

**Cross-border co-operation between Belgian and Dutch enforcement authorities in the fight against fraudulent or illegally operating Temporary Work Agencies (TWA)**

<b>Title of the policy or measure (in English)</b>	Cross-border co-operation between Belgian and Dutch enforcement authorities in the fight against fraudulent or illegally operating Temporary Work Agencies (TWA)
• Country	Belgium
• Sectors	All
• What groups are targeted by the measure	- Labour inspectors, social security Bodies, Tax bodies (directly targeted) - Temporary Work Agencies and Temporary Agency Workers (direct targets) - employers, contractors (clients of the Temporary Work Agencies) (indirect targets)
• Purpose of measure	Deterrence: improve detection
• Short sentence summarising the measure	Cross-border cooperation between Belgian and Dutch enforcement authorities optimises the detection of fraudulent employment agencies which develop cross-border activities. Closer cooperation and joint inspections help to tackle phenomena such as social dumping, sham constructions, benefit fraud, and fraudulent temporary employment agencies.
<b>Background</b>	
• Background context driving the implementation of the measure	The driver for the Cooperation between Belgian and Dutch labour authorities on fraudulent employment agencies originates in the need to combat social dumping and fraud concerning the posting of Dutch workers to Belgium. Belgium receives the third highest number of posted workers across all Member States. <sup>i</sup> When looking specifically at the construction sector, it accounts for nearly 50 % of all workers posted by Dutch companies whilst 19 % of seconded persons from the Netherlands are seconded by Temporary Work Agencies. However, this trend is not limited to the construction sector. Temporary work and TWAs are well regulated in Belgium but less so in the Netherlands. Belgian employment agencies are bound by strict rules regarding operating licences <sup>ii</sup> , but mandatory licences are not foreseen in the Netherlands. Moreover, Dutch employment agencies tend to post more temporary workers with an Eastern European nationality than native Dutch workers. The former are recruited by Dutch agencies or their subsidiaries in Eastern European Member States and sent to Belgium, be it in a direct client relationship or via a Dutch contractor providing the services in Belgium. Many cases of abuse (non-compliance with the Directive on the posting of workers, non-declaration to the Dutch social security), were reported by labour inspectorates from both countries. Belgian companies were suffering from unfair competition as a result, and cases of undeclared work in that cross-border setting were also detected which meant that social security contributions were not being paid to the Dutch tax and social security authorities.
• When was the measure implemented? (including start date and end date/ongoing)	The cooperation started informally in the border regions in the 1990s, but it became official within the structure of the Benelux framework in 2014 and remains an on-going permanent cooperation structure.

<ul style="list-style-type: none"> <li>Names(s) of authorities/bodies/organisations involved</li> </ul>	<p><u>For Belgium</u></p> <p>At the national federal level - The Federal Labour Inspection (TSW) of the Belgian Federal Public Service Employment, Labour and Social Dialogue</p> <p>At a regional level - The public administrations competent for employment and labour permits are the regional authorities of Brussels including Brussels–Capital Region, Flanders and Wallonia as well as their respective inspection services. These come under the auspices, chair and umbrella of the permanent Benelux administration in Brussels.</p> <p><u>For the Netherlands</u></p> <p>Inspectie SZW of the Ministry of Social Affairs and Employment</p>
<ul style="list-style-type: none"> <li>Scope of the measure (a pilot project, nationwide, regional wide)</li> </ul>	<p>National</p>
<ul style="list-style-type: none"> <li>Type of (policy) measure</li> </ul>	<p>Structural reform</p>
<ul style="list-style-type: none"> <li>Key objectives of the measure</li> </ul>	<p>General objective:</p> <ul style="list-style-type: none"> <li>To guarantee fair competition amongst companies<sup>iii</sup> by optimising the detection of fraudulent employment agencies through intensifying cooperation.</li> </ul> <p>Specific objectives:</p> <ul style="list-style-type: none"> <li>To develop joint initiatives and measures to better tackle social fraud and thus take a leading role in the European Union.</li> <li>To cooperate on the practical implementation of their laws and regulations in cross-border situations, and in a joint approach to enforcement issues within the EU.<sup>iv</sup></li> </ul>
<p><b>Specific measure</b></p>	
<ul style="list-style-type: none"> <li>Description of how the measure operates in practice</li> </ul>	<p>Two agreements provide the basis for cooperation between Belgium and the Netherlands in the fight against social dumping - the Benelux joint declaration on cooperation in the fight against social dumping (Feb 2014), as well as the recommendation of the Benelux Committee of Ministers (September 2015) concerning the fight against social fraud at both Benelux and European level.<sup>v</sup></p> <p>The legal basis for cooperation and information exchange is derived from both the EU Directive on the posting of workers and the Enforcement directive.<sup>viii</sup></p> <ul style="list-style-type: none"> <li>In cases where suspected fraudulent activity is being carried out, joint consultations are held in advance of any joint inspections.</li> <li>Inspectors gather information in advance from the Belgian LIMOSA database,<sup>viii</sup> where Foreign Service providers declare the social security status of their workers.</li> <li>Joint actions are carried out simultaneously in Belgium by both the Belgian and Dutch labour inspectorates. Inspectors from the Netherlands accompany the Belgian inspectors to the inspections to provide guidance on issues which arise. Dutch inspectors also play an important role during consultations, giving direction and establishing ongoing communication with the research team in the Netherlands.</li> <li>At the place of inspection, workers are identified with the aid of a short questionnaire, supported by interpreters if needed.</li> <li>Some people will be interviewed more extensively e.g. the site manager.</li> <li>Dutch labour inspectors also carry out any necessary investigations in the Netherlands associated with cases in Belgium, which may involve</li> </ul>

	<p>inspectors from the Dutch labour inspectorate, tax office and Employee Insurance Agency, and specialised digital experts if necessary.</p> <ul style="list-style-type: none"> <li>• The Belgian and/or Dutch inspectorate prepares a formal report with key findings for the regional competent prosecutor. The Dutch social and tax authorities as well as the Belgian ones examine the impact on fraud and missing social security contributions and/or unlawfully paid social benefits and take the necessary actions to recover social contributions owed and/or to recover benefits that have been claimed illegally.</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>- There are no additional costs or resources necessary except travelling costs for cross-border meetings or joint actions.</li> <li>- The activities are inherent and integral to the daily job of labour inspectorates</li> </ul>
<ul style="list-style-type: none"> <li>• What are the source(s) of funding?</li> </ul>	Funded by the labour inspectorates in Belgium and the Netherlands. No additional budget to the annual budget is required.
<b>Evaluation and outcome</b>	
<ul style="list-style-type: none"> <li>• Has the measure achieved its objectives?</li> </ul>	Both Belgian and Dutch inspection bodies seem to have found a durable and effective way to cooperate. The methods of exchanging data from databases (LIMOSA, A1, etc.) and joint inspections have led to successful internal enquiries in the Netherlands (recovering wrongly claimed social benefits and/or unpaid social contributions). If Belgian clients are found to be knowingly involved in these practices, they are at risk of penal convictions, as well as the seizure and confiscation of bank accounts/assets.
<ul style="list-style-type: none"> <li>• Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved</li> </ul>	As the Benelux working group is permanently installed and functioning, evaluations and learning activities take place at each periodic meeting. In relation to measuring penal and financial results (outcomes of prosecutions, convictions in appeal, payment of overdue or avoided contributions, payback of illegally claimed benefits etc.) this is an ongoing process. In some initial test cases <sup>ix</sup> , undeclared posted workers have been detected as an outcome of this cooperation. Effective convictions and sanctions of Dutch agencies have resulted from the collaboration <sup>x</sup> , as have convictions of their Belgian clients which have had a deterrent effect in the area of temporary agency work. <sup>xi</sup>
<ul style="list-style-type: none"> <li>• What are lessons learnt and the key conditions for success?</li> </ul>	<p>Lessons learnt and success factors include the following<sup>xii</sup>;</p> <ul style="list-style-type: none"> <li>- Both Belgium and Dutch inspectors learn about each other's competences, interests, working methods. They learn each other's needs, power and authorities, as well as the limitations in legislation and methodology.</li> <li>- Speaking the same language in Belgium and the Netherlands is also a major advantage.</li> <li>- A key challenge of international cooperation is that it requires more extensive communication before and after an actual on-site visit, due to differences in laws and procedures.</li> </ul>
<ul style="list-style-type: none"> <li>• Level of transferability (e.g. other countries/groups/sectors)</li> </ul>	In the context of the Benelux framework, the strategy and methodology is transferrable to other sectors. Extension to other countries will depend on the willingness and political choice and priorities of government decision makers. This is crucial in order to support and reinforce the importance of participation in the cooperation agreement.
<b>Additional information</b>	
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<ul style="list-style-type: none"> <li>Sources</li> </ul>	<ul style="list-style-type: none"> <li>- Benelux Summit Joint Declaration 2015: A Benelux Action Plan for Jobs and Growth. Available at <a href="http://www.benelux.int/files/9014/3042/3435/Political_declaration_signed.pdf">http://www.benelux.int/files/9014/3042/3435/Political_declaration_signed.pdf</a></li> <li>- Joint Declaration Social Summit Benelux, 13 February 2014</li> <li>- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. Available at <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31996L0071">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31996L0071</a></li> <li>- Directive 2014/67/EU of the European Parliament and Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. Available at <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0067">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0067</a></li> </ul>
<ul style="list-style-type: none"> <li>Metadata and key words for online search</li> </ul>	<p>Belgium; the Netherlands; Dutch; cross-border cooperation; Benelux Framework; temporary work agencies; temporary agency workers; posted workers; joint inspections; benefit fraud; social fraud; unfair competition; construction sector; employment agencies; social dumping</p>

<sup>i</sup> Limosa statistics and Enforcement directive impact assessment.

<sup>ii</sup> Agencies must fulfil a number of legal obligations in Belgium, for example, deposit of a bank guarantee/deposit of EUR 75 000 (Flanders region), having no social or tax debts etc.

<sup>iii</sup> Benelux Summit Joint Declaration 2015: A Benelux Action Plan for Jobs and Growth. Internet: [http://www.benelux.int/files/9014/3042/3435/Political\\_declaration\\_signed.pdf](http://www.benelux.int/files/9014/3042/3435/Political_declaration_signed.pdf)

<sup>iv</sup> Joint Declaration Social Summit Benelux, 13 February 2014

<sup>v</sup> The information presented in this field is adapted from the following publication: EU (2015), Cases studies on cross-border cooperation, by Daniela Mineva, *Vitosha Research EOOD (Center for the Study of Democracy Group)* Ioana Alexandra Horodnic, *University of Sheffield* February 2018

<sup>vi</sup> (i) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31996L0071>

(ii) Directive 2014/67/EU of the European Parliament and Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0067>

<sup>vii</sup> EU (2015), op cit.

<sup>viii</sup> According to Eurofound's EurWORK observatory web pages, "every foreign worker, self-employed person or student on work placement who enters Belgium for the purpose of temporary employment, is required to register with the relevant

<sup>ix</sup> European Platform Undeclared Work (2018), Case studies on cross-border cooperation by Daniela Mineva, *Vitosha Research EOOD (Center for the Study of Democracy Group)*, Ioana Alexandra Horodnic, *University of Sheffield*, February 2018 available at [ec.europa.eu/social/BlobServlet?docId=19080&langId=en](http://ec.europa.eu/social/BlobServlet?docId=19080&langId=en)

<sup>x</sup> In this new collaboration framework, Belgian and Dutch inspectors have been involved in two larger scale joint inspections followed by some enquiries of lesser size aiming at particular undertakings. Convictions and proceedings are still ongoing.

<sup>xi</sup> European Platform Undeclared Work (2018), op cit.

<sup>xii</sup> Information provided here is adapted from EU (2015) op cit.