following pages, the policies and tools in place in Belgium are discussed against these challenges and success factors identified during the workshop.

2.1 Clear national strategies and legislation that regulate competences and data exchange to address undeclared work, stable or temporary bodies for cooperation such as working groups or committees.

Based on its rich experience from the past, Belgium launched federal Action Plans against Social Fraud and Social Dumping in the past years, the last one in 2017. Objectives of the Action Plan include

- Better collaboration between social inspection services on national level (coordinated by Social Information and Investigation Service (SIIS)), and international level;

² Cf. Ruslan Stefanov/Daniela Mineva, [Learning Resource paper](#) following the Thematic Review workshop (forthcoming).

³ Stefanov/Mineva, *ibid*

- Multidisciplinary collaboration between police, social and fiscal services (supported by the Social Criminal Code);
- Data exchange between fiscal and social inspection services (using building blocks of the Belgian e-government system, such as the Limosa and Dimona databases);
- More and better targeted inspections due to datamining and datamatching; and
- A sector-specific approach (detailed in sector-specific tripartite agreements).

The Action Plan is coordinated by the office of the Secretary of State for Combating Social Fraud. It forms an umbrella for many activities in this area. Existing tripartite partnership agreements between employers' organisations, trade unions and inspectorates to combat social fraud in specific high-risk sectors (construction, cleaning, electro technicians, transport, agriculture/horticulture, and metal) were updated, amended and renewed. The agreements entail a broad number of sector-specific activities. For instance, the tri-partite partnership agreement for countering undeclared work in the construction sector ('National Plan for Fair Competition in the Construction Sector' from 8 July 2015) entails a commitment to carry out 2000 controls (10% of which in the evening hours and/or during weekends), develop better datamining tools, develop an electronic identification badge and to limit the number of subcontractors in the supply chain to 2 levels per specialism.

2.2 The lack of legal provisions to enforce cooperation and/or the lack of political importance placed on encouraging cooperation between national authorities are key barriers to setting up NAs successfully. The same applies to technical barriers to the exchange of information.

With the Federal Action from 2017 and the appointment of a Secretary of State for Combating Social Fraud, Belgium has ensured high-level political commitment for its efforts in tackling UDW. It also took action to overcome legal and technical barriers by enacting a special Social Criminal Code, to ensure smooth communication between various authorities and to define the process of proving an offence. All these actions taken together have allowed Belgium to develop advanced data sharing and data mining solutions to target social fraud, which is very often associated with UDW.

The Belgian Social Criminal Code defines the legitimacy of communication of information to and from the social inspectors to and from other administrations (article 54 and 55); and the use of information obtained from other parties by the inspection services (article 56). The Code grants the right to obtain all relevant information from public authorities on national level and the right to use this information for own inquiries.

The Social Criminal Code underpins the international exchange of information, and covers information exchange via the IMI as well as peer-to-peer exchange in the framework of a bilateral agreement with another MS. Similarly to its role on national level, the Social Criminal Code ensures that the free flow of information between countries is legally backed up. Very importantly, it allows the national permissibility of information, not only from EU countries but also from countries which have signed the relevant ILO conventions.

The Social Criminal Code also clarifies the role of the Social Information and Investigation service (SIIS)⁴ The SIIS is an umbrella organisation coordinating a number of inspection services (Labour Inspection, Social Inspection, National Employment Office and National Institute for Health and Disability Insurance) to make the fight against social fraud more effective and create 'a well-oiled machine'. 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.

⁴ Service d'inspection et de recherche sociales (SIRS) in Belgium - fr, Sociale Inlichtingen- en Opsporingsdienst (SIOD) in Belgium - nl

Inspection services have a number of shared competences and use the same databases.⁵

With regard to technical solutions, Belgium has two databases, Limosa (electric declaration of posted workers and self-employed from other countries), and Dimona (electronic declaration of Belgian employers and their employees), which are interlinked and allow for cross-searching and datamining to enhance the detection of social fraud. A common platform for the Inspection Services hosted by the National Social Security Office (NSSO) exists ('Dolsis' shared database of inquiries). Datamining concepts are developed and coordinated by the National Social Security Office (NSSO).

2.3 In order to implement NAs effectively at the local level, financial and human resources, local flexibility, monitoring and continuous improvement of procedures are important.

Belgium seems to have sufficient resources in place to implement the agreements. The topic is high on the political agenda, a Secretary of State was appointed, there is a supra-national coordinating body (SIIS), and the public prosecutor (Ministry of Justice) plays an important role in defining the judicial approach to social fraud and social dumping and carrying out the prosecution of infringements (penal and administrative), e.g. by imposing sanctions.

Data on the results of tripartite agreements (data on posting in Belgium, numbers of treated cases, most common infringements, results in million Euros) exists. Beyond that, the tripartite agreements are not systematically monitored and evaluated but are rather reviewed periodically to assess the need for their correction. In addition, continuous improvement in the form of updates and amendments are taking place.

2.4 The definition of clear targets and success indicators that are communicated across all levels of cooperation help to monitor, and update when necessary, the implementation of measures and activities in the NAs.

The Federal Action Plan against Social Dumping from 2017 consists of SMART (specific, measurable, achievable, results-oriented and time-bound) goals, hence it should be possible to assess the concrete actions against these goals⁶. However, no specific evaluation activities seem to be planned or carried out at this stage. The participants in the Follow-up Visit suggested that formal evaluations should be less frequent, whereas these can be substituted by annual practical reviews to show whether certain measures work or not.

2.5 BAs/MoUs should follow a clear structure and describe the aim of the cooperation, key partners and their legal competences, the areas covered by the agreement, the time frame, the cooperation activities and operational aspects, such as the way information is shared, contact points and budget provisions.

Belgium uses bilateral agreements as much as possible to reveal cases of cross-border social fraud, sham constructions, posting fraud criminal networks and non-genuine posting and letterbox companies. To that end, Belgium has international agreements with five other countries in place: France (2003), Luxembourg (2008), Poland (2007), Romania (2013) and Portugal (2009), which fall under the service for control of social laws (CSL) and are implemented by the Federal Labour Inspectorate. Article 4 of the

⁵ These are the actions under the axis of social security contributions. SIIS also addresses the axis of social benefits (combating cumulating/combination of benefits, residence or domicile fraud, illegal temporary employment etc.)

⁶ There are monthly statistical follow-ups by the Social information and Investigation Service (SIIS).

Posting Directive 96/71/EC⁷, requiring that MS make provision for cooperation on information between authorities, is seen as legal basis for these agreements.

The cooperation agreement with Poland was presented in detail at the Follow-up Visit. The agreement dates from 2007 and is regarded as very successful. Given the good experiences, the agreement was used as a template to draft two more agreements (with Luxembourg in 2008 and Portugal in 2009). The text of the agreement is quite short (4 articles). It was stated that overly fine-tuned agreements can have a detrimental effect – if too many aspects are regulated in great detail, the freedom to adapt to changing circumstances can be restricted. Nevertheless, the agreement contains information in relation to most of the points above. It describes

- The aim of the cooperation: Article 1 of the Cooperation Agreement between Belgium and Poland states that the agreement serves to facilitate the exchange of information in relation to protective rules of posted workers between Belgium and Poland (terms of employment, irregularities detected, and breaches of employee rights).
- The key partners and their legal competences: All key partners are named and sign the agreement. All partners are on the level of social security exchange and have related competences.
- The cooperation activities: The partners agreed to use certain forms to request information, including the IMI. It is also specified where any request should be sent to. Moreover, an annual meeting is held between the key partners of each country.
- The time frame: Both partners commit to respond to requests within 4 weeks (Article 2).
- Other operational aspects, such as the way information is shared, or contact points are stated in the agreement. The agreement does not contain any details regarding budget provisions.

The experience in Belgium shows that indeed agreements between partners in different countries with similar competences seem to be most successful. Belgium tends to close agreements between social security agencies/labour inspectorates, as they are in a good position to exchange information. However, there is also an agreement in place (Belgium-Romania) that was signed between ministers (BE: FPS Employment, Labour and Social Dialogue, RO: Ministry of Labour, Social Protection and Elderly Persons). This agreement is regarded as successful as well. It is very brief; in relation to posted workers it only contains a sentence that states that 'experts can contact each other and exchange information'. Provided political good will on both sides has been deemed sufficient for effective cooperation by the participants in the workshop.

2.6 To address any issues with BAs/MoUs, clear governance structures and contact points, regular staff exchange and other collaboration tools are needed.

The above-mentioned format of the BA experience of Belgium is sufficiently detailed to discuss issues with the implementation between partners. However, some cooperation agreements were mentioned, where changing political priorities have led to dormancy of the agreement. In such case, Belgium has no powers to enforce the implementation of the agreement.

⁷ (The European Parliament and the Council, 1996)

2.7 A common working language and similar legal systems facilitate the smooth implementation of BAs/MoUs.

Belgium has also been able to present a good example of an agreement signed between countries with common language and similar legal systems. An administrative cooperation arrangement on the fight against illegal work was signed on 9 May 2003 between Belgium and France. It focuses on countering UDW, employment of people who are not entitled to work in the respective country, income fraud and posting of workers fraud, joint monitoring of compliance regarding wages, working hours, paid holidays, health and safety, etc.⁸ This was triggered by a high amount of illegal cross-border activities between France and Belgium.

To tackle cross-border issues with between Belgium (Flanders) and the Netherlands, Belgium uses existing cross-border agreements and legal frameworks. The Benelux Union, a political-economical union of Belgium, the Netherlands, and Luxembourg was first used to name the customs agreement from 1944.⁹ It is now often used to refer to the geographic, economic and cultural union of the three countries. In 2014, the Benelux union issued a joint declaration on cooperating in the fight against social dumping. In 2015, a Recommendation of the committee of the ministers was launched which aims to enhance collaboration to fight social fraud and social dumping. Three working groups were established who address sham constructions, benefit fraud and fraudulent temporary agencies.

2.8 A critical component of BAs or/and MoUs are the provisions for safe exchange of personal data and data protection issues.

All Belgian agreements make reference to relevant European Directives, national and international legal standards regarding data protection. The European Data Protection Directive 95/46/EC¹⁰ applies, if it is not overruled by national data protection regulations (e.g. Germany has stricter regulations on national level).

On national level, Belgium has ensured the strict implementation of data protection standard to guarantee that national databases for tackling social fraud are accessible to different inspection units but also guarantee the privacy of the employees and the employers. At the same time the disclosure of data under court supervision is made easier if the request comes on the basis of established data mining algorithms, which indicate a company as high risk in relation to social fraud.

2.9 NAs and BAs/MoUs exhibit a lot of similarities and, as a rule, countries that have stronger NAs are also more active in drafting and implementing BAs/MoUs.

The Follow-up Visit to Belgium confirmed that this is indeed the case in Belgium, where a National Action Plan provides an umbrella for a range of national agreements in key sectors. NAs are complemented by longstanding BAs/MoUs with five countries, the majority of which are very actively used for information exchange and followed up closely by the Belgian Labour Inspectorate.

⁸ (Ministry of Housing and Territorial Equality, France and Ministry of Labour, Family and Social Affairs, Belgium, 2003)

⁹ In 1951, these countries joined West Germany, France, and Italy to form the European Coal and Steel Community, a predecessor of the European Economic Community (EEC) and the European Union (EU).

¹⁰ The European Parliament and the Council 1995

3. Summary of round table discussion on the draft Toolkit on BAs/MoUs

Following the presentation of the experience of Belgium the Follow-up Visit finished with a round table discussion on key questions regarding the development of a Toolkit on BAs/MoUs. The participants discussed briefly three questions, which were identified as important to follow up upon from the TRW in Utrecht in April:

3.1 What are incentives and methods of identifying needs that prompted the drafting of agreements? Who are the responsible driving bodies of an agreements and what are differences across countries?

There are two driving forces for initiating BAs/MoUs, namely the political leadership of a country which very often reacts to a specific example of an UDW incident or the specialised public administration dealing with labour and/or social security issues. The key ingredient to signing good BAs/ MoUs is the cooperation between these two initiating forces, including frequent contact and exchange of information between the countries in question. Typically, BAs upgrade already existing good relations.

3.2 How can implementation problems be overcome? Are practical solutions or legislative change or both needed?

The example of Belgium suggests that the existence of solid legal base nationally, as well as shared legal traditions between two countries are an important foundation for the efficient functioning of BAs and MoUs. However, participants agreed that good practical solutions are important because legislative change can be time-consuming and politically problematic. It was also mentioned that the Platform provides a very good instrument in this regard, as it allows the implementation of practical solutions and instruments on bilateral and multilateral level without the necessity to overly formalise relations.

3.3 Why are evaluations not a common practice and should an evaluation culture be enhanced (if so, how?)?

Evaluations are seen as unnecessarily burdensome formalisation of BAs and/or MoUs, which can cause complications of different character, like for example pointing out to results, which are politically unacceptable for one of the parties. The participants seemed to welcome a more light touch approach of reviewing the BAs and MoUs on an annual basis, rather than going through a formal evaluation procedure. Yet they noted that it is important to have a mechanism for such reviews.