



# Social Criminal Code, Belgium

<b>Title of the policy or measure (in English)</b>	The Belgian Social Criminal Code (SCC) - the exchange of information between labour inspectorates
• Case study/good practice name	The Belgian Social Criminal Code – The importance of legislation for the exchange of information between labour inspectorates
• Country	Belgium
• Sectors	All sectors
• Target groups	<ul style="list-style-type: none"> <li>- Employers and employees inspected by labour inspectors</li> <li>- Labour inspectors carrying out the inspections</li> <li>- The labour prosecutors and the Service of the administrative fines</li> </ul>
• Type of measure	Deterrence: improve detection
• Short sentence summarising the measure	The Belgian SCC integrates the existing legislation on social criminal law into one logically structured and coherent legal instrument. It comprises all stipulations of prevention, detection, prosecution and punishment of social criminal law infringements. The stipulations regarding the exchange of information are of crucial importance to improve the detection of undeclared work.
<b>Background</b>	
• Background context driving the implementation of the measure	The reform was prompted to a certain extent by the ineffectiveness of the social criminal law, which resulted in limited compliance <sup>1</sup> . This ineffectiveness was attributed to multiple causes, such as the absence of a coordinated entity (due to the dispersal of stipulations over a broad array of social laws), the lack of internal coherence of the social criminal law, the disproportionality in sanctions and the limited diversification in sanctions <sup>2</sup> . The introduction of the Belgian SCC was preceded by the work of the Commission for the Reform of the Social Criminal Law which was established in 2001 <sup>3 4</sup> .
• When was the measure implemented?	The Belgian SCC was implemented by the Act of 10 June 2010 and became effective on the first of July 2011 <sup>5</sup> .

<sup>1</sup> Wetsontwerp tot invoering van een sociaal strafwetboek, *Parl. St.*, Kamer, 2008-2009, 52/1666.

<sup>2</sup> Brisart, I. (2011), « Naar een nieuw Sociaal Strafwetboek », in Jorens, Y. (Ed.), *Sociaal strafrecht. Van controle tot veroordeling* (pp.283-354), Brugge: Die Keure.

<sup>3</sup> Blomme, F. & Messiaen, T. (2010). *Handboek Sociaal Strafrecht. Het nieuwe sociaal strafwetboek*, Gent: Story Publishers; RD 19 July 2001 establishing a Commission for the Reform of the Social Criminal Law, *B.A.* 28 July 2001.

<sup>4</sup> However, prior to the establishment of the Commission, several attempts had already been made to reform the social legislation (Vandervorst, P. (2007). "Twintig jaar later... 1981-1985 / 2001-2005 (voorwoord)", *Belgisch Tijdschrift voor Sociale Zekerheid*, Vol. 49 (1), 5-20).

<sup>5</sup> This is the case with the exception of article 189 of the SCC which entered into force on 30 June 2015.

(including start date and end date/ongoing)	
<ul style="list-style-type: none"> <li>Names(s) of authorities/bodies/or organisations involved</li> </ul>	The 27 members of the Commission for the Reform were directly involved in the preparation of the code. Several governmental and non-governmental institutions and professional groups were represented by the 27 members, such as institutions of social security, ministries, magistrates, lawyers, academics, cabinet members.
<ul style="list-style-type: none"> <li>Scope of the measure (a pilot project, nationwide, regional wide)</li> </ul>	National
<ul style="list-style-type: none"> <li>Type of (policy) measure</li> </ul>	Reform of the social legislation
<ul style="list-style-type: none"> <li>Key objectives of the measure</li> </ul>	<p>The major aim of the Belgian SCC was to group all the social criminal laws (incriminations, administrative sanctions, criminal sanctions and procedural rules) into a coordinated and coherent codification. In essence, four main objectives are discernible in the SCC<sup>6</sup>:</p> <ol style="list-style-type: none"> <li>1) Increasing the readability of the provisions;</li> <li>2) Increasing the coherence of the provisions;</li> <li>3) Striving for diversification in sanctions;</li> <li>4) On a procedural level: rearranging the rights and duties of labour inspectors and establishing procedural rules applicable to the imposing of administrative sanctions<sup>7</sup>.</li> </ol>
<b>Specific measure</b>	
<ul style="list-style-type: none"> <li>Description of how the measure operates in practice</li> </ul>	<p>The Belgian SCC consists of two books. The first book comprises all stipulations concerning prevention, detection, criminal proceedings and the system of sanctioning. The second book is devoted to the infringements and its sanctions. The focus here is on the exchange of information between authorities as stipulated in book 1.</p> <p>The <b>exchange of information between Belgian authorities</b> is covered by the SCC is determined by articles 54 to 56 of the SCC<sup>8</sup>.</p> <p>In practice, the exchange of information operates through different channels such as shared access to databases, joint meetings, written communications, etc. An important tool is the electronic process-verbal (PV)<sup>9</sup> which was introduced in 2011. The electronic PV tool is an online application which strives for uniformity and promotes the quality of the PVs with mandatory fields and data, role menus, help functions, etc. All labour inspectors who derive their</p>

<sup>6</sup> The SCC had other objectives as well, which are well explained in Wetsontwerp (2008) and Brisart (2011).

<sup>7</sup> Brisart (2011); Wetsontwerp (2008); Heirman, J.-C. & Van De Mosselaer, G. (2012). *De bevoegdheden van de sociaal inspecteurs in het licht van het Sociaal Strafwetboek*, Mechelen: Wolters Kluwer Belgium NV.

<sup>8</sup> See De Coninck, Gillis & Jorens (2013, 50-52) for the entire articles in English. Internet: [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2010060607&table\\_n\\_ame=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2010060607&table_n_ame=loi) (French) or <http://www.ejustice.just.fgov.be/wet/wet.htm> (German).

<sup>9</sup> A PV is an official pro Justitia report. This is an official written report drawn up by a person competent to do so, in this case the labour inspectors. It contains relevant information regarding the infringements (e.g. facts, hearing).

	<p>competences from the SCC have access to the electronic PV tool, in which they can consult electronic PVs established by other labour inspectors and can thus read the most important data (e.g. infringements) from colleagues within and outside their agency.</p> <p>Different types of information are exchanged through these channels depending on the conditions stipulated by law (e.g. medical information) and by cooperation protocols (e.g. with the tax administration) and on the appreciation of the inspector (e.g. ideas on what will be of interest to other labour inspectors given the focus of their authority).</p> <p><b>Information exchange between countries</b>, for example, in the case of posting of workers, is highly frequent (and of critical importance) and is determined by article 57 of the SCC<sup>10</sup>.</p> <p>Whereas the sharing of information between countries previously occurred via SPOC's (single point of contacts), since 2011 this takes place through the Internal Market Information (IMI) system. This system is an EU level certified platform for the exchange of information and is subject to stringent data protection measures and regulation. Still, the extent to which Belgian labour inspectors receive information from their European counterparts through IMI, depends to a large extent upon the national legislation on information exchange, data protection and privacy in force in the other Member States; currently, some have national legislation in place which inhibits/restricts information exchange.</p> <p>The abovementioned articles form the legal basis for information exchange between labour inspectors (and other authorities) in Belgium and abroad. These articles are not entirely new, but since the introduction of the SCC the field of application expanded. As a result, the articles are applicable to a broader set of authorities which are now also considered as labour inspectorates.</p>
<ul style="list-style-type: none"> <li>• Which groups are targeted by the measure?</li> </ul>	<ul style="list-style-type: none"> <li>- Labour inspectors (direct);</li> <li>- The labour prosecutors and the Service of the administrative fines (direct);</li> <li>- Employers and employees (indirect)</li> </ul>
<ul style="list-style-type: none"> <li>• What resources and other relevant organisational aspects are involved?</li> </ul>	<ul style="list-style-type: none"> <li>• Two legal experts supported the members of the Commission by providing advice on suggestions.</li> <li>• The draft was fine-tuned and evaluated by several working groups, the Council of Ministers, the social partners (representatives of employers and employees) and the Council of State before the SCC was finally approved by the members of Parliament.</li> <li>• All agents and agencies that fall within the scope of the code are responsible for the correct implementation of its stipulations.</li> </ul>
<ul style="list-style-type: none"> <li>• What are the source(s) of funding?</li> </ul>	<p>The fees of the external members of the Commission were paid by the (then) Ministry of Employment and Labour.</p> <p>The fees of the external members of the Advice Board are paid by the Ministry of Justice.</p>
<p><b>Evaluation and outcome</b></p>	

<sup>10</sup> See De Coninck, Gillis & Jorens (2013, 52-54) for the entire articles in English.

<ul style="list-style-type: none"> <li>Has the measure achieved its objectives?</li> </ul>	<p>The Belgian SCC is constantly evaluated by the Advice Board of Social Criminal Law, which was established by Royal Decree in 2011<sup>11</sup>. One of its main functions is to preserve the coherence of the SCC (in terms of goals, logic and structure) by giving advice on new bills which impact the SCC (such as bills concerning new incriminations).</p> <p>As a result of this Board's continuous work, the first aim - the codification of the social legislation in a harmonious entity - is achieved. As a result of this codification, one interviewee argues that the SCC provides – in comparison to the situation prior to the SCC – more clarity and a better grip for labour inspectors (it is referred to as their 'bible'). Furthermore, it is perceived to lead to more legal certainty (due to less mistakes by inspectors and better quality of PVs), to a higher risk of offenders being prosecuted and to more convictions. The SCC is also perceived to have increased the knowledge of employers concerning incriminations and their rights and duties.</p>
<ul style="list-style-type: none"> <li>Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved</li> </ul>	<p>The SCC is evaluated by the Advice Board which at present consists of 18 members (appointed for a period of four years) with varying functions (magistrates, judges, high-ranked civil servants in institutions of social security, academics) and five experts<sup>12</sup>.</p> <p>So far, the Advice Board has not yet evaluated the legislative stipulations concerning the exchange of information due to an absence of bills regarding this theme. However, according to two respondents, the information exchange between Belgian and international authorities works well. The articles are perceived as crucial because they provided the necessary legal framework that enables the exchange of information. Importantly, the SCC provides a legal justification for Belgian labour inspectors to obtain the necessary certifications from the Sectoral Committee of the Social Security, a mandated division of the Privacy Commission, to access databases (see below). Access to different existing databases facilitate a fluent exchange of information.</p>
<ul style="list-style-type: none"> <li>What are lessons learnt and the key conditions for success?</li> </ul>	<p>Lessons learnt:</p> <ul style="list-style-type: none"> <li>The quickly evolving domain of social legislation requires continuous efforts of the Advice Board to modify the SCC in a timely fashion. In order to preserve the coherence of the social criminal law and code, evolutions in national and international legislation should be closely monitored and evaluated as they can impact upon the social criminal law and the SCC. As such, the social criminal law is a living instrument.</li> </ul> <p>Key conditions for success:</p> <ul style="list-style-type: none"> <li>Broader framework stimulating cooperation and information exchange: practitioners point to the existing holistic system comprising for instance shared databases (which for instance allows for consultation on infringements detected by other social enforcement agencies), a culture of cooperation, a will to cooperate, joint inspections, joint policy plans.</li> <li>National legislation which offers a workable balance between data protection and international information exchange: it's crucial to have</li> </ul>

<sup>11</sup> RD of 7 June 2011 establishing the composition and functioning of the Advice Board of the Social Criminal Law and concerning the date of entry into force of Articles 96, 97 and 98 of the Social Criminal Code, *B.A.* 9 June 2011. MD 28 May 2016 indicating the experts of the Advice Board of the Social Criminal Law, *B.A.* 31 May 2016.

<sup>12</sup> RD of 23 May 2016 appointing the members of the Advice Board of the Social Criminal Code, *B.A.* 31 May 2016.

	<p>a sound legal basis on data protection, both on a national and international/European level, stipulating the conditions under which information can be shared. In Belgium, the so-called privacy law<sup>13</sup> and the law on the Crossroadbank for Social Security<sup>14</sup> are crucial anchor points to determine these conditions. In practice, labour inspectors have an authorisation to access and share information under certain conditions, with control measures in place to avoid and detect abuse (e.g. annual controls of logins, mandatory field in databases in which the reason for consultation of a database is to be mentioned, inspections by a security officer).</p>
<ul style="list-style-type: none"> <li>Level of transferability (e.g. other countries/groups/sectors)</li> </ul>	<p>While the legal and societal contexts of countries can differ widely, it is worthwhile considering the adoption of certain principles or aims which underpin the SCC (e.g. coherence, simplification of infringements and sanctions).</p>
<p><b>Additional information</b></p>	
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<ul style="list-style-type: none"> <li>Sources</li> </ul>	<p>Bill introducing a Social Criminal Code, Parliamentary Documents, Kamer, 2008-2009, 52/1666.</p> <p>Social Criminal Code of 10 June 2010, B.A. 1 July 2010. Internet: <a href="http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;table_name=wet&amp;cn=2010060607">http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;table_name=wet&amp;cn=2010060607</a></p>
<ul style="list-style-type: none"> <li>Metadata and key words for online search</li> </ul>	<p>Belgium; Social Criminal Code; social fraud; social legislation; undeclared work; information exchange; labour inspectors;</p>

<sup>13</sup> Law of 8 December 1992 on the protection of the privacy with regard to the processing of personal data, B.A. 18 March 1993.

<sup>14</sup> Law of 15 January 1990 on the establishment and organisation of a Crossroadbank for Social Security, B.A. 22 February 1990.