

Bulletin no.2. December 2021

Cross-border inspections



Welcome to this second edition of a quarterly summary of updates regarding cross-border inspections. In this edition, we put a spotlight on the first ELA supported concerted and joint inspections mainly in seasonal work and on the lessons learnt.

Seasonal workers action plan and road transport – First lessons learnt from Concerted and Joint Inspections

As part of the Action Plan on seasonal workers, Member States with the support of ELA undertook cross-border inspections in the agriculture sector. Moreover, ELA supported cross-border inspections in both the road transportation and construction sectors.

15-17 September 2021: French and Bulgarian inspection in the agriculture sector

The first ELA supported and coordinated joint inspection between two Member States focused on Bulgarian seasonal workers working in the grape picking sector. Several infringements were identified, including workers without work permits, undeclared work and sub-standard wages and accommodation conditions.

'Together with the newly created European Labour Authority, the French Ministry of Labour is working with its European counterparts to ensure compliance with the rules of labour law, by inspecting working conditions, pay and accommodation.'

Agnès Leroy, Directorate-General for Labour, France

20-21 September 2021: French and Spanish joint inspection at farming companies

French and Spanish labour inspectors carried out a joint inspection which took place in several farms in France. This inspection focused on Spanish temporary work agencies with the aim to inspect working conditions (working time, wages, etc.), accommodation of posted workers and social security contributions. A follow-up to this inspection aimed at controlling the temporary work agency was executed in Spain on 9-10 November with the participation of French authorities.

21 September 2021: Belgian, Lithuanian, and Dutch joint inspection in the agriculture sector

Joint inspections took place across Belgium, Lithuania and the Netherlands targeting posted workers performing activities in the agri-food sector (strawberry and raspberry sector). Inspectors concentrated on the type of employment, wages, working and living conditions of the employees, as well as compliance with the COVID-19 measures.

21 September 2021: Belgian and Polish concerted inspection in the agriculture sector

Belgian inspectors carried out an inspection at a chicory farm in Belgium to check the type of employment, wages, working and living conditions of 20 Romanian and Polish posted workers by two Polish companies. During the inspection it was revealed that workers were unaware of who their employer was. A follow-up inspection is planned at the headquarters of the two Polish companies in Poland.

23 September 2021: Italian inspection of a Romanian company, in the agriculture sector

Italian inspectors carried out an inspection in Piacenza and Alessandria to investigate a Romanian company sending posted workers to two Italian user undertakings. Follow-up actions are to be implemented.

15 October 2021: Belgian, German, Dutch, and French road transport inspection

A joint roadside inspection was undertaken on a highway parking area in Belgium. 37 trucks were inspected. The aim of the check was to detect violations such as exceeded driving times or manipulation of tachographs, and to exchange information on enforcement good practices between inspectors. Read more [here](#).

27 October 2021: French and Italian joint inspection in the construction sector

This joint inspection discovered several social security infringements and working condition violations, involving a number of posted workers from Italy.

3 December 2021: Italy, Romania, Slovakia and Belgium take part in a road transport concerted inspection

The four Member States carried out a concerted inspection focused on transport companies active in Italy with branches in all four Member States. It focused on working conditions of drivers such as wages, working time, driving and resting times, and adherence to the rules relating to stable establishment. This simultaneous action in the four Member States allowed for efficient information exchange and checks in other countries' databases.

Summary of lessons learnt:

- Participation of labour inspectors from other Member States is extremely valuable. It allows partners to understand other countries' laws and inspection practices. In addition, it facilitates trust and communication with workers.
- From the outset the role of visiting inspectors on-site should be clearly explained underlining that they are present in order to support workers to uphold their rights.
- There is a clear need for secure, fast and reliable cross-border information exchange tools.
- Information material for workers during inspections should be simple, available in different languages and give clear instructions about available help.
- Involvement of all stakeholders, such as social security, tax authorities or social partners, is of crucial importance.
- CJIs require a lot of preparation and ELA support to facilitate CJIs is very much needed and should be requested timely.
- Communicating the actions and results of CJIs (via press releases or social media) informs and demonstrates to the public that cross-border fraud is being tackled

Tools and procedures for concerted and joint inspections

The Working Group has developed templates and guidelines to support concerted and joint inspections. These resources clarify the roles of involved actors in launching and performing inspections, and facilitate the cooperation between national authority, social partners, and ELA. The latest resources are provided below:

- Guidelines for concerted and joint inspections including translations in all EU languages are available [here](#).
- [Workflow guidance for Social partners](#) (PDF, 440 KB)
- [Workflow guidance for Member States](#) (PDF, 736 KB)
- [Workflow guidance for ELA](#) (PDF, 516 KB)
- Presentation from the webinar on [temporary work agencies and other recruitment intermediaries](#) (PDF, 359 KB)

Infographic on support for CJIs

ELA offers a variety of support to help you organise concerted and joint inspections. An infographic, providing a short overview of support, [here](#) (PDF, 2 MB)

You can submit a case to ELA and apply for support by filling out the [case description template](#) (docx, 34 KB)

Planned meetings of the Working group on Inspections



Working Group on Inspections
24-25 March 2022



Working Group on Inspections
6 July 2022



Working Group on Inspections
9-10 November 2022

Summary of legal cases and law relevant to inspections



Judgement in relation to the road transport sector Judgment in Case C-428/19

OL and Others v Rapidsped Fuvarozási és Szállítmányozási Zrt.

Court conclusion: In line with previous judgements (C-815/18) the Court upheld that Directive 96/71/EC is applicable to **the transnational provision of services in the road transport sector**. Workers can rely on the provisions concerning a breach of minimum wage rules of the host Member State in courts of the sending Member State against their employer if that court has jurisdiction. **Daily allowances paid** to workers to cover costs of travel, board and lodging **are considered as** forming part of the specific situation of posting and is hence **part of the minimum wage**, unless it is paid to reimburse actual expenditures incurred or if it is paid to reward additional services or alters the nature of the services provided by the worker in return. In addition, it is lawful to pay bonuses on the basis of the savings made in the form of reduced fuel consumption in relation to the journey made, unless it is paid in such a manner that it encourages the driver to act in a manner that endangers road safety according to Regulation No 561/2006.

The judgement can be accessed [here](#)



National case law and legal updates in Member States

France

Judgement of the Cour de Cassation (highest court of appeal civil law), 31 March 2021, case 16-16.713 – Judgement links to CJEU Case law C-17/19, Bouygues travaux publics and others, and joined cases C-370/17 and C-37/18, CRPNPAC and Vueling airlines.

Court conclusion: In line with the Bouygues (C-17/19) and the Vueling cases (C-370/17), the Court held that when an A1 certificate (E101) has not been withdrawn by the issuing country or cannot be disregarded by national courts because the procedure of fraud detection as set out by the CJEU has not been complied with (promptly initiate procedure of Art. 84a (3) Regulation 631/2004 issuing authority has to review the evidence provided by the host state authority that it was a case of fraud or fraudulent use of the A1 form, and that on the basis the issuing authority has to formally withdraw or cancel the A1 form), the civil courts of the host Member State are not bound by a criminal ruling according to which the employer is found guilty of undeclared work for not affiliating his employees to the French social security. However, the employer can be required to pay annual leave compensation and other payments as part of the salary as A1 forms cover only social security law obligations.

Read the full ruling in English [here](#).



National case law and legal updates in Member States

Netherlands

Court conclusion: In its test to decide from which country an employee habitually works the national court relied on the following criteria:

- The transport services that were performed in Western Europe almost always originated and ended in the Netherlands.
- The work was organised from the Netherlands and all orders were given from the Netherlands.
- The trucks were put at the drivers' disposal in the Netherlands.
- Most of the transport services were carried out in north-western Europe, the number of kilometres driven in Hungary were negligible.
- The goods were unloaded in various places in Europe, mostly outside of the Netherlands, but never in Hungary.

As per this result, the court replied positive that the employees habitually worked in the Netherlands.

Furthermore, the Court of Appeal had to rule on whether the truckdrivers' employment contracts were more closely connected with Hungary. Although the truckdrivers paid taxes and premiums in Hungary, the Court of Appeal did not find this to be decisive because that circumstance was only a consequence of the drivers living in Hungary and not directly linked to the employment contract.

The judgement can be accessed [here](#).

Get in touch



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