

Practical case - Belgium's experience: a physical inspection on a construction site in Aalst

Federal Public Service Employment, Labour and Social Dialogue

<http://www.emploi.belgique.be/home.aspx>

Control of Social Legislation

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1. Background

In Belgium,

- the liaison office is attached to the following authorities:

Federal Public Service (FPS) Employment, Labour and Social Dialogue;

- a centralized computer registration must be established previous to the posting of salaried workers and free-lance workers in the territory (so-called "*LIMOSA*" declaration)

Exchanges of information with other Member States – data IMI 2012

Belgium requests to other EU Member States

Country	Number	Country	Number
Poland	56	Ireland	6
Portugal	33	Lithuania	6
U.K.	19	Italy	4
Romania	18	Luxemburg	3
Hungary	17	Latvia	3
Bulgaria	15	Slovenia	3
Slovakia	14	Czsech Republic	3
Germany	7	Estonia, Cyprus	2
Netherlands	7	Denmark, France	1
Spain	6	Total	224

Requests from other Member States to Belgium

Country	Number
Italy	2
Slovakia	2
Portugal	1
Poland	1
Luxembourg	1

The construction site in Aalst

Nature of the work: the old post office building was demolished and rebuild as offices.

In this building houses at the moment the regional labour inspectorate of Aalst, some tribunals (Police tribunal and labour court) and the regional offices of the FPS of Finance).

A private company is the owner of the building.

The head contractor was a company of Antwerp.

According to the information received, the total amount of the construction site is about 2.2 million Euros

Date of the start: 25 October 2010

Date of closure: end of 2012

According to the construction site mandatory declaration to the NOSS:

118 Belgian companies were active and 11 foreign companies/self-employed persons (seems to be very low).

2. Overview

During an inspection carried out by Control of Social Legislation on the 12 October 2011,

- 35 Belgian companies were identified,
- 1 company of the Netherlands
- 3 companies of Poland
- 1 company of Portugal

3. Findings, exchange of information with other Member States and follow-up action

* The findings for the **company of the Netherlands**: the employer with 1 employee.

>> The company went bankrupt on the 29 November 2011 before we could obtain the pay slips

* The findings for **one Polish company**: 33 workers present

- No pay slips were sent to Control of Social Legislation despite 2 requests
- Criminal report has been transmitted to the Labour Prosecution Office (for not sending the requested pay slips and non – respect of working hours (work on Saturday and Sunday, bank holidays)
- Limosa declaration (as employees) and construction site declaration were made. The A1 forms were issued.

>> Via IMI: request to the Polish Labour Inspectorate to send us the pay slips for the concerned workers and periods

- Answer : these workers signed a contract as “self-employed” (civil contract)
- No-one of the workers mentioned this fact during the inspection

>> As the Belgian Labour Inspectorate did not know, we did not investigation concerning possible bogus self-employment

* The findings for **one Polish self-employed person** – subcontractor of a Belgium company: Limosa and A1 declarations were in order

* The findings for a **second Polish construction company**: 2 workers present

- A1 and Limosa were in order (see below)
 - No pay slips were sent to Control of Social Legislation, despite the request, and no OPOC affiliation (Fund for existence of construction business workers)
 - Criminal report to the Labour Prosecution Office (for not sending pay slips)
- >> Via IMI: request to the Polish Labour Inspectorate to send the pay slips
- First answer : employer claims that one of the workers does not work for his company, and the other one is a self-employed but he pays no social contributions in Poland as self-employed

What about the A1-forms?

- Second answer : Poland did not issue an A1 form (falsified form)
- >> The two workers were not declared in Poland. What can Belgian Labour Inspectorate do?

* The findings for the **Portuguese company**: workers come from Poland (45 persons)

- A1 and Limosa declarations were in order
 - Pay slips were sent to Belgian Labour Inspectorate
 - Belgian minimum wage was not respected and no contributions to the OPOC
- >> Employer paid extra (made correct pay slips – 87 000 euros) and paid contributions to the OPOC (24 700 euros). The employees signed for their extra money

Extra payments were communicated to Portugal via IMI

Answer received: no declaration in Portugal of these extra payments at social insurance institution and tax department

4. Feedback

- Posted workers are always paid according to their own legislation
- They work as many hours as necessary (even 7/7)
- Many work as self-employed, but are clearly employees workers.
- In many cases, no cooperation with the foreign company (no pay slips, extra payments, declaration to SSI...)
- Cooperation with foreign Government Authorities is not always 100% -e.g., what is done with information communicated to them in case of fraud? Feedback would be very interesting, and motivating for the inspectors involved in the host countries controls if regularizations are carried in the home country.