

Factsheet on Undeclared Work – BELGIUM (September 2017)

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

Belgian legislation does not provide a precise definition of undeclared work. However, a general definition of undeclared work may be found in the Belgian Social Criminal Code. The latter defines undeclared work as “*all work done in contravention to social legislation under the competence of federal authorities*”¹.

In order to develop a sectoral policy, the Federal Public Service Employment, Labour and Social Dialogue has established partnership agreements with social partners in specific sectors. These sectors are: the construction sector, the metal construction sector, the cleaning sector, the transport sector, the security sector, electro technical sector, garages, the green sector (agriculture, horticulture), funeral sector and removal sector. These partnership agreements allow social partners to negotiate the implementation of specific measures at the three different steps in the fight against undeclared work (prevention, detection, repression). If the legal definition does not fit the operational environment of these sectors, the social partners are allowed to adjust the definition.

1.1.2 Characteristics of undeclared work

The main types of undeclared work in Belgium are:

- Undeclared work performed by foreign workers in an irregular situation;
- Undeclared work performed by Belgian workers or legal residents;
- Undeclared work performed by Belgian workers or legal residents who benefit from social allowances as integration allowance and social assistance;
- Partially undeclared work performed by Belgian workers or legal residents;
- Undeclared work performed by Belgian workers or legal residents with a false status (bogus self-employment, volunteers or trainees); and
- Work of a self-employed person who does not declare all his income to the tax administration.

The main broad sectors where undeclared work is found in Belgium are the **construction sector** and the **HORECA sector** (Hotels, Restaurants and Catering). The **meat processing sector** is also an important contributor to undeclared work. The government pays particular attention to construction, **cleaning, passenger transport** and **security sectors** by concluding sectoral agreements with the social partners.

There are no recent data about undeclared work distributed by employer size, or about the motivators for undeclared work.

1.1.3 Estimated scale of undeclared work

Currently, Belgium does not have any available data on the scale of undeclared work and no recent estimations have been conducted. Nevertheless, there is a project of the Federal Public Service (Social Security) to create an observatory “OBSOE” on the underground economy². On the other hand a country report for Belgium made for the ILO provides more detail³.

Nevertheless the data collected by the judicial district cells provide the number of infractions and positive controlled cases. These figures only give an estimate of the different types of undeclared work among the controlled population by the different bodies involved in the control process, and since these controls are not random no

¹ Social Penal Code, Article 1, § 1

² Internet : <http://socialsecurity.belgium.be/fr/ampleur-de-la-fraude-sociale-et-fiscale-sublec>

³ http://www.ilo.org/labadmin/info/WCMS_224578/lang--en/index.htm

statistical inference is possible. But some figures are noteworthy: out of 15,001 controls in 2014, 7,060 infractions considered as undeclared work have been registered, mainly in the HORECA, building, auto garages and cleaning sectors of activity, for which the rate of positive controls was over 40%.

1.2 Institutional Framework

1.2.1 Responsibilities for addressing Undeclared Work

At the federal level, two bodies were established by the Royal Decree of 29 April 2008 to tackle undeclared work, namely the Ministerial Committee and the College. On the one hand, the Ministerial Committee for the fight against fiscal and social fraud is chaired by the Prime Minister and features members of the government. On the other, the College for the fight against fiscal and social fraud is chaired by the Secretary of State.

Each year, the College establishes an action plan⁴ which is submitted to the Ministerial Committee for approval, which defines the overall policy and the priorities of the inspection services. The Committee also ensures the uniform application of law in the country.

The Social information and Investigation Service⁵ (SIRS) was established in law on 27 December 2006 and in 2010 consolidated in the Social Criminal Code. As a coordinating body, this service supports federal social inspection services to address UDW, and can be considered as "a single point of contact". It prepares protocols for collaboration between the Federal Authority and the Regions to organise the fight against illegal work and social fraud. It makes proposals to the relevant ministers to develop the legislation applicable in the context of the fight against undeclared work.

In Belgium, the fight against undeclared work and social fraud is primarily the responsibility of the federal social inspection authorities:

- Federal Public Service Social Security (i.e. FPS Social Security) acts to ensure correct reporting of remuneration of employees to social security. This service is organised territorially into nine "regions". This inspection service has been integrated in the inspection service of the National Social Security Office from 1st July 2017 onwards.
- Federal Public Service Employment (i.e. FPS employment) is involved in relationships between an employer and its workers. This service is organised territorially into 22 divisions.
- National Social Security Office responsible for the administration of social security, and checks whether employers correctly report the remuneration of their employees.
- National Employment Office checks the compliance of statements relating to unemployment insurance, career disruptions and early retirement. There is an inspection service by regional unemployment office.

There are also other social security public institutions which are involved in the fight against undeclared work, specifically in relation to fraud in social benefits such as the National Institute for Health and Disability Insurance⁶ and the National Institute for the Social Security of self-employed for contribution fraud.

At the regional level, the regional inspectorates of the Walloon Region, the Brussels-Capital Region, and the Flemish and German-speaking community are responsible for regionalised social legislation, such as the granting and monitoring of work permits to foreign workers employed in Belgium. Except for the control of foreign workers, these

⁴ Internet: <http://www.sirs.belgique.be/siodsirs/publicationDefault.aspx?id=43619>

⁵ In French : Service d'Information et de Recherche Sociale (SIRS).

⁶ In French: Institut National d'Assurance Madaldie-Invalidité (INAMI).

regional services have no specific competence regarding undeclared work and social fraud, which remains at the federal level.

Finally, there are the 21 local cells⁷ which conduct inspections against fraud concerning social contributions and social benefits. Each cell is composed of a representative of the various federal inspection and regional services, a representative of the FPS Finance, a magistrate of the King's public prosecutor, and a member of the Federal Police. It may also have representatives of other public institutions of social security and regional inspection services. Each year, targets are set for the cells in the national action plan adopted by the College and approved by the Ministerial Committee. The results were very positive in 2016, with minimum targets for the overall total frequency of checks being exceeded (i.e. 11,000 against the 9,000 requested).

1.2.2 Characteristics of responsible organisations

This information is included in Section 1.2.1 above.

1.2.3 Cooperation and collaboration between authorities and cross-border authorities

The SIRS has participated in the establishment of international collaboration between inspection services. For example, the Declaration Benelux against cross-border social fraud⁸ was signed on 23 September 2015. Under this, Belgium, the Netherlands and Luxembourg will work together (via data exchange and joint inspections) against social dumping, undeclared work and other social fraud.

As mentioned above, the FPS employment has developed a sectoral policy to deal effectively with undeclared work. Partnership agreements have been concluded with representatives of specific sectors (i.e. the construction sector, the meat sector, the cleaning sector, the transport sector, childcare services). New partnership agreements are being prepared particularly in the HORECA sector. These partnership agreements received legal and structural framework with the creation of the Partnership Commission (i.e. federal agency). The latter prepares the partnership agreements between the relevant ministers and professional organisations. In this way, the social partners are involved in the three stages of the fight against undeclared work: prevention, detection, targeted repression. The SIRS is responsible for monitoring the implementation of partnership agreements concluded by the ministers.

There is also a special collaboration between the Inspectorate of the Social Security Office and the Control of Social Law of FPS Employment in order to implement structured and coordinated checks in each local district. Similarly, some initiatives have been developed to ensure more effective cooperation with the police, the judicial authorities, etc.

1.3 Policy Focus and Measures

1.3.1 Policy approach

The general policy against undeclared work, and more extensively the fight against social fraud and social dumping is defined each year in an Action Plan for the fight against social fraud and social dumping that covers the actions of the cells judicial district, the SIRS and the different inspection bodies. The strategic plan foresees a programming of the controls based on the risks. The analysis of these risks and their evolution shows that the risks needing a multidisciplinary approach are increasing. Social dumping and transnational social fraud is considered in the action plan as the biggest challenge for the inspection services. It concerns mainly the irregular use of posted workers.

⁷ Program law of 27 December 2006.

⁸ Internet : http://www.benelux.int/files/8914/4308/2200/M20157_FR.pdf

As explained above the Social information and Investigation Service ⁹ (SIRS) can be considered as “the single point of contact”. It is composed by representatives of the different bodies involved (Social security administration, federal police, social partners (trade-unions and employers’ association), public federal services of employment, social security and finance, justice court). The SIRS in itself does not have any role in controlling. It acts mainly as a coordinating body of all the different control bodies of the different administrations concerned with social fraud. The role of the SIRS is to execute the policy defined by the Council of Ministers.

1.3.2 Measures to tackle UDW

As stated in the 2016 Action Plan, this plan also constitutes the integrated action plan “social fraud” included in the government’s agreement. The 2016 Action Plan defines 90 measures covering not only the different forms of undeclared work but also everything that may be considered as social fraud in relation to different social security or social assistance benefits. It also concerns the application of some aspects of the labour law (bogus self-employed status, false employment contracts).

The fight against undeclared work remains organized around targeted sectors: Horeca, building and cleaning. These three sectors represent about 60 % of the controls operated. But other sectors have been identified: meat sector, transport, garage, manufacturing, taxis, horticulture, retail trade, craft bakeries.

Concerning the HORECA, the introduction of the so-called BlackBox that is compulsory in the sector should have a direct effect on the use of undeclared work. The control in this sector will have a deterrent dimension, as usual, but also a training dimension. The daily control and registration of the workers will be extended in the critical sectors like the meat sector. Specific controls and measures will be also introduced for the transport of goods, the taxi and private transport of persons.

Besides the usual undeclared work, a growing attention is devoted to the misuse of posted workers. Among the 90 “actions” of the Action plan 2016 and 2015 about one third are related with the misuse of posted workers. A committee against social dumping has been created and has to develop new strategies against fraud. The measures may be organized following the following directions:

- Optimization of the use of existing databases, extension of these databases and intensive use of datamining and data matching with the objective of a better targeting of the controls;
- Conclusion of partnership agreements and organization of roundtables with the social partners in the critical sectors;
- Intensification of European collaboration and trans-border collaboration, participation to the European Platform for Undeclared Work; and
- Creation of the Social Dumping Committee with the objective of elaborate new strategies and instruments against social dumping.

The only performance or efficiency indicators available are the results of the controls operated in the different sectors: 37 % of the controls ended with a positive control, meaning that a repressive or administrative sanction or action has been taken. (Cellules d’arrondissement-statistiques 2016 –SIRS).

1.3.3 Good practice

Examples of good practice in addressing undeclared work in Belgium are provided below.

The BlackBox in the HORECA sector

Since 2016 a new system has been introduced in the restaurants of the HORECA sector. This requires all restaurants to be registered by the use of a so-called Black

⁹ In French : Service d’Information et de Recherche Sociale (SIRS).

Box, which registers customer orders as soon as the bill is paid, whatever payment mechanism is used. The objective is to avoid fiscal evasion. The content of the Black Box is directly transferred to the employers' accountants and may be controlled by the administration. The Black Box also registers the amount of worked hours of the staff who serve clients.

Extensive use of datamining for identifying the risk sectors and firms

The use of datamining allows the improved identification of specific sectors and/or firms where the risk of social, fiscal fraud or undeclared work is high. The use of datamining has been associated with an increase of the number of controls and inspections.

Sectoral roundtables, action plans for fair competition and partnership agreements

The pressure of social dumping is rising with the use of posted workers. The use of roundtables and partnership agreements can lead to restricted social dumping, since employers' and employees' organisations have common interests in this field.

Flash inspections

On a regular basis the local cells carry out so called national 'flash inspections' in different economic sectors (such as construction, catering, transport, etc.). These sectors are at particular risk of undeclared work, and employers should be made aware that this behavior is unacceptable.

Therefore these announced inspections (on the SIRS-website and in the press) on compliance with social legislation have a particularly adverse effect on the perpetrators to realize that the risk of being caught in breaches is real. This awareness must eventually lead to a mentality and behavioral change in order to better comply with social legislation. The usual unannounced controls will of course continue unabated and severe social fraud will be tackled rigorously.

E-GOV network

A very strong e-GOV network (Crossroad bank for social Security, crossroad bank for enterprises, etc.) with big data are available as well as a strong online collaboration platform. Enforcement bodies have secured access to all of them for daily use.

Social Criminal Code¹⁰

All infringements on labour law, safety and health and social security law are described in a uniform and logic way, kept up to date with the corresponding sanctions, administrative and criminal proceedings, competences and investigation powers of social and labour inspectors. To complement this, a system of online electronic penal reports has been put in place ("e_PV"). All relevant services, inspectors, public prosecutors, service of administrative fines, have access. A database "Ginaa" (with detailed follow-up regarding prosecution and conviction up to the final payment of fines) is also available.

Prohibition of payment in cash for wages and salaries

At the end of 2016 payment in cash became prohibited as a general rule. Only few exceptions are still allowed.

1.3.4 Challenges and barriers

The strategy of a targeted approach limits the efficiency of the fight against UDW, even if the use of datamining will help to concentrate on the most risky sectors or firms. As quoted at the beginning of the Action Plan the measures and actions will depend on the

¹⁰

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2010060607&table_name=loi

budgetary decisions and constraints. One of the barriers is certainly the size of the human resources implied in the controlling operations: 900. This number must be compared to the number of potential 'at risk' population of employees, self-employed, posted workers, posted self-employed.

One should also keep in mind that the Action Plans are not only concerned with undeclared work of different types, but also with social fraud in a broad sense: misuse of social security or social assistance allowances.

The most important challenge is the social dumping often implied by the use of posted workers.