

The construction sector: Raising the awareness of contracting owners (Luxembourg)

Luxembourg Inspectorate for Labour and Mines (ITM)

<http://www.itm.lu/detachement-de-travailleurs>

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1. Observations and motivations

During controls which we carry out at construction worksites, sometimes after work or on weekends, we have observed that contracting owners often do not comply with the legal rules concerning health and safety at work.

In the situations encountered, we often find subcontractor companies and non-declared posted workers.

The posting Directive was implemented in Luxembourg in 2002. We transposed our entire Labour Code, including the provisions related to occupational health and safety.

After the condemnation of Luxembourg by the Court of Justice of the European Union in 2008, we were obliged to backtrack and return to a system where the declaration of employee posting must be made at the latest on the day work begins. At the same time, we limited the number of documents required for establishing this declaration.

This situation greatly modified our control practices and made it difficult for our services to react properly, in spite of working in close collaboration with customs services.

In the past, labour inspectors had, in principle (except for clandestine labour), previous knowledge of the place where posting operations were carried out for all sectors of activity and could deliver a “Temporary Cessation of Activity Order” when the posting declaration had not been communicated. This is no longer the case.

Therefore, how could we continue to act at the worksites to guarantee safe and decent working conditions?

Rather than count on an evolution of the legal system on posting, we preferred to use as a basis existing Luxembourg regulations on mobile and temporary construction sites and initiate a sensitisation campaign which targeted contracting owners.

2. Goals

For building operations, our action gives priority to working conditions and occupational health and safety, but it also includes social dumping by making the entire chain of participants responsible for a situation. This includes both the contracting owner and the general contractor.

In turn, the general contractor is the contracting party for subcontractors, temporary workers, posted or assigned workers (loan of labour), etc.

By involving a third entity in the employment relationship, the hoped-for effect is to make the author of a real-estate project (whether public or private, and as the initial and primary contracting party) aware that non-compliance with regulations (labour, social and tax law, right of establishment) can have negative consequences, including negative economic consequences, on the progress of work on the site.

3. Partners and method

Implementation of action is based on :

- **the mobilisation of relay entities**
 1. Through the intermediary of the Ministry of the Interior, the supervisory Ministry for the Communes. In a first step, we distributed a circular inviting the burgomaster to systematically provide information to contracting owners with delivery of the building permit.
 2. In close collaboration with the health and safety coordinators. Trained by the Labour and Mines Inspectorate, they act at construction sites as “relays” or even mediators between the contracting owner (or developer) and the contracted companies.
- **the existence of legal tools tied to the regulations applicable to construction sites**
 - o an obligation to declare the opening of a construction site, before starting building operations, which enables us to know ahead of time where the worksite is located and to target our controls;
 - o an obligation to maintain updated information posted at the site on companies working at the site;

- an obligation to update communication with ITM when new trade companies or successful bidders are selected;
- the possibility of deciding to close the site temporarily in case of serious and imminent danger since labour inspectors have room to manoeuvre when evaluating a situation;
- the possibility of removing a worker from a situation when he is working under conditions considered to be at “specific risk” – a situation which is rather frequent in the construction sector and even more frequent among posted workers – and when he does not have a certificate of aptitude for this type of work delivered by a certified occupational health service.

4. Type of action

We developed two specific position papers:

- For burgomasters, we have prepared a circular emphasising their role as a source of information for their constituents (in this case, the contracting owners) on the difficulties they may run into in case of non-compliance with legislation concerning working conditions and social rights on their building sites.
- For contracting owners, we call their attention to the cost and the risks tied to non-compliance (delays, penalty clauses, administrative procedures to close the site, possible criminal proceedings in case of accident at work or serious occupational illness).

Information for contracting owners is found in a brochure which is systematically distributed by the burgomasters with the delivery of a building permit (list of the regulations concerning mobile and temporary construction sites).

It is also available on the Labour and Mines Inspectorate website in French and German at the following address: <http://www.itm.lu/home/legislation/detachement-de-travailleurs.html>

5. Impact of action on problems encountered

- **Evolution of the situation**

A control campaign is currently being carried out, since feedback from the agents was positive. The general level of “safety culture” seems to have improved (less site closings), under the combined effect of continuous and more systematic training and a fear of retribution.

- **Difficulties and limits**

Because of a lack of sufficient personnel, thorough and repeated control of all construction sites is materially impossible.

- **Positive effects**

Field agents have been freed of the need to inform contracting owners (information on regulations is considered to have been acquired), and they are now able to concentrate on noting violations.

6. Impact on participant dynamics

- **Evolution of collaborations implemented**

Greater awareness of a “community of interest” among specialised participants under the guidance of:

- health and safety coordinators, including safety representatives (personnel representatives) and designated workers (prevention advisors on the employer’s side);
- project managers and general foremen or team foremen within the framework of specifications drawn up following the instructions of the contracting owner/developer.

- **Difficulties and limits**

- A “unidirectional” information campaign, except for some feedback from community technical services.
- Inapplicable to “micro-construction sites” (or to undeclared work).
- Use of non-qualified coordinators (not certified by the ministry) and shortcomings in on-site tracking.
- An often prohibitive cost of health and safety at work coordination for small projects, especially during a time of crisis and recession, and a lack of state subsidies (for the energy council, for example).

Certain contracting owners, either in bad faith or because of shameful dishonesty, hide behind a supposed ignorance of the documents handed out with the building permit (ITM brochure).

- **Positive effects**

- Perception of a more responsible general and collective ethical approach.
- The marginalising of illegal or dangerous work.

7. Two key points on feedback

- The effectiveness of action for medium-sized to large construction sites;
- A potentially disproportionate approach for “micro-projects,” whence the need for administrative tolerance.