

Undeclared Labour in the Construction Industry

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1. The national regulatory system relevant for construction: regulation and institutions

1.1 Taxation

The Belgian Code on Income Tax 92¹ holds provisions on direct tax law, such as the Personal Income Tax, the Corporate Tax, the Legal Entities Income and the Non-Resident Income Tax. Construction companies are subject to direct taxation under the Corporate Tax Law. Main actor involved is the Federal Public Service Finance² (FPS) with its own inspection services.

In principle, foreign employers and workers have to pay taxes for income that has been acquired in Belgium. If they also have to pay taxes in their country of origin, double taxation is inevitable. To prevent this, many countries have concluded double taxation treaties. In the field of taxation there exist no rules at Community level regarding the definition of cross-border workers, the division of taxing rights between Member States or the tax rules to be applied. Neighbouring Member States with many persons crossing borders to work often agree special rules for cross-border workers in their bilateral double taxation conventions. Since these rules reflect the special situation between two Member States and are the result of negotiations between them, it follows that these rules vary from one double taxation convention to another. Main rule in these double taxation treaties is that, just like in the field of social security, it is the state where the person works that will pose a levy on his salary. The main exception to this is called the 183 days-rule, according to which a person working less than 183 days in a country can remain under the taxation competence in the country of origin (comparable to posting rules in international agreements). However, the 183 days limit is constantly under discussion. When a foreign company has a permanent establishment in Belgium, this has two major implications in the tax field. First, profits of the establishment become taxable and a corporate tax return should be declared. And second, the 183-day rule cannot be applied and salaries of the foreign workers are taxable from the first working day. For foreign workers and companies the Non-Resident Personal Income Tax and the Non-Resident Corporate Income Tax, regimes comparable to their national counterparts, apply.

1.2 Social security legislation

The basic social security legislation is comprised in the Law on the National Office for Social Security (“RSZ-Wet”)³ and the Law on the general principles in social security.⁴ Classical social security contains seven sectors:

1. Old age and widowhood's pensions;
2. Unemployment;
3. Insurance for accidents at work;
4. Insurance for professional disease;
5. Family benefits;
6. Sickness and disability insurance;
7. Annual vacation.

¹ <http://www.fisconet.fgov.be/> Wetboek van de Inkomstenbelastingen 92

² <http://minfin.fgov.be/>

³ Besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders, *BS* (Belgisch Staatsblad), 30-12-1944. Wet 27 juni 1969 tot herziening van de besluitwet van 28 december 1944 betreffende de maatschappelijke zekerheid der arbeiders.

⁴ Wet van 29 juni 1981 houdende de algemene beginselen van de sociale zekerheid voor werknemers, *BS* van 02-07-1981. Algemene Beginselenwet Sociale Zekerheid.

Grossly, the social security system is divided into three systems: a system for salaried persons, for self-employed persons and for civil servants (of the federal government). For self-employed persons, there is also a social insurance in case of bankruptcy.

Social security scheme for salaried persons

In the social security scheme for salaried persons, both employees and employers have to pay contributions to the National Office for Social Security (RSZ-ONSS)⁵. Till 1994 contributions were determined separately for each social security sector and RSZ-ONSS paid the competent semi-public institutions the right percentage for the sector(s) under their management. Since 1st January 1995 an overall financial management ('gestion globale') has entered into force. RSZ-ONSS finances the sectors according to their treasury needs, and no longer with fixed percentages. Yet, there is a difference between the scheme for manual workers and that for employees. Annual vacation benefits for employees (white collars) are paid directly by the employer, whereas the annual vacation of manual (blue collar) workers is paid by RSZ-ONSS for annual vacation or a vacation fund with specific social contributions paid by the employer to RSZ-ONSS beforehand. These contributions consist of a quarterly 6% calculated on 108% of their gross wage, and an annual contribution of 10.27% calculated on 108% of gross wage of the previous year. Usually, the annual vacation sector is not considered a part of social security. The table below lists the contribution percentages in the first quarter of 2004. A distinction is made between employers' and employees' contributions.

Sector	Employee contribution (%)	Employer's contribution (%)	Total (%)
1. Sickness and invalidity			
- medical care	3.55	3.80	7.35
- invalidity benefits	1.15	2.35	3.50
2. Unemployment	0.87	1.46	2.33
3. Pensions	7.50	8.86	16.36
4. Family benefits	0.00	7.00	7.00
5. Accidents at work	0.00	0.30	0.30
6. Professional disease	0.00	1.10	1.10
Total (= 'global contribution')	13.07	24.87	37.94

When paying salary, the employer should deduct the employee's contribution. The employer adds the contributions he is due. An employer cannot reclaim contributions from the employee that he himself has forgotten to deduct from his employee's wage.

Often uncertainties exist about the gross salary on the basis of which contributions have to be paid. Salary denotes *'any advantage in money or that can be expressed in money, granted by the employer to the employee as a counterpart for labour, and to which the employee is directly or indirectly entitled through his contract with the employer.'* This means that commissions, fees, benefits in kind, participations in profit, are considered to be salary, and that contributions will be due. There are other social security contributions as well. Employers have to pay a wage moderation levy of 7.48%, a contribution for the closure of companies of 0.20% (for companies with 1 to 19 employees) or 0.23% (for companies with 20 or more employees), a levy of 0.05% for childcare and of 0.10% for high-risk groups. Employers with 10 or more employees have to pay an extra contribution of 1.69%. Employers and employees

⁵ <http://www.rsz.fgov.be/>

are not alone to finance social security. Federal government annually pays a fixed amount to RSZ-ONSS. Since a few years, Belgium uses alternative financial resources to fund its social security with the aim to limit government subsidies and to reduce employers' contributions, instead of taxing labour. Alternative financing consists of a percentage of VAT revenue.

Various measures reduce the social security contributions in favour of particular categories of workers: older employees, long-term job-seekers, first recruitments, young employees, low wages, high wages, employees benefiting from the collective labour time reduction in their company or benefiting from the four-day working week. There is also a system for structural reduction of social security contributions, designed to definitively reduce employer's contributions for social security and to boost the competitiveness of companies.

Unless settled otherwise by international agreement, salaried persons with a labour contract at the service of an employer or an operational office in Belgium, will be subject to the Belgian social security scheme for salaried persons. Social security for salaried persons applies to any salaried person and employer related by a labour contract. The existence of a labour contract is crucial. It is a contract in which a person agrees to provide labour in exchange for a salary, to the profit and under the authority of another person (the employer). The employer's authority implies the power (i.e. the possibility and the right) to guide and to supervise the employee. The employer does not have to exercise that authority permanently; the right to give the employee instructions about the organisation and the execution of the work agreed upon is enough. For social security, the operational office of a company is the office, which usually pays the employee's wage, which exercises direct authority over the employee and to which an employee reports about his activities. The social security scheme for salaried persons is of public order. It is therefore not possible to deviate from it with special agreements, which would be null and void by law.

Social security scheme for self-employed persons

Self-employed pay their quarterly social security contribution to the social insurance fund they are affiliated with. Contribution is calculated on the self-employed person's net professional labour income in the third calendar year ('reference year') preceding the year during which the contributions were paid. These were the amounts in 2004 (income of 2001):

Professional income per ceiling	Amount of the contribution
Up to 9,067.99 EUR	445.47 EUR per quarter
Between 9,067.99 EUR and 44,289.23 EUR	19.65% of net professional income
Between 44,289.23 EUR and 65,273.48 EUR	14.16% of net professional income
More than 65,273.48 EUR	0 EUR

Starters as self-employed with no 'reference year' pay contributions on a provisional basis. Persons with a self-employed job next to their principal occupation (e.g. as a salaried person) and retired people with still a professional activity pay no (or only a reduced) contribution as long as the annual income does not exceed a particular amount fixed every year.

The social security system has been subject of a successful modernisation towards e-government. Institutions mainly involved in the organisation of social security are the Federal

Public Service for Social Security⁶ and the RSZ-ONSS. Both institutions have separate inspection services (Social Inspection and Inspection RSZ-ONSS).

1.3 Labour legislation

Most relevant labour law concerns several rules on labour regulation (principally labour organisation) and health and safety at the workplace:

- A general law (1965) concerning the protection of the wage⁷.
- The implementation (2002) of Directive 96/71/EG concerning the applicable labour legislation in the case of posting of workers⁸,
- Labour law (1971) concerning working hours, rest time, nightwork and Sunday work⁹;
- Law on the combination of work and wellbeing (2001) concerning collective reduction of working hours¹⁰;
- Law (1974) ruling public holidays¹¹,
- Coordinated laws (1971) concerning yearly paid holiday periods¹²,
- Law (1987) ruling temporary labour, agency work and lending of personnel¹³,
- Law (1965) concerning the formulation of labour orders¹⁴,
- Royal decree (1978) concerning the keeping of social documents¹⁵,
- Royal decree (2002) ruling the immediate declaration of employment (DIMONA), to a large extent removing obligations with regard to the keeping of social documents¹⁶;
- Law (1996) concerning health and safety at work, together with related legislation constituting the “Code on the well-being at work”¹⁷.

⁶ <http://socialsecurity.fgov.be/>. Other institutions involved are the Fund for Accidents at Work (FAO-FAT; <http://securitesociale.fgov.be/faofat>), Fund for Professional Diseases (FBZ-FMP; <http://www.fmp.fgov.be>), National Institute for Sickness and Invalidity Insurance (RIZIV-INAMI; <http://riziv.fgov.be>), National Institute for the Social Insurance of Self-employed Persons (RSVZ-INASTI; <http://inasti.be>), National Labour Office (RVA-ONEM; <http://www.rva.fgov.be>), National Office for Annual Vacation (RJV-ONVA; <http://www.onva-rjv.fgov.be>), National Office for Family Benefits for Salaried Persons (RKW-ONAFTS; <http://www.onafts.be>), National Pension Office (RVP-ONP; <http://www.onprvp.fgov.be>), National Social Security Office for the Provincial and Local Administrations (RSZPPO-ONSSAPL; <http://www.onssapl.fgov.be>) and the Office for Overseas Social Security (DOSZ-OSSOM; <http://www.dosz.be>).

⁷ Wet van 12 april 1965 betreffende de bescherming van het loon der werknemers, *BS*, 30-04-1965

⁸ Wet van 5 maart 2002 tot omzetting van de richtlijn 96/71/EG van het Europees Parlement en de Raad van 16 december 1996 betreffende de terbeschikkingstelling van werknemers met het oog op het verrichten van diensten, en tot invoering van een vereenvoudigd stelsel betreffende het bijhouden van sociale documenten door ondernemingen die in België werknemers ter beschikking stellen, *BS*, 13-03-2002

⁹ Arbeidswet van 16 maart 1971, *BS*, 30-03-1971

¹⁰ Wet van 10 augustus 2001 betreffende de verzoening van werkgelegenheid en kwaliteit van het leven, *BS*, 15-09-2001

¹¹ Wet van 4 januari 1974 betreffende de feestdagen, *BS*, 31-01-1974

¹² Wetten van 28 juni 1971 betreffende de jaarlijkse vakantie van de werknemers gecoördineerd op 28 juni 1971, *BS*, 30-09-1971

¹³ Wet van 24 juli 1987 betreffende de tijdelijke arbeid, de uitzendarbeid en het ter beschikking stellen van werknemers ten behoeve van gebruikers, *BS*, 20-08-1987

¹⁴ Wet van 8 april 1965 tot instelling van de arbeidsreglementen, *BS*, 05-05-1965

¹⁵ Koninklijk besluit nr.5 van 23 oktober 1978 betreffende het bijhouden van sociale documenten, *BS*, 02-12-1978

¹⁶ Koninklijk besluit van 5 november 2002 tot invoering van een onmiddellijke aangifte van tewerkstelling, met toepassing van artikel 38 van de wet van 26 juli 1996 tot modernisering van de sociale zekerheid en tot vrijwaring van de leefbaarheid van de wettelijke pensioenstelsels, *BS*, 20-11-2002

¹⁷ Wet van 4 augustus 1996 betreffende het welzijn van de werknemers bij de uitvoering van hun werk, *BS*, 18-09-1996

Of course this legislation should be seen together with the corpus of generally binding interprofessional agreements concluded by the National Labour Council¹⁸ and sectoral collective agreements concluded at the level of the joint committees¹⁹. The most important collective agreements in construction (Joint Committee nr. 124) deal with wages, premiums and compensations, labour regulation, additional social advantages, trade union delegations and the health and safety of workers.

At the moment the collective agreement of 2 June 2005²⁰ is determinant. It guarantees that workers are paid according to their professional skills and their age. Four categories of professional competences are discerned: unskilled, experienced, skilled 1st degree and skilled 2nd degree. Besides these basic categories, 4 types of special professional skills are acknowledged: first unskilled, first experienced, foreman and headman. Other provisions relate to wage supplements for special work, such as risky work, unhealthy work, unpleasant and troublesome work or to wage supplements for shift work or night work. Compensations for tools, homework mobility and provisions relating to the compensation by the employer for food and accommodation in working places far from home are settled as well.

Special provisions on working hours in construction are formulated in an agreement of 6 December 1973. Limits for the beginning and the end of a working day are set at 6.00 AM and 19.00 PM. Special schemes deviating from normal working hours are foreseen for the five-days-week, workplaces far from home, shift work, continuous work, preparatory and finish off-work and finally for flexible workweek-regimes (aiming a reduction of economic unemployment and limitation of the amount of overtime by a flexible application of working hours). Also temporary overtime, the corresponding wage and recuperation are dealt with. In an agreement of 1979 prohibition of Saturday work is incorporated with limited number of derogations.

In a recent collective agreement (24 June 2005)²¹, social partners have agreed to strict rules on temporary agency work in construction, only allowing it in case of replacement of sick workers or of a temporary increase in work-volume. Agency work is permitted in other sectors, it is forbidden in construction. Other rules are related to the lending of personnel. With regard to social security, construction has separate provisions complementing social security legislation for workers, adapted to the particularities of the sector. Main actor in this field is the Fund for Social Protection (FBZ). To avoid confusion with the classic social security system the term FBZ will be used. Workers' and employers' organisations can establish such a fund in the joint committees and their statutes are laid down in generally

¹⁸ Article 1 of the National Labour Council Act of 29 May 1952 defines the Council's role: to advise a Minister or the Houses of Parliament on its own initiative or at the request of these authorities, on general social issues concerning employers and workers and to issue opinions on jurisdictional disputes between joint committees. The Act of 5th December 1968 respecting collective industrial agreements and joint committees considerably enlarged the Council's role by empowering it to conclude collective agreements, binding on various branches of activity or all sectors of the economy. Moreover, collective agreements may be concluded in the National Labour Council for a branch of activity that is not within the competence of an established joint committee or where an established joint committee does not function. Beside these general duties, the Council carries out specialized advisory tasks under social laws prescribing preliminary consultation on all or part of the enforcement measures.

¹⁹ In the joint committees (JC) sectoral workers' and employers' organisations are seated. The goal is to group undertakings with similar activities and to apply agreements adapted to the concerned labour conditions. Main competences of the joint committees are the negotiation of collective agreements, the prevention and resolving of social conflicts, advising the government, the National Labour Council or the Central Council for Business and the execution of other tasks attributed by law. JC nr. 124 is for the construction sector.

²⁰ CA of 2 June 2005, <http://meta.fgov.be/pdf/pk/124/124-2005-002099.pdf>

²¹ CA of 24 June 2005, <http://meta.fgov.be/pdf/pk/124/124-2005-002894.pdf>

binding agreements. Their main purpose is the financing, provision and granting of social advantages, the financing and organisation of professional education for the youth and for construction workers and the financing and guaranteeing of health and safety of workers at the workplace. The funds are based on employers' contributions and regulated by law.²²

Under these additional social protection schemes, construction workers receive an identity card (distributed annually in October, based on the amount of activities of the preceding calendar year, establishing the right to additional unemployment benefits from FBZ and a proof of seniority for certain advantages), compensation in case of unemployment or sickness, invalidity and accidents at work, end of career measures and loyalty and bad-weather stamps. Additional advantages are a "construction-compensation" for temporary (economic, bad-weather) and full unemployment, compensation for loss of working hours due to frost, a dismissal compensation (in case of employment less than 20 years) and a special complementary compensation for loss of working hours due to frost (as a compensation for the loss of holiday money during frost periods). The end of career measures comprise provisions relating to pre-retirement, accompanying measures in case of inactivity from the age of 58, yearly pension interests and premiums for working after the age of 58. The loyalty and bad-weather stamps scheme is probably the most sector-specific scheme. It is entrusted to the FBZ. All construction workers are entitled to loyalty stamps for an amount of 9% of the gross wage that was declared to the social security institutions. Construction workers in enterprises that are affected by loss of working hours due to bad weather are entitled to bad-weather stamps. These constitute a lump sum compensation of 50% of the lost wage for unstarted or unfinished working days due to bad weather and amount to 2% of the gross wages declared to the social security institutions. Other provisions lay down specific rules relating to trade union delegations and health and safety at work.

Competent institutions

Main actor in the field of labour legislation is the Federal Public Service for Employment, Labour and Social Dialogue²³ with its inspection services. Trade unions and employers' organizations negotiate collective agreements and play an active role in the enforcement of the rules concerned. For additional social advantages for the sector, FBZ²⁴ is predominant. Representative trade unions (with sectoral organisations in construction) are the General Labour Federation of Belgium (ABVV/FGTB), the Confederation of Christian Trade Unions (ACV/CSC) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB). The employers' organisations are the Association of Belgian Enterprises (VBO), the Union of Independent Employers (UNIZO) and UCM. The Confederation Construction and the Bouwunie are the sectoral employers' organisations.

1.4 Other important institutions in the field

Regional institutions

Most important institutions at regional level are the "Administration Work and Social Economy of the Ministry of the Flemish Community"²⁵, its French-speaking counterpart, the "Division de l'Emploi et de la Formation professionnelle Direction générale de l'Economie et de l'Emploi de la Ministère de la Région wallonne"²⁶ and its equivalent for Brussels-Capital

²² Wet van 7 januari 1958 betreffende de Fondsen voor bestaanszekerheid, BS van 07-02-1958.

²³ <http://meta.fgov.be/>

²⁴ <http://www.fsefbz.be/>

²⁵ <http://www.vlaanderen.be/werk/>

²⁶ <http://emploi.wallonie.be/>

“Administration Economy and Work of the Ministry of the Brussels-Capital Region”²⁷. These administrations are competent for working permits on their territory and for the recognition of temporary work agencies.

*Public prosecutor and Courts*²⁸

Most relevant court is the Labour Court, competent for disputes concerning labour contracts and social security, accidents at work and occupational diseases, employers’ obligations regarding social security, unemployment, sickness and invalidity, pensions, yearly holidays, social assistance and so on. The Labour Court of Appeal is competent for appeals to decisions of the Labour Courts.

In civil and criminal matters, the Court of First Instance has the residuary competence, with further appeal to the Court of Appeal. Both have civil, criminal and youth chambers. Highest court is the Court of Cassation. This court has a civil, a criminal and a social chamber. It does not consider the facts of a case. Its task is to guarantee correct application of the law by the first instance and appeal courts. If the Court of Cassation decides that a law was not applied correctly, it sets aside the decision and attributes the case to another court. In every Belgian Court a public prosecutor is responsible for the handling and pursuit of civil and criminal matters. In the Labour Courts this competence lies with the Labour Auditory, with labour auditors assisted by substitutes. The Labour Auditory also functions within the criminal courts in cases where these are competent for criminal matters.

2. Undeclared labour: nature and features

2.1 Definition and classification

Undeclared labour is largely known under the term “zwartwerk”. There is no legal definition neither in the law nor in practice and the different institutions or even the different persons within these institutions have different views on how to define undeclared labour. The Law of 6 July 1976 to suppress illicit work of a commercial or craftsman nature provides a legal definition of illicit work only referring to the informal individual work for own account. It does not contain measures against other appearances of undeclared labour. Illicit work is defined as “the work that can be the subject of a profession related to craftsmanship, commerce or industry and which is carried out by a natural or a legal person not registered in the register for craftsmen or the commercial register, or who is in breach of the legal provisions concerning licenses, insurance obligations or registration with relation to the exercise of a profession, as far as this work has a specific professional character, be it due to its size or technical nature, to its frequency or to the use of certain materials or tools”.²⁹ Derogations are provided for work for personal use by family members up to the 2nd degree and for work related to the construction or renovation of social housing, the derogation counts for family members up to the 4th degree.

The definition therefore depends to a large extent on the viewpoint of the person who is asked for a definition, departing from his own experience. However, most actors in construction can find consensus on the definition of undeclared labour as given by the European institutions – any paid activities that are lawful as regards their nature but not declared to the public authorities –, albeit with different nuances according to their personal and/or professional view. For the inspection services of the National Office for Social Security, undeclared labour

²⁷ <http://www.bruxelles.irisnet.be/en/citoyens/home/travailler.shtml>

²⁸ <http://www.cass.be>

²⁹ Wet van 6 juli 1976 tot beteugeling van het sluikwerk met handels- of ambachtskarakter, BS, 20-07-1976.

is every employment that has not been declared through DIMONA, as the law says that the declaration should be done before the work starts. For the inspection services of the FSP Employment, Labour and Social Dialogue undeclared labour implies some form of work “under authority”, while illicit work is not executed under the authority of another person. FSP categorises undeclared labour into “irregularities with social documents”, “irregularities concerning part-time employment” and finally “irregularities with regard to the employment of foreign workers”³⁰. For others, undeclared labour occurs as soon as any legislation related to employment is not complied with. Consensus exists in the context of the fight against undeclared labour that it should be defined as broad as possible.

A categorization of different aspects and different forms of undeclared labour, both dating from 1993, is still considered very valuable. As undeclared labour are regarded³¹

- Activities to circumvent the payment of income tax, VAT or other taxes;
- Activities to circumvent the payment of social security contributions;
- Activities to circumvent the application of other legislation such as this relating to minimum wages, working hours, health and safety at work;
- Activities to circumvent other administrative obligations.

A classification of different forms and gradations of undeclared labour also dates from 1993³²:

- Traditional undeclared labour in its most pure appearance; a worker is not registered in social documents, not declared to social security institutions, no taxes are paid. These workers can be persons enjoying social security benefits (social benefit fraud; unemployment, sickness or invalidity, pre-retirement, pension) or not (moonlighting, persons working in shifts having another undeclared profession, illegal immigrants). A more subtle form is when the worker is registered and declared to the social security institutions, but no contributions are paid (contribution fraud). A third form is the one where activities are declared, but wages, salaries or compensations are withdrawn from social security (e.g. facility trips for executives, secret commissions).
- Undeclared supplementary work: undeclared supplementary work by a worker for the employer he normally works for or abuse of part-time work schemes.
- Fraudulent application of specific contracts: bogus self-employment, fraudulent practices in subcontracting (especially in the construction sector).
- Different legal, semi-legal and sometimes criminal constructions with foreign (EEA and non-EEA) workers.

A major distinction is to be made between unorganised and organised forms (f.i. undeclared supplementary work in regular company, fraudulent forms of subcontracting).

The 4th mode (fraud concerning foreign workers) is not new, but it is only in recent years that this kind of fraud merits its own category as it has become a major concern to the authorities. Fraudulent activities related to employment of non-EEA and EEA-workers have instigated new actions and strategies to combat social fraud, undeclared labour, contribution fraud and benefit fraud.

³⁰ P. PIRENNE, “Zwartwerk en fraude: de plaats van de administratieve geldboetes in het sanctioneringsbeleid”, *B.T.S.Z.* 2003, Vol.3, 743-744. And: Kenniscentrum Statistiek, “Zwartwerk in cijfers”, De Tijd 24 november 2003, http://aps.vlaanderen.be/statistiek/nieuws/arbeidsmarkt/2003-11_zwartwerk.htm.

³¹ A. MARCHAL en J. PACOLET, “Sociale fraude en zwartwerk in België: zoektocht naar het ondefinieerbare?”, *B.T.S.Z.* 2003, Vol. 3, 698.

³² VANDEN BROECK, Ph., VERBEKE, D. en HEIRMAN, J.-C., “Zwartwerk: symptomen en remedies”, *Arbeidsblad* 1993, 9-14.

Another classification was formulated by the FPS Employment, Labour and Social Dialogue:

- Undeclared labour by foreign workers residing illegally;
- Undeclared labour by Belgians or foreign workers residing legally;
- Undeclared labour by Belgians or foreign workers residing legally and receiving social benefits, including integration premiums and social assistance;
- Partially undeclared labour by Belgians or foreign workers residing legally with an appearance of legality not declaring all activities;
- Undeclared work under a false statute by Belgians or foreign workers residing legally (bogus self-employment, fake volunteer work, fake trainees, ...);
- Self-employed activities only partially declared.

As contribution fraud is concerned, it is possible for an employer to fail paying the social security institutions during a period of 6 months (contributions have to be paid quarterly), go bankrupt and disappear from the market, reappearing under another company name. This well-known fraud practice was prevented during a certain period by introducing an obligation to pay social security contributions immediately after the employment of a worker. This advanced payment was abolished with the introduction of the electronic social security card (SIS-card). The inspection services of the RSZ-ONSS try to prevent this kind of fraud by forcing market players with a record of contribution fraud to pay contributions immediately at the end of every quarter by means of a writ towards the debtor or his debtors. The 6-month “free ride” is only possible for companies having a good record of contribution. The National Office for Social Security can only take action at the end of the quarter, as this quarterly payment is the established system.

The construction sector has to deal with major issues concerning (bogus) self-employment. This is not only a concern when it comes to foreign companies, but also an internal problem to be solved. Especially partial self-employment (self-employed activities besides main activities as a regular worker) is a threat to regular construction work. Temporary self-employed are alleged to engage more than occasionally in undeclared labour, making a minimal number of invoices at very low prices. Partial self-employment is attractive due to lower social security contributions, lower taxes, lower administrative burdens and the safety net of the main activity as a worker. The sector is confronted with a growing number of pensioners, disabled persons, civil servants and construction workers engaged in partial self-employment. The share of partial self-employed in construction has increased from 22.4% in 2000 to 25.3% in 2004.

Since a couple of years, the inspection services and authorities are confronted with a remarkable increase of activities of foreign companies and workers. These activities often go hand in hand with all kinds of unfair competition. A lot of problems have to do with fraud related to the posting of workers. One of the frequently appearing unfair practices is the disrespect for Belgian minimum wages and other labour conditions.³³

In several cases these practices constitute social dumping of the workers concerned and even lead up to or can be linked to criminal activities, such as human trafficking. Posting fraud can be divided into 4 categories: the incorrect declaration of the activities, posting fraud constructions, falsification of posting declarations and fictitious posting. Inspection services are confronted with very low prices from foreign companies, intermediaries on the market or malafide posting agencies (especially Dutch agencies since the liberalisation of the market in

³³ Country report Belgium, Y.Jorens, F.Van Overmeiren in The Free movement of workers, J.Cremers, P.Donders, CLR-Studies 4, Page 69-76.

1998) and an increase of posting from Central and Eastern Europe. Since the EU-enlargement, the number of abuses has grown. The evolution is hard to curb due to the complexity of cases, lack of administrative cooperation between Member States and lack of information on the applicable legislation. Bogus self-employment of workers from these countries is another major issue causing enforcement problems. Problems are also caused by the fact that transitional measures have been imposed with regard to the free movement of workers from 8 CEE Member States. In order to be engaged directly on the Belgian market by a Belgian employer, they have to apply for a working permit (like non-EEA workers) forcing them to (ab)use a by-pass under the free movement of services, as a self-employed or as a posted worker. Problems with non EEA workers often relate to residence and working permits.

2.2 Causes

The occurrence of undeclared labour is often related to the increase in leisure time, benefit from social advantages to complement a low income, high labour costs for employers and high VAT-tariffs for customers. The labour costs for employers are high, as is acknowledged both by employers' and workers' representatives. To put it roughly, a worker earning a net wage of 55 has a gross wage of 100 and costs 170 to his employer³⁴. It has been estimated that prices in the informal economy would be on average 30 to 50 % lower than in the formal economy. But next to high labour costs, also high indirect labour costs, such as time-consuming recruitment procedures, resignation compensations, strict rules concerning working hours or concerning temporary labour contracts can be specific motives.

Also the level of social protection has to be mentioned as a factor in the occurrence of undeclared labour. When the difference between the social security benefit and the salary is minimal, a person can find it useless to engage in the formal economy, if he can receive an amount of social security benefits comparable to his wage on the formal market, complemented by profits from undeclared activities. High unemployment benefits can constitute a factor in the choice for undeclared activities. On the other hand, controls are normally harsher in countries with a high level of social protection, as there is more "at stake" in case of undeclared labour. Better controls normally reduce the size of the informal market.

Contractors have to respect tight time schedules and they risk contractual fines if the work is not done in time. That is one of the reasons why some employers' temporarily use undeclared labour. F.i. after a long winter period, time pressure in the sector is very high. This can constitute an incentive for involvement in undeclared labour. Next to this, there is a very ruthless competition on the market especially for small and medium sized companies. Every year some 1000 companies go bankrupt, replaced by large numbers new undertakings.

The sector-specific regime for temporary unemployment (economic unemployment and unemployment due to bad-weather) is sometimes regarded as an invitation for undeclared labour. This is even more the case for posted workers, as their situation is hard to control by the authorities of their country of origin. If a Portuguese worker is posted to Belgium, very often only part of his activity is declared to the Portuguese institutions.

Other determinants are the efficiency of controls by the authorities, social control and social acceptance. F.i. in the sector of renovation, painting or wallpapering, there is definitely a high acceptance in society.

³⁴ P. TIMMERMANS, "Zwartwerk en fraude: een bedreiging voor de verzorgingsstaat – inbreng van de ondernemerswereld", *B.T.S.Z.* 2003, Vol. 3, 760.

2.3 The size: studies and figures

There is a large consensus that there are either reliable nor realistic figures or studies on undeclared labour in general, let alone in the construction sector. Most of the available data do not represent reality, but the “controlled reality”, such as figures in activity reports from inspections. It is acknowledged that construction is one of the most fraud-sensitive sectors, next to catering, gardening and personal services like cleaning or babysitting.

Logically precise data on undeclared labour are absent. This means that one can only try to get an idea of the size of it by means of direct surveys in Belgian families or via indirect methods. According to an inquiry in the 80ies, a quarter of all families would from time to time perform undeclared labour and this at an average of 33 hours a month. This accounts for approximately 6 % of the total formal labour volume. Occasional undeclared labour was at the time alleged to be three times as important as organised ways of permanent undeclared labour. Young households and low-skilled workers were found to be the main categories involved. Results from surveys and other measuring methods, like different indirect measuring methods that are used, have to be interpreted with the necessary caution.³⁵

In international macro-economic studies, Belgium is frequently referred to as a country with a high percentage of undeclared labour. A European Commission synthesis study of 1998 situated the informal economy between 12 and 21 % of the GDP, which placed Belgium between the EU countries with the largest informal economy (like Italy, Greece and Spain). The most recent Belgian study on undeclared labour dates from 2003. This research does not provide new estimations regarding undeclared labour and only tries to give an overview of the existing data with a focus on the “controlled reality”.³⁶ Social security contribution fraud is estimated at 6.8% of total social security contributions, representing a contributions loss of 1.879 billion €

In a 2004 macro-economic study³⁷, Belgium was with an estimated average size of 21.5% of GDP, together with Greece (28.3%), Italy (26.2%), Portugal (22.3%) and Spain (22.3%), part of a group of EU countries exceeding the level of 20%. 21.5% of GDP equals 57 billion € According to the PROSPERO-report on the Belgian economy, the government would lose about 30 billion € of tax revenues due to the informal economy³⁸. The black market represents 22% of the GDP³⁹. About one fifth of the population at working age performs undeclared labour full time, part-time or occasionally.

Other well-known research on the topic goes back to the end of the nineties⁴⁰ with an estimated loss of tax revenues between 13.19 and 16.09 billion €. A previous study estimated the “underground economy” between 12 and 20% of the GDP, meaning between 24.12 and 40.2 billion €. An ORSEU study of 1992 estimated that due to the informal economy 12.9 % of the social security contributions were lost, equalling 3.5 billion €, more or less confirmed

³⁵ X., “De informele economie”, *Economische en financiële berichten / KBC*, nr. 17, Octobre 1999, 3-5.

³⁶ A. MARCHAL en J. PACOLET, “Sociale fraude en zwartwerk in België: zoektocht naar het ondefinieerbare?”, *B.T.S.Z.* 2003, Vol. 3, 698.

³⁷ SCHNEIDER, F. and KLINGLMAIR, R., “Shadow economies around the world: what do we know?”, *CESInfo Working Paper Series*, http://www.cesifo.de/pls/guestci/download/CESifo%20Working%20Papers%202004/CESifo%20Working%20Papers%20April%202004/cesifo1_wp1167.pdf

³⁸ PROSPERO, “Un nouvel an pour la prospérité économique en Belgique”, McKinsey&Company, 2004, http://www.mckinsey.com/locations/benelux/pdfs/prospéro/Prospero_FR.pdf

³⁹ De Standaard, “Zwartwerk vertegenwoordigt 22 procent van Belgisch bbp”, 27 mei 2006, 12.

⁴⁰ Kenniscentrum Statistiek, “Zwartwerk in cijfers”, Bron: De Standaard 25 januari 2003, http://aps.vlaanderen.be/statistiek/nieuws/economie/2003-01_zwartgeld.htm

by 1995 figures from the inspection services of the FPS Social Security estimating the contributions loss between 1.76 and 4.4 billion €⁴¹.

There are no scientific studies available on undeclared labour in construction. But a survey amongst contractors who are members of Nacebo, the federation for SME's in construction, pointed out that undeclared work would cost the sector 4 to 6 billion € every year. That amounts to 20 % of total turnover in the sector⁴². The related tax loss would be 700 million €

3. The functioning of the informal market

3.1 Specificities on the Belgian informal market in construction

Supply and demand on the informal construction market are matched to a large extent in pubs, by word of mouth between private individuals and between employers. In certain regions, some families are known for their preparedness to and involvement in undeclared labour. They explore the market and offer their services to potential customers. They get the minimum wage of a bricklayer and some extra envelope money, often paid per metre. After the work they are dismissed and search a next site. Belgian workers involved are in most cases not completely undeclared, but partially regular (“in order”) in one way or another.

With regard to fraud in the employment of foreign workers, advertisements from foreign temporary work or posting agencies are sent via e-mail or fax to construction companies, offering very attractive prices. These prices often reveal that Belgian minimum wages could not possibly be respected. Foreign workers often get engaged in undeclared labour via intermediaries, sometimes malafide posting agencies (often Dutch) or natural persons engaged in gang master-alike activities.

As regards the activities, certain construction work, mainly indoor, such as painting, renovation or wallpapering, is ideal for undeclared labour. The actors in the formal economy are not really interested as fixed costs are too high to engage in this kind of work; so the door is open for undeclared labour, now often performed by Polish workers.

People “step into a system” (i.e. fraud construction) and from then on, everything is taken care of by their “helpers”. Workers often do not know where exactly they are working. The only thing they have to do is to be prepared to get on the bus in time, work a lot of (overtime) hours and go back to a place of residence. Recurrently they receive wages under the minimum wage or they receive a minimum wage but work more hours than declared. Reimbursement for food and stay is often calculated as part of the wage (sometimes at “Hilton-prices”), while lodging is frequently miserable and by and large overestimated. Gang masters as active in the 90ies have disappeared from the market, but comparable practices (by intermediaries or agencies) remained or reappeared.

A foreman of a group of workers on a bigger site usually has a lot of power, as he is the direct representative of the project leader. He is in charge of the budget and has to make sure profits are as high as possible. To achieve this, he has a broad autonomy to choose his working methods and workers. A dubious gang master surrounds himself with a number of undeclared workers and deals with the work that has to be done, receiving a percentage of the profits. In

⁴¹ A. MARCHAL en J. PACOLET, “Sociale fraude en zwartwerk in België: zoektocht naar het ondefinieerbare?”, *B.T.S.Z.* 2003, Vol. 3, 717.

⁴² “Zwartwerk kost de bouw elk jaar miljard euro”,

http://www.livios.be/nl/_immo/_guid/_buyg/_btwa/4126.asp?content=Zwartwerk%20kost%20de%20bouw%20elk%20jaar%20miljard%20euro

cases where undeclared workers or employers of undeclared workers are caught by inspection services, identical excuses are being used; the worker just started and there was no time to declare the work to the authorities or the worker just applied for a job and is still on probation. Undeclared labour can have a clear link to the criminal environment. A company, owned by two Dutchmen with a dubious record as businessmen, employed 50 workers, 25 of them working in the demolition branch of the company, all of them ex-detained persons. These workers were in need of cash (most of them also because of a drug addiction). The company paid 1000 € per month, working 12 hours every day and working on Saturdays and Sundays. Next to this, they received unemployment benefits. As this situation is very advantageous to them, these workers will stick to the company's policy. The company acted as a subcontractor all over Belgium and was signalled by trade union representatives.

Another example concerns undeclared labour in a steel bending company where most workers were persons receiving unemployment benefits. As it was detected, inspections services for safety and prevention went to the working place for control. However, a “doorkeeper” at the entrance of the building to keep priors out protected the place. This is a perfect example of how organised certain forms of undeclared labour can be.

Next to this, even cases of alleged bribery of regional inspection services have been reported.

In another construction company, undeclared workers with children were protected by the trade unions. It shows that even trade unions can have an ambiguous position in the debate on undeclared labour. On the one hand, they are against all kinds of social fraud because it undermines social protection and it leads to a destabilisation of the labour market. On the other hand they are representing workers who are potentially involved in undeclared labour. Of course, the employers' organizations have a similar problem towards their members and even the government has to deal with an ambiguity towards its voters. Whilst the fight against undeclared work by foreign companies figures in all sensitizing campaigns, the measures concerning undeclared labour by Belgian private individuals, like moonlighting, has always been announced with a more subdued voice.

3.2 Workers, companies, branches

As working in construction comprises a lot of hard physical work, most of the undeclared workers are young males between the age of 18 and 45. Younger people are probably also more susceptible to fast and easy “in pocket” profits. Most workers are low to average skilled. More details about professional qualifications are not available and no conclusions can be drawn from the experience in the field. People involved are not only professionals from the sector, but also workers from other sectors (cf. teachers, policemen, shift workers in other sectors, part-time workers), especially when it concerns unskilled work or renovation, painting and wallpapering. Access to equipment, tools and materials can be an incentive for regular construction workers to engage in undeclared labour. A well-known category is persons receiving social security benefits, such as pensioners or unemployed persons. The nationality of undeclared workers is in the first place Belgian, but if a ranking can be given of the most involved other nationalities, then Eastern Europeans must be placed on top, with a second and third position for respectively Portuguese and non-EEA workers.

Smaller and medium sized enterprises are more involved than bigger companies. There is enough evidence to state that 90% of the bigger companies will be clean. A higher degree of professional administration and management in big companies is one of the main reasons why participation in undeclared labour is marginal. In companies with less than 30 workers two strong regulating factors are missing, in particular the ‘management and administration’-factor and the presence of trade union delegations.

It also depends on the sort of activity or branch. The sub-sector of demolition has been referred to as “cowboy land”, where abuse is the order of the day, especially when it comes to health and safety at work. Working sites are often only notified after the demolition work is finished. Also excavation and cable works were indicated as risk sub-sectors where particularly a lot of allochthonous Belgians perform undeclared labour. Other sub-sectors in construction are characterised by a very low level of undeclared labour. These are generally the sub-sectors engaged in highly specialised or very specific activities, such as dredging work or electricity work. The level of undeclared activities also depends on the customer, particularly whether this is a private person, a company or the public authorities.

3.3 Motivation of the involved actors

The motivation for all involved in undeclared labour – customers, undertakings and workers – is without any doubt for all of them in the first place the financial advantage and the economics. The customer does not have to pay VAT when an undeclared worker performs the work. An employer sees his costs reduced as he avoids paying social security contributions. The worker also avoids social security contributions and income tax.

It should be noted that the clearest indicator are overdue debts in social security contributions or in FBZ contributions or, in other words, from the evolution of the social debts, a tendency in undeclared labour can be described.

Roughly said a customer wins 21%, the undertaking 50% and the worker between 30 to 40%. Compared to the financial aspect other motivation can be regarded as *quantité négligeable*.

3.4 Main influencing factors, dynamics and the relation with the economic cycle

Internationalisation and globalisation of the market is a highly influencing factor. Especially the European internal market has had an enormous affect on the occurrence of undeclared work. Increasing cross-border mobility of workers often goes hand in hand with different forms of social fraud and other illegal practices. The use and abuse of the freedom of service provision is an outstanding example, leading to the use of bogus self-employment, posting fraud, unfair competition and social dumping.

Another important factor is the development of outsourcing and subcontracting activities. Although, it should be stressed, subcontracting in se is completely legal, many abuses are observed in this field. This can be explained by the complexity of subcontracting chains, the low controllability and the difficulty to sensitize subcontracting companies on the topic of undeclared labour. It can be stated without doubt that the more subcontractors on a construction site, the higher the risk that undeclared labour will be present.

The immense labour costs in Belgium can be indicated as a third key factor.

More from a historical perspective, the attitude of citizens towards the government has to be mentioned. Belgium has a long history of subjection to different regimes. This is alleged to have influenced the attitude of the population towards government, resulting in a permanent mistrust of governmental activities, certainly when it concerns taxation, and an ongoing search for circumvention and evasion practices in various fields.

The structure of the labour market is a final determining factor. As has been stated above, construction is a sector where the threshold to step in is very low. This makes the market fragmented and dominated by a large number of very small companies, which are very fraud

sensitive. Specifically, employers are sometimes very “hard to catch” because of their mobile working places, which can be a stimulus for involvement in undeclared labour.

Some occasional undeclared labour in the sphere of personal services such as household services, babysitting or small maintenance work can have a positive effect as these generate a demand that would not be present in the formal economy. Income created from these activities stimulates expenses in the formal economy and the people employing this undeclared labour create more time to participate in the formal economy, to name two advantages. However in labour intensive sectors like catering or construction the informal activities constitute a mere shift of production from the official circuit and undeclared labour has few to no positive effects on the total economic activity. The positive effect on the external competition position is nullified by the unfair competition on the domestic market. The latter only stimulates more use of undeclared labour, a loss of income for the authorities, higher tax tariffs for the formal economy, again stimulating more undeclared labour, etc...⁴³.

The relationship between undeclared labour and the economic cycle is very hard to evaluate. When the economic climate is good and demand is high in construction, there is a lot of work and a lot of time pressure on employers. This can be a reason to use undeclared labour. In a bad economic situation, undeclared labour fits well in a survival strategy of employers as a counterbalance against the loss of profit due to a decreasing demand. In fact, this means that there is always a good reason to take advantage of undeclared labour. Nevertheless, it has been observed that in periods of low economic activity, construction workers prefer to work for bigger or “traditional” contractors, with usually a low occurrence of undeclared labour and a high level of social protection. In periods of high economic activity, people are less refrained to work for smaller subcontracting companies, where the amount of undeclared activities is usually higher. It is certain that the economic cycle has very little effect on construction prices, so this could not be the reason for involvement in undeclared labour. In a period of prosperity where the demand for workers is higher than the supply, workers can take advantage of a powerful market position to get extra’s in the pocket.

4. The effects of undeclared labour in construction.

First of all, undeclared labour puts pressure on productivity, as it guarantees companies with low productivity to stay in business by using the profits from the undeclared labour. It puts a stop to the growth of undertakings that have a higher productivity level while respecting the legislation and clearly constitutes unfair competition. It is very hard for bona fide companies not to get involved, as the fraudulent practices always lead to lower prices and more flexibility makes it very tempting to step in informality.

Undeclared labour endangers the safeguarding of working conditions and social insurance rights in the regulated formal labour market and undermines the industrial relations system with industry wide provisions and regulations established for the sake of continuity in the sector. Besides this, it leaves involved workers without social protection and creates social pariahs. Big pressure is put on Belgian workers, in case foreign workers on a construction site work more hours than the Belgian and their wage is lower. The employer can stress the replaceableness of workers as he pays less and the foreigners work longer. Consequently this creates a negative spiral on the wage and labour conditions. In the recent debate on combating

⁴³ X., “De informele economie”, *Economische en financiële berichten / KBC*, nr. 17, Octobre 1999, 3-5.

fraud, the reintroduction of Saturday work is discussed. According to workers' representatives this is partially due to the fact that posted, illegal workers work on Saturdays and Sundays.

For the governments undeclared labour mainly represents a financial and budgetary problem and a loss of revenue. Undeclared labour and social fraud lead to a weakening of the social security system and of the complementary social advantages built on a solidarity base.

Finally, it makes the construction sector unattractive to young people and other potential construction workers and has created over the years a bad image in public opinion.

5. Measures in the fight against undeclared labour

5.1 Overview of the most topical older measures

The fight against undeclared labour has been given extra impetus the last couple of years. Consequently we will focus on recent measures. But some old legislation and initiatives are still very valuable today and worth mentioning here. It has to be notified that all measures described, if not pointed out otherwise, are criminally sanctioned.

One of the oldest measures in the fight against undeclared labour is probably the “Law of 6 April 1960 on the execution of construction works⁴⁴”. The law mainly regulates the periods when it is prohibited to execute construction activities, namely before 7.00 AM and after 18.00 AM. Also on Saturdays, Sundays and official holidays it is in principle forbidden to perform construction work. Limited derogation is provided after notification of the inspection services. The “Law of 6 July 1976 to suppress illicit work with a commercial or craftsman nature” has already been elucidated for its specific definition of illicit work.

The Royal Decree of 8 August 1980 concerning the keeping of social documents⁴⁵ intends to guarantee compliance with several social terms and conditions and to make sure that effective control by the inspection is possible. By virtue of these rules Belgian and foreign employers have to draw up and keep social and labour documents as: a staff register, a special staff register or individual document, a presence register, an individual account for each worker, the labour rules, the pay slip, the labour contract for the employment of students, the labour contract for the employment of domestic workers, the labour contract for the employment of part-time workers and the immediate notification of employment. The imposition of these obligations was considered a restriction to the freedom to provide services within the meaning of Article 59 of the Treaty (after amendment, Article 49 EC) in the *Arblade* Judgment of the Court of Justice. To respect this judgment, government reviewed its system of drawing up and keeping social documents for employers of other Member States that post workers and worked out a new and simplified system for posting in the Act of 5 March 2002.

A Protocol on Cooperation has been introduced on 30 July 1993 to enhance the collaboration between the different inspection services involved in the fight against social fraud. It has resulted in a more integrated approach and was extended to all regional inspection services in 1995. However it soon became clear that cooperation still needed to be ameliorated. This was the aim of recent legislation introducing a “Federal Council and a Federal Coordination Committee for the fight against illegal labour and social fraud”.

⁴⁴ Wet van 6 april 1960 betreffende de uitvoering van bouwwerken, *BS*, 07-05-1960

⁴⁵ Koninklijk besluit van 8 augustus 1980 betreffende het bijhouden van sociale documenten, *BS*, 27-08-1980

One of the most important provisions in the fight against undeclared labour was the introduction of the registration of contractors linked to a system of multi-staged joint liability and a deduction obligation for social security and tax purposes. We will expound the principles of the system since 1999. Named after an article in the Law on the National Office for Social Security, it was called the “Article 30bis system”, introduced specifically for construction, in particular to combat fraudulent practices by so-called gang masters. Under the system of joint liability, the customer (everyone commissioning the execution of certain works at a certain price) who, for specified construction works, appeals to a contractor not registered at the time of the conclusion of the contract, is jointly liable for the payment of the social debts of his contracting partner. If a contractor, for specified construction works, appeals to a subcontractor not registered at the time of the conclusion of the contract, he risks the same joint liability for the social debts of the subcontractor. When there has been an appeal to several subcontractors for the execution of specified construction works, every contractor in the chain is jointly liable for the payment of the social debts of every contractor who is not registered and is involved in the execution of the work. The liability is applied in chronological order between the involved contractors and limited to 50% of the price of the works, which were entrusted to the non-registered contractor or subcontractor, VAT excluded. The “social debts” involved are the payments to the National Office for Social Security (the application of social security legislation and regulation), and the payment of the contributions to the FBZ. The deduction obligation is different for customers or for contractors. When a contractor is not registered at the time of payment, the customer, paying the price partially or totally, is obliged to deduct 15% of this amount, VAT excluded, and transfer it to the social security institutions. Whether a subcontractor is registered or not at the time of payment, the contractor, paying the price partially or totally, is obliged to deduct 35% of this amount, VAT excluded (when the activity falls under the competence of the joint construction committee; if not, a deduction of 15 %, VAT excluded, applies when the subcontractor is not registered at the time of the conclusion of the contract or at the time of payment of the invoice) and has to transfer it to the social security institutions. The contractor is freed from this obligation when the subcontractor is registered and free of any debts to the social security institutions or the FBZ. The deduction obligation does not apply in case the non-registered contractor is an employer, not established in Belgium, with no social debts in Belgium and whose workers all have a valid posting form (E101).

The other component of the Article 30bis system is the working site notification. Before the work is started, a contractor to which a customer appeals for specified construction works, must provide all information to the social security institution to enable it to estimate the importance of the work and to identify both the customer and all subcontractors at any stage (via a form called C 30bis/1, via the Social Security Portal site or via the website of the social security institution). If other subcontractors intervene during the period of execution of the work, the contractor must notify the social security institutions in advance. As a consequence, every subcontractor should notify the contractor in writing on the intervention of a new subcontractor. A contractor that does not fulfil these duties is obliged to pay an amount equalling 5% of the total amount of the works that were not notified, VAT excluded. In case a subcontractor does not fulfil his duty, he is obliged to pay an amount equalling 5% of the total amount of the works he has entrusted to another subcontractor or other subcontractors. The working site notification does not apply to contractors who do not appeal to a subcontractor, for works of which the total amount does not exceed 24.789,35 €

The Article 30bis system has proved to be a very efficient system and is still in force. A similar system of joint liability and deduction obligations was put in place with regard to tax payments (transfer of a certain percentage of the paid amount to the tax authorities). This

fiscal equivalent is currently under fire, as it is subject of a case pending before the Court of Justice (C-433/04).

5.2 Recent developments

For years, the fight against undeclared labour and social fraud is mentioned in government policy statements and in different “States of the Union”. Combating of illegal work and social fraud has gained renewed importance since the middle of the nineties. After 1999 emphasis was put on the modernisation of the government and administrative simplification. Since 2003, the accent has moved to prevention and control on undeclared work, especially by reforms regarding the tools and actions of inspection services, the sanctioning and the involvement of the social partners. Especially the Ministerial Council of Gembloux in January 2004 has been a landmark in the fight against undeclared labour and social fraud. This Council produced an extensive note named “Respect for Social Solidarity”, containing a number of necessary measures with regard to controls and sanctioning:

- Better cooperation between the social inspection services
- Extra staff for the social inspection services
- Central planning and steering
- Databases for better controls
- Modification of the legislation concerning the inspection services
- Awareness-raising campaigns
- Administrative simplification leading to better controllability
- Effective social criminal law
- Joint liability in other sectors than the construction sector
- The introduction of specialised chambers in the criminal courts
- Measures relating to different target groups
- Measures relating to the problem of bogus self-employment

The bulk of measures implementing the guidelines (some of them were already taken or in the pipeline before Gembloux) can be divided into 3 categories: “administrative simplification”, “improving control and enforcement” and “awareness-raising and involvement of the social partners”. The new impetus in the debate on undeclared labour and social fraud is largely inspired by the impact of activities of foreign companies and workers on the labour market and the fact that these often go hand in hand with semi-legal or illegal operations.

Administrative simplification

The establishment of e-government in the social security system has accomplished an administrative simplification for employers and authorities. Starting point has been the knowledge that employers are interrogated by the authorities at different points by different institutions. Often these institutions ask the same information with different forms and information sheets, which an employer only can fill in using large instruction guides, resulting in tons of paper. The e-government project aimed at a rationalisation of the administrative obligations of employers. The objectives were a reduction of the number of declaration forms, reduction of the number of times an employer is asked information by the social security institution and a reduction of the necessary time to fill in the remaining declarations, f.i. by reducing the number of sections to be replied and by avoiding that information has to be given on facts in the far-away past. The three main components of the project were a generalisation of the electronic declaration of employment, the generalisation of the electronic and multifunctional social security declaration and finally a simplification and computerisation of the social risk declaration. The most known applications already functioning today are:

- Crossroads Bank for Social Security⁴⁶.

Ever since 1990 social security institutions collaborate in an electronic network. This process has led to a successful combination of back-office integration (between 2000 social security institutions) and an e-portal solution, which serves as an example for Europe. Social security consists on the one hand of 3 insurance systems (workers, self-employed workers and civil servants), that cover maximum 7 social risks (incapacity for work, industrial accident, occupational disease, unemployment, old age, child care and holiday pay), and on the other hand of 4 protection systems (subsidies for the handicapped, guaranteed family allowances, minimum income and income guarantee for the elderly), that grant people specific minimum services after checking their subsistence resources. Crossroads' mission is to be the motor of e-government in the social sector, i.e.

- to stimulate and support actors in the social sector to grant more effective and efficient services with a minimum of administrative formalities and costs for all involved; based on a common and concerted vision, the actors benefit from new technologies to improve and re-organize radically their mutual relationships and processes;
- to promote information security and privacy protection by the actors; all involved institutions and people can have justified confidence in the system;
- to deliver integrated statistical information to politicians and researchers in order to support the social policy.

The socially insured persons and their employers only have to make a declaration to the social security system in the following cases

- at the latest at the beginning of a work relationship, an employer has to declare at which time (date and hour) the concerned worker enters into office;
- every quarter of a year, the employer has to declare the income earned by each of his workers, divided in income components (that have been uniformly defined throughout the social security branches for workers and civil servants), and how many workdays and assimilated days each of his workers has worked, divided in sorts of days (uniformly defined as well);
- when a social risk occurs, socially insured persons or their employers only have to declare the information about that social risk; information about the historical income or the historical work performances or assimilated performances does no longer have to be reported because it is obtained from the quarterly declaration of wages and working time data; only if wages and working time data are necessary concerning a period for which the quarterly declaration has not yet been made, wages and working time data for that period will still have to be reported, in the form of an anticipated declaration and according to exactly the same principles as the quarterly declaration;
- at the latest at the end of a work relationship, an employer has to declare when (date and hour) the concerned worker leaves office.

- DIMONA⁴⁷

Since January 1, 2003 all employers have to declare a new employee electronically to the National Office for Social Security (the system was tested on employers in construction). For employers in horticulture and agriculture, catering and certain employees of temporary work agencies, this will, for their occasional employees, only apply as of 1 July 2006. A circular of 2 December 2005 provides a procedure by which local authorities will request a special number with the central social security database for the foreign occasional employees who

⁴⁶ <http://www.ksz.fgov.be/>

⁴⁷ Dimona stands for: Déclaration IMmédiate - ONmiddellijke Aangifte (immediate declaration).

temporarily come to work in Belgium, so that employers can make their Dimona declaration. These employees will have to report to the local authorities, even when they are staying in a hotel. The Dimona declaration does not have to be made for a number of categories of people who, subject to conditions stipulated in the legislation, are not submitted to the social security system even though they are working in Belgium for a Belgian employer. It has to be made at the latest when starting work. The date of starting employment, i.e. the date stated in the contract of employment, must be reported. The date of leave, i.e. the end of the labour relationship, should also be reported, at the latest on the first working day after the contract ends. After the declaration has been processed, a message is sent to the employer within 10 working days. Afterwards he has 5 working days to check that the information was registered correctly. For the employer, this message is proof of the correct and prompt declaration. One of the advantages of making a correct declaration is that the employer does not have to keep a general personnel register, as the existing personnel file is always known electronically.

- Multifunctional declaration (DmfA).

In the past this declaration was only used for the calculation of social security contributions. All social security institutions now use the transferred data for different purposes. The data that have to be declared by the employer are the wage and performance data of every worker and the contributions for the whole company. Depending on the wage and performance data given, the employer is entitled to a number of reductions. Especially the status of the employee and his sort of employment are decisive.

- GOTOT-in / GOTOT-out.⁴⁸

The cross-border employment database collects all information on incoming foreign workers (GOTOT-in) and outgoing posted workers (GOTOT-out). Before the system was introduced, available information existed only on paper forms, documents were kept for a certain period only and information was spread over different institutions and far from univocal. The database collects all the information and can be consulted by the inspection services of the National Office for Social Security, the FPS Social Security, the FPS Employment, Labour and Social Dialogue and the National Employment Office (RVA). The GOTOT-out database is an application for full automatic treatment of posting applications by workers who habitually work in Belgium. A worker can get his posting form E101 via a fast and simplified online procedure, social security institutions can put more time in dossiers requiring specific attention and workers enjoy greater legal security due to fast treatment of their application.

- Notification of social risks.

Electronic notification of social risks has to be executed when a social risk can give cause to maternity benefits, benefits for accidents at work or for occupational diseases, unemployment benefits, income guaranteeing benefits and wage subsidies. As soon as social risks occur, the employer, the insured person or his mandatory have to inform the social security institutions. Afterwards the employer can be asked to give supplementary data. Notification can be sent via the social security web portal, via FTP (File Transfer Protocol; in case of large data transfer) or via a paper form.

- Notification of temporary unemployment:

Notification for temporary unemployment is possible for certain employers in the possession of a user-id and a password for the social security web portal. This notification is combined with an electronic 'validation book'. The application enables these employers to fulfil their

⁴⁸ Standing for: Grensoverschrijdende Tewerkstelling-Occupation Transfrontalière (cross-border employment).

notification obligation of temporary unemployment (for economic reasons, bad weather, technical reasons, and economic reasons in construction) to the National Employment Office and to keep an electronic validation book. The data enable the National Employment Office to check the legality of the temporary unemployment. If it is not valid, this is immediately reported to the employer or afterwards, as some conditions can not be controlled in the notification (f.i. “was it bad weather?”).

The user-friendly social security portal <https://www.socialsecurity.be/> contains all of the above and many other applications (pension register, staff register, holiday register, validation book, register of employers, working site notification concerning safety and hygiene, notification of temporary or mobile working places, notification of asbestos removal works, works in a hyperbaric environment and sandblast works).

This large administrative simplification project was very beneficial to the fight against undeclared work and social fraud. E-government applications make sure that there is unique identification of every citizen and every undertaking. Certain facts are immediately or even beforehand declared to the competent authorities and there is a guarantee that the same information is used for the calculation of contributions and benefits. Access of actors responsible for the attribution of entitlements to the data on entitlements in other social security branches is regarded as a good tool for avoiding concurrence of benefits. Finally the public accessibility of information with regard to social debts of undertakings has an advantageous warning function, especially in construction where it is linked to the system of joint liability and deduction obligation for customers and other contractors. Biggest advantage of the applications is the fact that it increases the information base for inspection services and it becomes easier to know and control the situation of companies and workers.

Not all proposals for administrative simplification are warmly welcomed by the actors. A recent proposal by the State Secretary for Administrative Simplification to replace the system of a priori registration of contractors (cf. *supra*) by a system, in which all contractors are registered automatically, with the possible sanction of scrapping when certain irregularities are detected, found less approval. A majority of actors regarded this as turning back the clock and opening the doors for abuse.

Improving control and enforcement.

All interested actors agree that the legal instruments to combat undeclared labour suffice and that the involved inspection services generally perform very well and that some of them even display an unstoppable enthusiasm and dynamism, especially in the field of fraud by foreign undertakings. During inspections and in the actual enforcement services are confronted with several legal and practical problems, not in the least due to internationalisation. Moreover, lots of cases are not brought to court due to a lack of staff in the Labour Auditory (public prosecutor in social matters) or simply to other priority setting. Nonetheless some fundamental changes took place since 2003 in control and enforcement.

Starting point was the introduction of the “Federal Council and the Federal Coordination Committee for the fight against illegal labour and social fraud” and the district cells by the Law of 3 May 2003⁴⁹. The purpose was to give new impetus to the coordination of and cooperation between the inspection services and administrations involved in the fight against illegal labour and social fraud. In this Law, illegal labour and social fraud are defined as every breach of social legislation under the competence of the federal government. The policy

⁴⁹ Wet van 3 mei 2003 houdende oprichting van de Federale Raad voor de strijd tegen de illegale arbeid en de sociale fraude, het Federale Coördinatiecomité en de Arrondissementscellen, *BS* van 10-06-2003

concerning illegal labour and social fraud is established by the Council of Ministers, composed by all competent Ministers. The Federal Council has to implement that policy and is composed of senior officials from all involved institutions such as the FPS Employment, Labour and Social Dialogue, the FPS Social Security, inspection services of the National Office for Social Security, inspection services of the National Employment Office, but also representatives of the public prosecutor, the federal police, the FPS Finance, the Secretary of the National Labour Council and the Coordinator-General of the Federal Coordination Committee for the fight against illegal labour and social fraud. The Federal Council has to pay special attention for the coordination of the actions of the different public administrations involved in the fight against illegal labour and social fraud and the sensitising of the services and administrations. The Federal Coordination Committee is the executive branch of the new institution and is also composed by representatives from the different administrations and services involved under the supervision of a Coordinator-General. The Committee has to implement the orientations of the Federal Council, establish guidelines for the district cells, coordinate the actions of the involved inspection services in the district cells, prepare the activities in the Federal Council, provide necessary support to the involved administrations and inspection services, conduct federal prevention actions, coordinate the information, education and documentation of the inspection services and the district cells and realise studies with regard to illegal work and social fraud. Next to the Federal Council and the Coordination Committee, the Law establishes “district cells”, composed of representatives of the mentioned administrations and representatives from the public prosecutor and the federal police at local level. As operational local branches they have to implement the guidelines as established by the Coordination Committee, provide information and education for the staff of local services and evaluate the results of the common actions of the inspection services. Another new entity introduced is the Partnership Committee, aiming at the preparation of Partnership Agreements between competent ministers and the professional organisations.

Competence of the Coordination Committee has been criticised as too vague; “implementing the policy of the Council of Ministers” is not really a clear-cut task. Due to internal conflicts, practical problems and over-ambitious planning without predefined strategies, results seem to be almost absent. Notwithstanding this, the establishment of a coordination institution is still seen as a necessary and valuable initiative, but competences should be defined more precisely and be merely supportive for existing services, e.g. by collecting know-how, realising specific research and study, creating new tools and methods and elaborating ICT support, without getting involved in existing competences and structures. The district cells play a very valuable role, as these cells bring together all local actors and work close to the manifest problems.

The Ministers for Work and for Social Affairs plan to transform the newly introduced institutions into a Social Inquiry and Tracing Service (SIOD) as successor of the Federal Coordination Committee, working with its own staff (instead of posted staff from involved administrations) under the supervision of a public manager reporting directly to the Minister. On 24 May 2006 the federal government has approved a strategic plan for the actions of the inspection services. On the one hand, the battle against contribution and benefit fraud will be given new impetus by maximizing the use of electronic controls via data-matching and risk-analysis. On the other hand, thematic actions from district cells (involving all related inspection services) will be at the centre of attention in the fight against irregular employment and will focus on human trafficking, posting of workers and undeclared labour in certain sectors. The SIOD will initially function as a support and knowledge centre, starting its steering role in 2007. Actions will be assessed by means of a professional evaluating system

with measurable indicators to evaluate the actions continuously and steer them if necessary. This new approach is expected to produce 80 million € at the end of 2006.

More staff has been promised several times by several competent Ministers, but has never been realised to a satisfying extent, although the corpse of the 4 most involved inspection services has grown from 780 controllers/inspectors in 1995 to 1200 in 2003⁵⁰. Within the inspection services of the FPS Employment, Labour and Social Dialogue, a special team has been incorporated in the Department Control on Social Laws to deal with fraud related to the activities of foreign undertakings and workers. In the same department, a specific guide was elaborated, aiming at a unified approach of the practical problems encountered and to give a clear signal to the service sector and the social partners that the concerned inspection services take cross-border fraud, social dumping and unfair competition seriously. It is a very complete guide on the definition and appearances of posting fraud, which also contains an integrated methodological approach, the legal framework and supervision instruments and contacts information for the inspectors dealing with complex international cases. A Checklist for foreign subcontractors was developed for the inspectors of the department.

The opening of the borders to all EEA workers has been described as a remedy to undeclared labour involving EEA-workers. The sector has to deal with recruitment problems of skilled workers. About 20 % of the vacancies are not filled, which equals about 3000 jobs. Consequently several professions are considered as bottleneck professions. Therefore construction employers were in favour of the free movement of workers from the 8 new Member States from CEE countries. On the 1st May 2006 all old Member States had to decide whether to stick to the restrictions or not. Transitional measures (forcing workers to apply for work permits) were discussed. As a result Belgium will keep the transitional measures until new tools to combat undeclared labour and social fraud have been introduced (as notification for posted workers and self-employed, joint liability, reinforcing inspections⁵¹). For a series of bottleneck professions, application for a work permit will be simplified and it will take only about 5 days to get it. On 19 April 2006 the Flemish Minister for Work and the social partners agreed on a list of 113 bottleneck professions. Almost all professions in construction were included. However the Bouwunie (SME's in construction) claims that painter should be added, as more than 90% of painter firms is looking for qualified personnel⁵². General contractors would have preferred an end to the transitional period, as nowadays the barriers to free movement of workers are circumvented by different sorts of social fraud, relying on the free provision of services with self-employed or posted workers. Employers are convinced that under normal recruiting people are more likely to end up in the regular economy in the bottleneck vacancies. Foreign EEA-companies and workers have had a "taste" of the advantages under the provision of services; it will be hard to get them back on the track of the free movement of workers.

One new measure is the LIMOSA-project.⁵³ This project of the federal government as part of the "Modernisation of the social security" works out an electronic system for monitoring and

⁵⁰ A. MARCHAL en J. PACOLET, "Sociale fraude en zwartwerk in België: zoektocht naar het ondefinieerbare?", *B.T.S.Z.* 2003, Vol. 3, 705.

⁵¹ Belgische Senaat, donderdag 9 Maart 2006, "Mondelinge vraag van de heer Berni Collas aan de Minister van Werk over de tewerkstelling van werknemers van de nieuwe lidstaten van de Europese Unie" (nr. 3-1039), <http://www.senate.be/www/?MIval=/Registers/ViewReg.html&COLL=H&PUID=50334617&TID=50347331&POS=1&LANG=nl>

⁵² VRTnieuws.net, "De lijst van knelpuntberoepen is klaar", woensdag 19 april 2006, http://www.vrtnieuws.net/nieuwsnet_master/versie2/nieuws/details/060419Knelpuntberoep/index.shtml#

⁵³ Landenoverschrijdend Informatiesysteem ten behoeve van MigratieOnderzoek bij de Sociale Administratie.

controlling every form of employment of foreign workers. It will result in a single point of contact for the coming generalised prior notification obligation for all posted workers and self-employed persons (they have to declare their activities before starting). The measure also contains a notification duty for the end-users/clients and for applications for working permits, licenses, establishment and residence permits. This has to be a central database with all information on foreign activities and thus an ideal new tool for all inspection services, at the same time constituting a considerable simplification of the business environment. LIMOSA's regulatory framework was approved by the Council of Ministers of 28 April 2006 and the prior notification obligation will presumably be in place in September 2006.

E-government, used for administrative simplification in the social security sector, plays also an important role in the upgrading of control tools of the inspection services (through for instance GOTOT in / GOTOT out). Other tools were developed.

- OASIS.⁵⁴

OASIS is a data warehouse that was created in the frame of a common anti-fraud project of the inspection services from the FPS Employment, Labour and Social Dialogue, the FPS Social Security, the National Office for Social Security and the National Employment Office (as the 4 main actors). Main purpose is to enable the social inspection services to execute goal-oriented controls and to perform analyses on related data from different social security sectors. In other words, a tool created to detect and analyse fraud scenarios. Analyses of different data can result in “flashing lights”, indicating possible fraud. E.g. if the turnover of an undertaking increases, the number of employees decreases and at the same time there is a increase in social debts, this can indicate fraud. The same counts for successive bankruptcy, non-declaration of wages or fraudulent posting. OASIS was at first only oriented towards construction as the most fraud-sensitive sector and priority was to detect fraud regarding temporary unemployment. In case a fraud scenario is suspected, research by the inspector can even be performed at the level of an individual worker and not only at company level.

- GENESIS.⁵⁵

GENESIS is a database comprising 2 modules: the first is a combination of basic data from control visits of the different inspection services by filtering all data from the computer files on a daily base, the second is a module to enrich the controls by combining all data that are actualised on a daily base, like the official address of a company or Dimona-data. It is the synthetic register of all closed and pending controls of the inspection services from the FPS Employment, Labour and Social Dialogue, the FPS Social Security, the National Office for Social Security and the National Employment Office (the 4 main actors).

The growing number of control tools may cause new problems. Due to the fact that a lot of desktop research has to be done, inspectors sometimes encounter difficulties to perform controls. There is a clear risk that they spend too much time behind their computer and do not find the time to perform regular controls.

Sanctioning of social fraud has also been subject of discussion. Often cases are not brought into court due to a lack of staff in the Labour Auditory (public prosecutor in social matters) or simply priority setting and most cases end up in warnings, regularisations, settlements and

⁵⁴ Stands for “Organisation Anti-fraude de Services d’Inspection” and is applied since January 2005.

⁵⁵ Stands for: Gathering Evidences from National Enquiries for Social Inspection Services.

administrative fines.⁵⁶ A clear trend towards depenalisation of social fraud was observed. Pacolet observed that this was still the case in 2003.⁵⁷ The Gembloux Ministerial Council countered it in 2004 by proposing measures with regard to social criminal law. In 2001, a Committee on social criminal law (with representatives of the administrations, the judiciary, the academic world and the government) had been established to research certain topics: “control on social laws”, “infringements and sanctions”, “depenalisation and decriminalisation”, “organisation of criminal and administrative sanctions in social law”, “logistical needs in the framework of criminal and administrative sanctions in social law” and “improvement of international cooperation”. After Gembloux, the different competent Ministers decided which social crimes would have high priority for prosecution: (1) undeclared employment of more than 5 persons, (2) employment of minimum 3 foreign workers without the necessary permits, (3) the exploiting of victims of human trafficking, (4) serious accidents at work and diseases caused by disrespect for the legislation on health and safety at work and (5) preventing controls of the social inspection services. On 15 January 2005 a still pending Law proposal concerning different provisions of social criminal law was submitted to Parliament. It contained two components. The first introduces specialised chambers in the criminal courts (of first instance and appeal) that exclusively deal with infringements concerning social criminal law. This has to lead to enhanced efficiency in the prosecution of social criminal offences. The other component aims at assigning a special (civil) legal action to the Labour Auditory as a tool for better alternative sanctioning of social criminal offences. This legal action will take place in cases where all the employees of an undertaking are concerned and criminal prosecution is not necessary. At the moment the Labour Auditory only has this legal action before criminal courts.

Initiatives with regard to the fight against bogus self-employment have been announced several times and measures have been taken to counter abuse of partial self-employment. But the sector is still lobbying for a combination of different measures. They want a maximum term of 3 years for the reduction of social security contributions for partially self-employed persons, the exclusion of the construction sector from the VAT-exemption and a prohibition for certain social benefit receivers to engage in partial self-employment. Although the issue is nowadays strongly related to bogus self-employed persons from other EU countries, the fact remains that it should first be dealt with at home, as questions on the distinction between workers and self-employed persons are pending. On 24 May 2006 a new Law proposal concerning the nature of labour relations was approved by the Council of Ministers. Basic principle is that parties are free to choose the nature of their relationship. But the proposal wants to introduce legal and socio-economic criteria for the assessment of a labour relationship. The former would apply to all sectors while the latter could be introduced by sector. A commission will be appointed to assess the sector-specific socio-economic criteria and to report with a proposal to the competent ministers. That commission has to rule (with binding advice) in individual cases if parties seek clarity on their labour relations.

Finally the Law proposal by the Minister of Work on joint liability should be mentioned. Joint liability will not only apply to construction, but to all sectors and will thus introduce a general system of joint liability for customers and (sub) contractors. The precise proposal has not yet been published, but liability for social debts would comprise all amounts to which workers are entitled according to their labour contract, the contributions for the FBZ and all payments the

⁵⁶ Imposed by the Director-General of the Department of Legal Studies of the FPS Employment, Labour and Social Dialogue.

⁵⁷ A. MARCHAL en J. PACOLET, “Sociale fraude en zwartwerk in België: zoektocht naar het ondefinieerbare?”, *B.T.S.Z.* 2003, Vol. 3, 708-714.

employer owes to the social security institutions. The liability would be a non-multi-staged cascade system, which means every involved (legal) entity is liable for the whole of the social debts in case a) they have or one of them has been sentenced relating to employment of illegal foreign workers, undeclared labour or social fraud (to be specified), (2) social infringements have been recorded by social inspection services and (3) they or one of them knew, at the conclusion of the agreement, or had to know that the low prices (to be specified) could only find their cause in disrespect for obligations in social legislation. Some exemptions will be incorporated⁵⁸. The proposal is accompanied by another proposal concerning joint liability, described by several actors as incoherent, inefficient and unacceptable.

Awareness-raising and involvement of the social partners

The awareness-raising component consists of several sensitisation campaigns on TV, on the radio or through the distribution of folders. Media frequently report on large-scale controls by different inspection services and this also has a dissuading effect. Participation of the involved administrations and inspection services in research groups, academic steering groups or at seminars and conferences is another way of spreading the word. Finally the government regularly disperses new folders on the negative effects and sanctioning of undeclared labour and social fraud. In 2003 the folder *Undeclared labour, a steep bill*⁵⁹ was dispersed and in 2006 the Minister for Work distributed leaflets to the public at the yearly construction exposition Batibouw. One flyer was addressed to private persons, entitled *Everything you always wanted to know about undeclared labour, but were afraid to ask*.⁶⁰ The other was addressed to the professional and was displaying *The employment of foreign workers in the construction sector*⁶¹. Another initiative is a publication of blacklists of contractors with social debts on the website of the National Social Security Office.

In the Law of 3 May 2003, mentioned earlier, a Partnership Committee was established. The committee has to prepare Partnership Agreements between government and professional organisations. Aim is to involve sectors in the three phases of the fight against undeclared work: prevention, tracing and repression⁶². A model for Partnership Agreements and a procedure to conclude these have been developed. Partnerships already existed before this regulatory framework was put up. Construction was used as a pilot. Results of this experiment limited to the Antwerp region and to a sub-sector of construction were described in earlier CLR-research on the free movement of workers. Another partnership was concluded between the competent Minister and the Confederation Construction. The Minister agreed to more controls outside normal working hours in particular on Saturdays, all over the national territory and in all sub-sectors. The Confederation agreed to conduct an information and sensitisation campaign amongst its members and to promote the transparency and publicity of construction sites by inciting members to put names and other important company data on a visible place on site.

A recent attempt to conclude a new partnership between the authorities and the social partners in Antwerp has been blocked by the local employers' organisation. Purpose was to control health and safety on site, performed through screenings by unions and the inspection services.

⁵⁸ P. Van Velthoven, "Minister Vanvelthoven wil door preventie en strenge aanpak van opdrachtgevers sociale fraude tegengaan", <http://www.petervanvelthoven.be/article.php?id=265>.

⁵⁹ Brochure "Zwartwerk, de rekening is gepeperd", <http://meta.fgov.be/pdf/pd/nldc18.pdf>

⁶⁰ Brochure "Wat u altijd wilde weten over zwartwerk maar nooit durfde vragen", <http://meta.fgov.be/pdf/pd/nldc31.pdf>

⁶¹ Brochure "De tewerkstelling van buitenlandse werknemers in de bouw", <http://meta.fgov.be/pdf/pd/nldc32.pdf>

⁶² P.-P. Maeter, "Zwartwerk en Fraude: overzicht van beleidsmaatregelen", *B.T.S.Z.* 2003, Vol. 3, 772-773.

The Bouwpool (“Construction pool”, 2001) in Antwerp is a local initiative of the social partners aiming at the employment of certain risk groups. Some 70 nationalities are involved in this project. Workers are guided through a process from education over training to (guaranteed) employment, financed by the sector and the Antwerp city. It is a good initiative to combat undeclared work, as these risk groups of foreign workers tend to end up in fraud operations. Similar projects are taken up in Ghent and Limburg.

Trade unions try to work with “antennas” in the communities of foreign workers (worksites, churches, lodgings). Flyers are distributed (mainly in Polish) with valuable information for workers. They are informed that if they have a double nationality (Polish-German), they can be recruited directly by a Belgian employer under the free movement of workers. Also the legislation on minimum wage and other labour conditions is explained. The initiative deals with the situation as it is: those workers already reside in the country and it is better to inform them and sensitise them away from the “fraudulent circuit”. Moreover trade unions try to mobilise Polish workers, accepting union membership for a symbolic contribution. They will have the same rights to information and assistance as other unionists; a modest but valuable contribution to drag informal activities into the formal market.

A Task force on unfair competition within the joint committee of the construction sector is focussing on unfair labour migration, the provision of working cards and permits, the revalorisation of training for job-seekers and the limitation of partial self-employed. The Confederation Construction has published a Progress report on the Action Plan against Undeclared Work in 2005 with an overview of measures taken and measure that have to be taken (e.g. make renovation investments by private individuals tax-deductible via the invoices⁶³, more flexibility with regard to labour time organisation⁶⁴).

5.3 Good practices

As a lot of the measures taken were put into place very recently, circumspection on their evaluation is necessary. With regard to e-government Belgium can play a leading role in the EU. The social security web portal is a very user-friendly and timesaving instrument for social insured persons, for undertakings and for the authorities. The easier all kinds of data are registered, the greater the “overall knowledge” of the authorities. The overall e-government project has been nominated as one of five 'best practices' in the category 'European, Central and Local Government eCo-operation and Public eServices'. As a result of this project all concepts, procedures and administrative instructions were standardized across all social security sectors. Some 170 sorts of paper certificates that the socially insured persons or their employers had to get in one social security institution, only to hand it over to another social security institution, were replaced by electronic messages. In 2002, 243 million data exchanges took place between social security institutions. About 50 sorts of declaration forms towards social security have been eliminated and in another 30 declaration forms the number of headings has on average been reduced by two thirds. A lot of declarations can now be entered directly and electronically from the personnel administration packs or in real time (on-line) via the social security portal, e.g. the immediate declaration of employment and discharge (DIMONA, unique in Europe, now taken up by The Netherlands) and the quarterly declaration to the National Office for Social Security. An ever-increasing number of social

⁶³ Cf. Belgische Senaat, “Wetsvoorstel tot wijziging van het Wetboek van de inkomstenbelastingen 1992, met als doel de aftrek mogelijk te maken van kosten van kosten die betrekking hebben op woongebouwen”, 18 maart 2004, <http://www.senate.be/www/?MIval=/dossier.html&LEG=3&NR=568&LANG=nl>

⁶⁴ Cf. Belgische Senaat, Wetsvoorstel tot wijziging van de wetgeving betreffende overuren, 17 juni 2004, <http://www.senate.be/www/?MIval=/dossier.html&LEG=3&NR=755&LANG=nl>

security rights are granted automatically without administrative declarations for the socially insured person or his employer.

Another laureate instrument is certainly the GOTOT-in database that collects all information on incoming foreign workers. This could be a very useful tool to introduce in every country of the European Union in order to make it possible for the different national administrations to check the GOTOT-database of other Member States and thus increase their knowledge on foreign undertakings and workers. The same counts for the GENESIS-database. The EU has already shown interest for the GOTOT database to introduce it as a general norm.

The introduction of an umbrella institution for all inspection services involved in the fight against undeclared work and social fraud is to be recommended. But competences of such a supra-administration should be clearly defined to avoid entanglement of competences with the coordinated administrations and conflicts leading to stagnation. An intensive know-how support role of such an entity is also advisable. The development of practical guides for social inspectors on how to control foreign undertakings and workers is a specific ‘good practice’ to improve efficiency of controls.

Fixing a lump sum for part of the contributions of employers to sector-specific joint institutions like the Belgian FBZ with an impact on the hourly rate from a certain moment and the reduction of the cost for working overtime are both considered as good incentives to work more in the formal market. Measures to combat abuse of temporary unemployment are necessary.

Almost all actors involved are in favour of the introduction of a joint liability system for customers and contractors on a European level. The introduction of a “social Europol” was reiterated and so was the need for European initiatives relating to better administrative cooperation between the Member States.

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