

Boosting transnational cooperation on posting of workers

Cooperation in process

Transnational workshop
Addressing posting complex cases of fraud
Which practices, which lessons to be learnt?

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Synthesis



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Other stakeholders : Investigating Judge Hainaut Court of First Instance (BE), Service point Free Movement of Labour Hamburg (DE), EU Equal Treatment Office, Berlin (DE), SOKA BAU (DE), German Pension Insurance (DE), Hamburger Ministry of Labour, Social Affairs, Family and Integration (BASFI) (DE), General Konsulate Republic of Poland, DG for Employment, Social Affairs and Inclusion (European Commission)

Introduction

The “boosting transnational cooperation on posting of workers” project had two dimensions:

- The first, entitled “**cooperation in action**” was specifically intended to develop operational cooperation plans based on collaboration between the host country and sending country.

These cooperation plans included different types of action: inspection and monitoring, information, awareness raising and prevention.

The method chosen was “learning by doing/training by doing.” The cooperation plans were co-designed and implemented by the partner Member States during the project. They resulted in eight on-line workshops in April and May 2021 (see “overview of cooperation plans”).

- The second dimension, entitled “**cooperation in progress**” will be described here.

Given the rise in the number of complex cases of posting fraud, the purpose of the project was to identify obstacles and room for manoeuvre in terms of inspection and monitoring.

The methodology was based on an analysis of previous real-life cases, data from a questionnaire sent out to all the partners and the work of a focus group (Riga March 2019). The findings of the analysis were then shared to gain greater understanding of the logic behind these fraudulent schemes and identify suitable action.

These case studies are described in five action sheets:

[Action sheet n°1](#) « Fraudulent arrangements adaptation to legal frame in the construction sector: an “historical perspective” » (ACT, PT)

[Action sheet n°2](#) « The involvement of social partners and transnational cooperation in a shipyard case » (Inspectorate SZW, NL)

[Action sheet n°3](#) « The collaboration between public authorities and trade unions: an approach to solve the problems encountered: the case of the Dunkirk methane terminal» (EFBWW)

[Action sheet n°4](#) « An example of national and European judicial coordination: steps, process and follow-up » (Federal Public Service Employment, Labour and Social Dialogue and Investigating Judge, Hainaut Court of First Instance, BE)

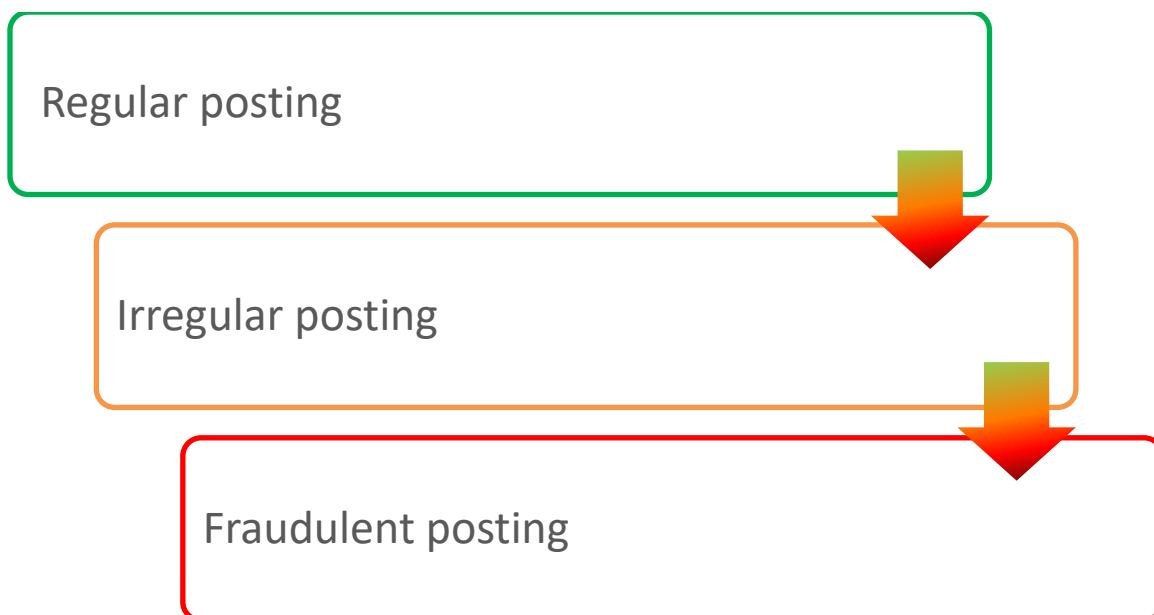
[Action sheet n°5](#) « An example of coordinated investigations at European level: steps, process and follow-up : research in 3 countries into the activities of a letterbox company» (Ministry of Labour and pension system, HR)

1-Complex posting fraud: what are we talking about?

1.1 Use of posting: an overview of the situations encountered

The use of posting and transnational provision of services takes many different forms. It ranges from a “virtuous” agreement between contractual parties in which worker mobility contributes to fostering social and economic development to the setting up of fraudulent schemes between different Member States.

In 2011, a study commissioned by the European Federation of Building and Woodworkers¹ suggested a ranking of situations ranging from the most satisfactory, legally-compliant situations to the most abusive situations, some verging on human rights violations.



- ¹ « In search of cheap labour in Europe – Working and living conditions of posted workers », European Institute for Construction Labour Research, CLR Studies 6 - Jan CREMERS, 2011

Three situations have been qualified :

- « **Regular** » posting

In this case, posting is the result of corporate strategy and business relations, for example in the construction sector with regard to sub-contracting relationships.

- The first strategic objective is to seek to obtain a competitive advantage due to human resources and skills management. Workers might be brought in from a different country to that of the host company because they possess skills that are rare or not available locally or to compensate for a labour shortage.

In this case, «specialist sub-contractors provide services on a temporary basis in another EU Member State employing well-paid qualified workers or staff who are on the regular payroll of the companies posting workers» .

- A second strategic objective is to seek to obtain a competitive advantage due to lower labour costs. Using workers from other countries allows companies to take advantage of differences between national legislation, in particular social and fiscal provisions. This posting is “legal” but *“the calculation is based on the choice between employing national labour and cheaper labour in the framework of a service provision by a foreign company.”*

- « **Irregular** » posting

These situations refer to:

- *“situations which entail a number of problems regarding living and working conditions of posted workers, due to the failure to respect the “hard core rights” defined by the directive (unreasonably long working hours, poor working conditions)” ;*
- *and/or “practices in which the posting takes place within a legal framework but where posted workers have to pay undue costs such as administrative fees, unauthorised deductions for accommodation and transport or withholding tax” which violate EU law.*

- **Bogus postings which are fraudulent**

These types of fraud can take different forms: *“Copying and distribution of E101/A1 forms, recruitment of posted workers already in the host country or bogus self-employed workers, posting via letterbox companies with unverifiable invoices drawn up for the provision of services.”*

Full-blown fraudulent set-ups gradually emerged in a variety of configurations ([action sheet n°1](#)). Their complexity makes it particularly difficult to analyse them and identify standard modus operandi.

By analysing the situations encountered with project partners, it is possible to identify keys to better understanding these fraudulent schemes.

1.2 How to qualify these complex frauds. A multi-dimensional question

- **The transnational dimension**

All of the complex cases detected by the partners demonstrate frauds which are perpetrated within the EU. These strategies rely on misuse of the posting mechanism and it is harder to understand them if seen from a purely national point of view. To describe or rather re-enact these fraudulent schemes, we need to shift to a transnational interpretation which involves the cooperation of several European actors.

Over and above this common definition, other dimensions can be used to qualify these “artificial set-ups”. The fraudulent situations grow in complexity when they combine several or even all of these dimensions according to the typology proposed by Jan Cremers² :

- **The involvement of more than two countries in or outside the EU**

In the framework of directive 96/71/EC, cooperation practices are laid down and implemented according to a “bilateral model” based on exchanges of information between a host country and a sending country, between the place of performance of the work and the place where the companies are established.

² See in [Appendix 2](#) la « Complex cases » summary

The limits of this « **bilateral model** » are clear when the legal-financial schemes involve more than two countries.

A typical example: workers from a Member State are employed by a company registered in another Member State and posted to a third one.

This is the case of the « Dunkirk methane terminal » ([action sheet n°3](#)) where the legal frameworks of three different Member States come into play: the workers' nationality, the country where the service provider is established and the country where the work was performed.

This type of scheme is also found in cases of fraud where the workers come from third countries.

A 4th tier is added when employees from Member State 1 are employed by a temporary work agency registered in Member State 2 which hires them out to a subcontractor in Member State 3 to perform work in Member State 4. This scheme which goes by the name of "double posting" was reported by France and Italy for example.

The number of countries concerned increases when the investigation reveals a large-scale criminal organisation, as was the case in Belgium ([action sheet n°4](#)).

- **Creation of fake postings**

The fraudulent schemes have an artificial dimension. These fake postings appear to be real postings from the outside and serve as alibis for artificial arrangements created in order to circumvent rules or for financial transactions.

The construction sector has seen artificial, letterbox companies spring up, concealing fake subcontracting and the illegal provision of labour where the workers are under the direct supervision of the user undertaking.

This type of situation is illustrated in the investigations presented by Croatia involving a triangular operation with Belgium and the Netherlands ([action sheet n°5](#)).

- **Several social policy areas are intertwined**

Fraudulent practices such as the use of letterbox companies to hire workers take advantage of legal loopholes due to the overlapping regulations.

To quote Jan Cremers: *"the legal framework spans several national and EU policy areas with incoherent, contradictory or even conflicting rules regarding company law, labour and contractual law, internal market, tax and social security regulations"*³.

³ see Jan Cremers's report "Company Law, Artificial Corporate Entities and Social Policy" Novembre 2019
<https://www.etuc.org/en/publication/company-law-artificial-corporate-entities-and-social-policy>

This state of affairs underscores the importance of promoting cooperation between public authorities to tackle complex frauds⁴.

- **The involvement of multi-level chains of companies, the frequent use of company transfers or bankruptcies and the falsification of documents**

Although the creation of artificial entities in the form of ready-to-use letterbox companies is easy and cheap, as is the falsification of documents such as fake A1 declarations, these fraudulent practices involving the creation of several tiers of companies which evolve due to company transfers or bankruptcies tend to create a smokescreen making it difficult to get to the bottom of the schemes put in place. These set-ups exist in various configurations, for example:

- posted workers whose contracts are transferred between separate legal entities which belong to the same group and relate to the performance of the same service;
- hiring out of workers between companies as part of subcontracting arrangements;
- a group of temporary work agencies opens branches in a sending country and transfers the workers' employment contracts back and forth between the branches;
- temporary work agency posts workers to another temporary work agency in the host country which then hires out these workers to provide a service.
- several associates set up several different businesses (including a temporary work agency) in the sending and host countries so that they can post their own workers; this is referred to as a merry-go round scheme by the ACT, the Portuguese working conditions authority.

Another illustration was given by the labour inspectorate in the Netherlands: ([action sheet n°2](#)) :

- Romanian workers on a shipbuilding site are employed by temporary work agencies in Romania which are in fact subsidiaries of a temporary work agency in the Netherlands.

Lastly, the company set-ups can reveal a full-scale transnational hierarchical organisation for example under the cover of straw men suspected of money laundering as in the case presented by the Belgian Supervision of Labour Legislation and Labour Judiciary. ([action sheet n°4](#)).

These schemes are constantly on the move. They are underpinned by strategies to commit fraud and evolve over time.

⁴ By convention, we use the term "collaboration" between stakeholders at the national level and the term "cooperation" at the transnational level

The Bulgarian Labour Inspectorate pointed to: “A frequent change of company ownership due to a share transfer or resale” where “in some cases, the head office and registration address” are the same. Only the name of the company and in some cases the director change.”

The French labour administration underlined that: “in complex schemes, companies are elusive and are not visible for labour inspection even though they participate actively in the fraud. They referred to the following example:

“One of the associates creates [...] a temporary work agency [1] in sending country [A] which only does business in France mainly with the same user undertakings, some of which are in the hands of the receivers. The name of the company is changed. It does not have the necessary administrative authorisation in the sending country to operate as a temporary work agency.

The director of one of the French user undertakings in turn sets up a temporary work agency [2] in a Central European country (B); his name however does not appear in this company which he has run by a friend domiciled in country C. This structure is abandoned in favour of another temporary work agency [3] established in the initial sending country (A). “

In a nutshell:

The various dimensions of complex posting fraud

- More than 2 countries
- The involvement of multi-tier corporate chains
 - Frequent bankruptcy or transfers
- Several social policy areas are intertwined
 - the use of workers from third countries
 - Document falsification
 - Creation of fake postings

2- Suggestions for action: what have we learned?

In the absence of proven methodologies which are doubtless in the process of being tested, what suggestions for action can be identified based on the cases presented and discussed in the workshop?

2.1 The difficulties raised by cases of « complex fraud»

Given the complexity of the situations encountered, what specific difficulties should be taken into account to combat the abusive practices revealed by the complex cases?

- Respond to the increasing number of injured parties

In the light of the experiences presented, these types of fraud tend to increase the number of injured parties which require different types of response :

- the posted workers who have been denied their entitlements under the applicable rules (remuneration, health and safety etc.),
with the added difficulty of reinstating their rights.
- the Member States who have suffered a financial prejudice due to the loss of social contributions or tax revenue generated by the fraudulent schemes.
with the problem of public debt collection,
- Society as a whole which is the victim of serious criminal offences (money laundering, human trafficking etc.)
with the matter of ensuring effective joint legal-administrative action.

- Re-enacting fraudulent schemes

The inspection body's investigation usually begins with an analysis of available data. In some cases, the identification of the undertakings concerned (social and legal track record) indicates the probability of a complex case.

In any case, it is often only possible to get to the bottom of a fraudulent scheme as the investigation progresses by implementing a strategy as the pieces of the puzzle start to fall into place.

This re-enactment also requires a major investment in time and resources which it is difficult to assess beforehand.

It involves a greater need for information exchange on either side of the border.

It also entails the problem of legal responsibility given the nature of complex fraud.

- **Take into account the interaction between the fraudulent scheme and the action of the stakeholders**

A third difficulty is related to the timeframe - the time required to re-enact and act upon fraud and the fact that these schemes change over time, interact and react to the action taken by public authorities or other stakeholders.

The administrative and legal action carried out in Belgium took seven years in all ([action sheet n°4](#)).

2.2 What specific drivers can be activated in terms of inspection method and strategy?

Based on the cases presented, the working group shared best practices for monitoring and inspection to help overcome the difficulties identified.

These best practices were discussed with added input on two main themes:

- collaboration between stakeholders to compensate for the diversity and fragmentation of skill sets,
 - coordination of action to compensate for the complexity inherent in transnational fraudulent schemes.
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- **Adaptation of national frameworks**

As a general rule, transnational cooperation with regard to posting encourages public authorities to:

- adapt their organisation, and
- adopt frameworks and tools to simplify information exchange/access to data to strengthen collaboration between stakeholders.

Adapting national frameworks makes it easier to tackle complex fraud. Some illustrations of the different organisational choices and practices:

- In **the Netherlands**, the labour inspectorate (ISZW) is in a position to cooperate with various bodies: tax and customs authorities, the Immigration and Naturalisation Service (IND), the Employee Insurance Agency (UWV), the National Criminal Investigation Department of the ISZW, the Human Environment and Transport Inspectorate (ILT), municipal authorities and the social partners.

It has a special plan for cases of fraud. The first deals with bogus set-ups. The second concerns compliance with collective bargaining agreements (CAO). Case reports are drawn up and the other authorities concerned are informed.

If the inspectorate has insufficient administrative powers to deal with the situation, it can request a criminal investigation via an internal criminal investigation department.

The social partners are legally entitled to request investigations from the labour inspectorate and receive a report which can then be used as a basis for civil legal proceedings in order to ensure that the provisions of collective bargaining agreements are enforced; these are usually binding ([see action sheet n°2](#)).

- In **Belgium**, collaboration between the Supervision of Labour Legislation (CLS), specifically its posting unit and the National Social Security Office (ONSS) makes it possible to curb posting fraud. It works closely with the legal authorities. ([see action sheet n° 4](#)).

By sharing data and working jointly in the field, it is able to detect fraudulent situations more quickly and take prompt action.

The relationship between the CLS and the social partners is governed by partnership agreements or charters to combat social fraud.

- In **Germany**, an NGO, Arbeit und Leben, which supports mobile crossborder workers, including posted workers, reports any cases encountered to the public authorities.

The Berlin and Brandenburg alliance is a collaborative platform for the construction sector grouping the IGBA trade union, the social fund for construction, branch representatives, the labour and economic affairs ministers of the two states as well as the financial inspection office for illegal work and the workplace safety office.

- **France** has a dual-pronged approach.
 - In each regional labour department, there is a regional illegal work support and inspection unit (URACTI) specialising in undeclared work, the illicit supply of workers, commission-based illegal subcontracting which is prejudicial to the worker and the use of foreign workers without a work permit.
URACTI units can also support the general inspection units of the labour inspectorate.
 - At central level, a national monitoring, support and inspection group (GNVAC) shares its expertise in complex frauds and helps coordinate inspections (labour, social security, gendarmerie, tax and legal authorities).
- In **Italy**, the labour inspectorate works closely with the National Social Security Institute (INPS), the tax authorities and the police so as to share data available in different databases and have a clearer picture of the situations in question.
- In **Latvia**, when situations arise involving third country workers, the labour inspectorate works on an ad hoc basis with other public authorities (border control, migration and citizenship office) to exchange information or carry out joint inspections.

- In **Norway**, seven operational centres bringing together labour, social security, tax and police authorities were set up to simplify tackling complex fraud by encouraging joint inspections and analyses.

At transnational level, the cases presented during the workshop, highlight two drivers of action:

- **The role of a key actor and transnational coordination**

In the case presented by the Dutch labour inspectorate, the social partners who are signatories of a collective bargaining agreement, called upon the labour inspectorate to carry out investigations to ensure compliance with the provisions of the agreements.

In this connection, the FNV trade union instigated the action: it brought the matter before the court based on the report from the labour inspectorate and negotiated with the Dutch temporary work agency on behalf of the Romanian workers concerned s ([action sheet n°2](#)).

In the case presented by Belgium ([action sheet n°4](#)), the labour judiciary is not only the key actor.

It is also **in charge** of criminal investigations. In the context of Belgium, this method relies upon collaboration between the Supervision of Labour Legislation and the judicial authority, as well as between various inspection bodies (CLS, federal criminal police, the ONSS) which form a “**joint investigative team**”.

The **transnational dimension** of the judicial enquiry is an efficient driver of action. This is made possible thanks to coordination by Eurojust so as to:

- provide additional input to the investigation by means of liaison magistrates,
- conducting **simultaneous investigations** in Member States,
- organising coordination meetings.

This point is also raised in the case presented by the Croatian Labour Inspectorate where Europol joint action days provide an opportunity to collectively define an investigation strategy. ([action sheet n°5](#)).

- **Broaden the scope of stakeholders and capitalise on a wider network**

Taking action on complex fraud implies involving stakeholders at transnational level, the scope of which will vary as the investigations progress.

Being able to rely on a trusted existing network of actors who have developed working practices over time boosts efficiency and simplifies the exchange of information which is essential for the investigation to progress.

In the case presented by the EFBWW, the involvement of the REDER network allowed the French CGT trade union to contact a member of the CGIL trade union of Romanian origin, benefit from the expertise of Fabienne Muller, and liaise more efficiently with the French labour inspectorate ([action sheet n°3](#)).

This case also illustrates the importance of widening the scope of stakeholders by addressing the **client**. The choice is not to seek out a judicial solution due to the difficult financial situation of the workers concerned.

This approach allowed the two unions to ensure the Romanian workers received their entitlements by negotiating with the subcontractor employing them.

Another case:

Bogus temporary work agencies hired out workers to several user undertakings in France (see [Appendix 1](#) “method for handling complex fraud”).

The GNVAC outlined the chosen strategy in the judicial phase and the implementation following exchanges with the judicial authority, the gendarmerie and the labour departments (GNVAC and URACTI). The decision was taken to target the main users of hired labour rather than simultaneously addressing a large number of user undertakings which was liable to slow down the judicial enquiry.

In a nutshell:

Inspection method and strategy: drivers of action at transnational level

Key actor and coordination of the action	Network of actors and client
Investigation management Joint investigation team Simultaneous investigations (action sheet n°4) Establishment of an investigative strategy (action sheet n°5)	Reliance on an existing network Complementarity between social partners/public authorities (action sheet n°3)
An actor to drive the action (action sheet n°2)	Address the client (action sheet n°3)

ACTION SHEETn°1

Fraudulent arrangements adaptation to legal frame in the construction sector: an “historical perspective” (ACT, PT)

In the form of a story:

“A Portuguese company is building houses in the North and South of the country. It is a small business with 5 or 6 employees. The managing director works on site with the employees.

One day, a Portuguese entrepreneur who had lived his entire life in France, asked his Portuguese friend to come and work at Versailles palace. With his entire team, his friend comes to France and provides a service.

Everyone in the building trade knows each other. After this initial job, he comes into contact with several companies and works on a number of building sites in France.

Mr. Antoine, the managing director of the Portuguese company, sees that there is work to be had. Why not set up a temporary work agency in Portugal? It would be easier to work in France with two companies.

Time goes by. He is inspected by the French labour inspectorate. He then decides to set up a branch in France. With three companies, he can work on more building sites with employees who are sometimes employed by the Portuguese building company and other times by the Portuguese temporary work agency.

Life goes on and regulations evolve too with the posting directive followed the enforcement directive.

Mr. Antoine decides to set up a temporary work agency in France with a French friend. He now has a group of four companies. The employees work here and there. Mr. Antoine has Portuguese workers but also Brazilians and people who come from former colonies.

Mr. Antoine is now a contractor with two French companies. He can be a main contractor or a subcontractor which will make life complicated for the public authorities.

Mr Antoine is also prepared to work in Belgium, Luxembourg and Germany. He is in the centre of Europe. Then the posted workers call us.

Regulations change and it is a fact that there will always be companies who bypass the rules. We need to be capable of anticipating this. We can only succeed in doing so if we work as a team.”

ACTION SHEET n°2

The involvement of social partners and transnational cooperation in a shipyard case

Summary	Facing the posting to a Dutch shipyard of workers through several TWAs based in Romania, a cooperation between a Dutch union and the Dutch Labour Inspectorate led to the application of Dutch collective labour agreement to posted workers in respect to wages
Stakeholders	National Labour Inspectorate (ISZW) (NL) FNV Union (NL) National Labour Inspectorate (RO)
Sector	Shipbuilding
Purpose of the action	Ensuring Romanian posted workers receive the remuneration they are entitled to in the Netherlands

Context	<p>Labour Inspectorate and social partners relationships in the Netherlands :</p> <p>Competencies of the NLI planned by law are limited to the supervision of legal minimum provisions (legal minimum wage especially)</p> <p>Social partners and thus Trade Unions are in charge of monitoring the application of collective agreements, especially sectoral level ones.</p> <p>In this frame, Social partners (one or several) are legally entitled to request the State (and then the NLI) to carry out investigations so that they can use findings to initiate legal proceedings (article 10 Law of May 25, 1937, declaring generally binding and non-binding the provisions of collective labor agreements / article 8 of Workforce Allocation Act by Intermediaries). This applies in case of a suspicion that generally binding provisions are not complied with in a specific company.</p>
Key objectives of the action	<p>General objectives:</p> <p>To ensure compliance with Dutch generally binding labour provisions</p> <p>Specific objectives:</p> <ul style="list-style-type: none"> - Ensuring equal wages for Romanian posted workers - Indirect objective (not covered by the action) : ensuring compliance with Dutch social security and tax legal requirements

Activities implemented	<ul style="list-style-type: none"> - The Union asks the NLI to investigate compliance with the collective labour agreement, regarding the application of the hirer's remuneration/equal wages for Romanian posted workers, employed by a Dutch Temporary Work Agency and working on a shipyard - National investigations by the NLI : workplace control, hearings of Romanian posted workers, interviews with the user company reps and with the TWA reps, desk researches in both companies - Discovering Romanian workers are employed by 3 Romanian TWAs, all of them being subsidiaries of the Dutch TWA, cooperation is engaged with the Romanian NLI - Transnational cooperation aims at checking whether Romanian TWAs are letter box companies or not - Visits of the 3 TWAs in Romania - Union receives the NLI report and goes to Civil Court, holding liable the entire production chain (user, mother TWA, Romanian subsidiaries). The Union wins. - Union negotiates with the Dutch TWA so that Romanian workers can benefit from Dutch regulations and reaches an agreement
Specific resources mobilised	<ul style="list-style-type: none"> - National legal framework organising cooperation between social partners and Labour Inspectorate
Outcomes	<ul style="list-style-type: none"> - Romanian workers received wages lower than the one they were entitled to, considering the applicable Dutch CLA - Agreement between the Union and the Dutch TWA resulting in : Dutch employment contracts with the Dutch TWA for 600 posted workers, including 160 Romanian Workers; salary adjustment for the last 5 years benefiting to all posted workers - Evidence of a fake posting situation in respect to social security (too long posting period) and tax regulation, but no concrete followings known in this respect
Lessons learnt and success factors	<ul style="list-style-type: none"> - The cooperation between social partners and national labour inspectorate which allowed to protect posted workers in an efficient way - The complementarity between social partners and National Labour Inspectorate : Unions in particular can use other tools than labour administration to cope with unlawful situations (public denunciation of bad practices, addressing employees at the workplace, negotiating with local companies) - Transnational cooperation with the Romanian NLI which allowed to get additional information to address the case in a relevant way - Companies accepted to cooperate with the Labour Inspection and to provide requested information
Limits	<ul style="list-style-type: none"> - Possibility that social security implications of the case were not entirely taken into account /addressed - No systematic feedback from social partners to labour inspectorate about the followings of their actions - time necessary to visit companies in the sending country

ACTIONSHEET n°3

Collaboration between public authorities and trade unions: an approach to solve the problems encountered: the case of the Dunkirk methane terminal

Summary	Involvement of a multi-actor transnational network to re-instate the rights of posted workers on an industrial site following negotiations with a subcontractor
Stakeholders	FNSCBA CGT trade union (FR) CGIL trade union (IT) Labour administrations (FR, IT) Client (FR) Sub-contractor (IT)
Sector	Construction
Purpose of the action	Use of the REDER network to defend the rights of Romanian workers on an industrial site.

Context	<p>The methane terminal in Dunkirk is France's second largest industrial site. 9,000 workers have been employed there over a four-year period, more than half of which were posted workers.</p> <p>A CGT union delegate met with a Romanian worker employed by an Italian company. The employee claimed he was not being paid and feared reprisals with his colleagues "their lives were in danger."</p>
Keys objectives of the action	<p>Main objectives: Fight against working conditions which are incompatible with human dignity</p> <p>Specific objectives: Re-instate the rights of the workers and obtain back pay.</p>

Activities implemented	<ul style="list-style-type: none"> - The CGT delegate met the employees on a camp-site where they were staying, discovered their employment contracts and wage slips in Italian, noticed irregularities, for example net wages of €0 and undue costs (board and lodging and transport) - The CGT FNSCBA contacted the CGIL; the CGIL delegate was of Romanian origin and helped with translation - The CGIL and the Italian Labour Inspectorate analysed the documents and identified the main irregularities Fabienne Muller an expert working with the REDER network was called in - The CGIL checked whether social security contributions had been paid in Italy - The CGT FNSCBA contacted the French labour inspectorate concerning the data collected (some 300 Romanian workers) - The French labour inspectorate summoned the Italian company which failed to respond - The CGT FNSCBA met the client already contacted by the French Labour inspectorate to incite them to put pressure on the subcontractors and enter into negotiations - Negotiations began with the subcontractor which “denied everything” - The CGT FNSCBA threatened to take the company to court. The company management quickly came to France and the CGIL delegate was invited to participate in negotiations - The labour inspectorates and trade unions liaised during the negotiation phase - A settlement was signed at the company head office with the CGT FNSCBA
Specific resources mobilised	<p>Involvement of the REDER network Linguistic resource (CGIL delegate) Expertise of Fabienne Muller</p>

Outcomes	<p>Recovery of €400,000 for 14 workers Opening of a legal investigation into “working conditions incompatible with human dignity”</p>
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Lessons learnt and success factors	Complementary action between union(s) and labour inspectorate(s) Requisite communication with other Member States (the company had operated in Belgium)
Limits	The time taken by the legal proceedings to re-instate the workers' rights

ACTION SHEET n°4

An example of national and European judicial coordination: steps, process and follow-up

Summary	To tackle a fraudulent transnational organisation, collaboration between the judicial and public authorities of a Member State (Belgium) allowing EU level coordinated judicial enquiries to be launched
Stakeholders	Supervision of Labour Legislation CLS (BE) Federal judicial police (BE) National Social Security Office ONSS (BE) Labour judiciary (BE) Central Office for Seizure and Confiscation OCSC (BE) Public authorities from other member states: ES, PT (social security), ES, LU, UK (judicial authority) Eurojust, the European Union Agency for Criminal Justice Cooperation
Sector	Construction
Purpose of the action	The collaboration between the judicial and public authorities in a complex case:
Context	In Belgium, at national level: - The Labour judiciary is a public prosecution office representing the public ministry which specialises in social fraud. This judicial authority works on an everyday basis with the Supervision of Labour Legislation departments and criminal police departments - The role of inspection departments is complementary: The Supervision of Labour Legislation deals with working conditions (working hours, remuneration) The ONSS checks A1 forms and social security cover The federal criminal police handles asset tracing and financial investigation of the fraudulent organisation
Key objectives of the action	Main objectives: Shut down the fraudulent organisation operating transnationally Specific objectives: Understand the complex mechanism behind the fraud, the role and responsibilities of each entity and actor in the organisation Re-instate the rights of the injured parties: regularisation of pay, collection of social contributions Launch legal proceedings on the basis of the criminal offences identified

<p>Activities implemented</p>	<p>➤ The situation leading to the case</p> <p>At the start of the 2000s, Mr. X, a Portuguese national, sets up two companies of which he is the managing director</p> <p>Belgian Business 1 which employs one worker with, in 2012, 405 employment relationships with posted workers</p> <p>Portuguese Business 1, the only subcontractor of Belgian Business 1 with 254 posted workers between 2010 and 2012</p> <p>➤ An administrative dimension</p> <p>2010:</p> <ul style="list-style-type: none"> - Portuguese company 1 is inspected by the CLS and ONSS on several work sites <p>2012:</p> <ul style="list-style-type: none"> - ONSS investigation: missing A1 forms for the 254 posted workers. - request from the ONSS to Portugal and reply sent to Belgium after one month: no A1 filled in and fake A1s detected - no substantial activity identified <p>The company had been refused social security cover in Portugal since its creation in 2002.</p> <ul style="list-style-type: none"> - procedures were engaged - in Portugal. Portuguese Business 1 starts legal proceedings to contest the refusal of social security cover - in Belgium, the ONSS applies for regularisation for the 254 workers in question which is put on standby. - the organisation changes with a number of companies being created <p>Between 2012 and 2016, Mr X creates many companies. One of these companies, Portuguese Business 2 does a lot of work in Belgium: 19 worksites in 2015, more than 500 workers with Limosa declarations between 2012 and 2017</p> <p>➤ A legal dimension</p> <ul style="list-style-type: none"> - The results of the inspections of Portuguese Business 2 carried out by the Belgian labour inspectorate are sent to the labour judiciary. - Clues are found indicating serious offences (forgery, uttering in false instruments, money laundering (bank accounts and investments abroad); the organisation is adapting and the existence of a nebulous hierarchical criminal organisation is suspected: network of 11 companies in different countries (holding), straw men - bearer shares. - the labour judiciary runs and coordinates the criminal investigation at national level (Supervision of Labour Legislation, ONSS, crossborder fraud unit, ECOFIN unit of the federal criminal police). - at the same time in the other countries concerned and with Eurojust coordination, international letters rogatory allow a criminal investigation to be opened in Portugal and asset tracing and financial investigations to be undertaken in Spain, the UK and Luxembourg.
<p>Specific resources mobilised</p>	<p>The role of Eurojust, the EU legal cooperation body, to carry out the judicial enquiry in the various Member States concerned</p>

Outcomes	<p>The results obtained:</p> <p>For the administrative dimension : The ONSS applied to the Belgian courts in 2014 for regularisation for the 254 workers concerned (€700k owed). The procedure was put on standby, business continued.</p> <p>For the legal dimension : -Analysis of pay slips for 129 workers employed for a few months allowed the Supervision of Labour Legislation to calculate the sums owed (overtime). On this basis, following the preventive seizures requested by the labour judiciary from the user undertakings in Belgium, the corresponding sums sent to the Central Office for Seizure and Confiscation (OCSC) allowed the wages owed to the workers to be paid out. (€136k).</p> <p>-attachments of debts for all the work sites on which work was ongoing, attachment of bank accounts and property. This led the companies in question to wind down their operations and cease to do business at the end of 2017.</p> <p>The expected results:</p> <ul style="list-style-type: none"> - legal proceedings against the various natural and legal persons in question based on serious criminal offences: money laundering, forgery, uttering in false instruments, criminal infringement of social legislation. - confiscation of the assets (proceeds from committing offences) and the laundered money - prohibitions to practice - criminal record (risk of re-offending) - collection of social contributions owed: compensation or agreements between bodies pursuant to article 71 of the regulation 987/2009 (€14 M).
Lessons learnt and success factors	<ul style="list-style-type: none"> - The role of the labour judiciary in managing and coordinating the legal investigation <p>The labour judiciary coordinates the investigations and centralises information received from the various parties involved in the investigation</p> <ul style="list-style-type: none"> - The Belgian and transnational dimension of the investigation <p>The transnational dimension was possible thanks to coordination by Eurojust. It made it possible to provide additional input to the investigation by including liaison magistrates in each country: coordination meeting putting the Member States concerned in contact, searches and seizing of documents simultaneously at the company head offices (suspected letterbox companies), interviews with social security employees in Portugal to provide evidence for the fake A1 certificates, financial and banking enquiry in Luxembourg, the UK and Spain.</p>

	<ul style="list-style-type: none"> - Collaboration between inspectorates, the Supervision of Labour Legislation and federal criminal police departments, the ONSS <p>This collaboration made it possible to bring together representatives of the Supervision of Labour Legislation and police departments concerned in a "joint investigative team"</p> <p>Coordination within the Supervision of Labour Legislation by a labour inspector specialising in posting</p> <ul style="list-style-type: none"> - Exchange of information between the ONSS in Belgium and their Portuguese counterpart
Limits	<p>Difficulty in putting in place processes to ensure greater reactivity due to:</p> <ul style="list-style-type: none"> - the anteriority of the case (5 years from the first investigations) - the fast changing fraudulent set-up

ACTION SHEET n°5

***An example of coordinated investigations at European level: steps, process and follow-up :
research in 3 countries into the activities of a letterbox company***

Croatia-Belgium-The Netherlands-EUROPOL

Summary	Collaboration between public authorities in three countries (Croatia, Belgium, Netherlands) which has been implemented within the framework of EUROPOL "joint action days". This action was aimed at restoring the wage rights of Croatian workers posted by a letterbox company.
Stakeholders	State Inspectorate, tax administration, police (HR) Labour authorities : BE, NL EUROPOL
Sector	Construction
Purpose of the action	Struggle against the economic exploitation of posted workers by coordinating investigative powers.

Context	<p>Dutch colleagues have sent a request to Croatian Labour Inspectorate for cooperation because they found Croatian workers in Netherlands and they have suspected that something was wrong with their salaries. And soon after that, Croatia received the same request from Belgium colleagues.</p> <p>The subject of the inspectors' supervision was a Dutch company. At the moment when inspection supervision has started, the director of the supervised company was a Dutch citizen. All construction workers of the Company were working in Belgium and Netherlands. And in Zagreb, it was just an administration office with a few of administrative workers.</p>
Key objectives of the action	<p>General objectives:</p> <p>Reinstatement of the wage rights of posted workers- struggle against economic exploitation of workers</p>

	Specific objectives: <ul style="list-style-type: none"> • Understand the structure of fraudulent arrangements • Establish a responsibility (who is the employer?) • Establish the amount and the constituent elements of the salary • Result in a regularisation of wages for workers
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Activities implemented	1/Initial request from Belgium and Netherlands to Croatia, through IMI 2/Referral to EUROPOL for the joint action days 3/Meeting in Zagreb between the 3 public authorities (Belgium, Croatia, Netherlands): work organisation, exchange of documents/information 4/ Inspection in Belgium with the support of the Croatian labour inspectorate for documentation requests 5/ Regularisation procedure in Belgium 6/ Inspection in the Netherlands
Specific resources mobilised	EUROPOL-Joint action days IMI Involvement of Croatian tax administration and Croatian police

Outcomes	In the end, workers received all salary differentials due to them; that was confirmed by Belgium. The Company paid workers the difference, in one part as a field allowance and another part as a salary increase.
Lessons learnt and success factors	<ul style="list-style-type: none"> • Constant communication between authorities (before, during, after): email, telephone, IMI • Identify the legal issues that hinder the communication of documents (EUROPOL works with bilateral cooperation agreements) to secure the process • Preliminary organisation of work in Zagreb to define a strategy and steps: process optimisation regarding time issue

Appendix 1

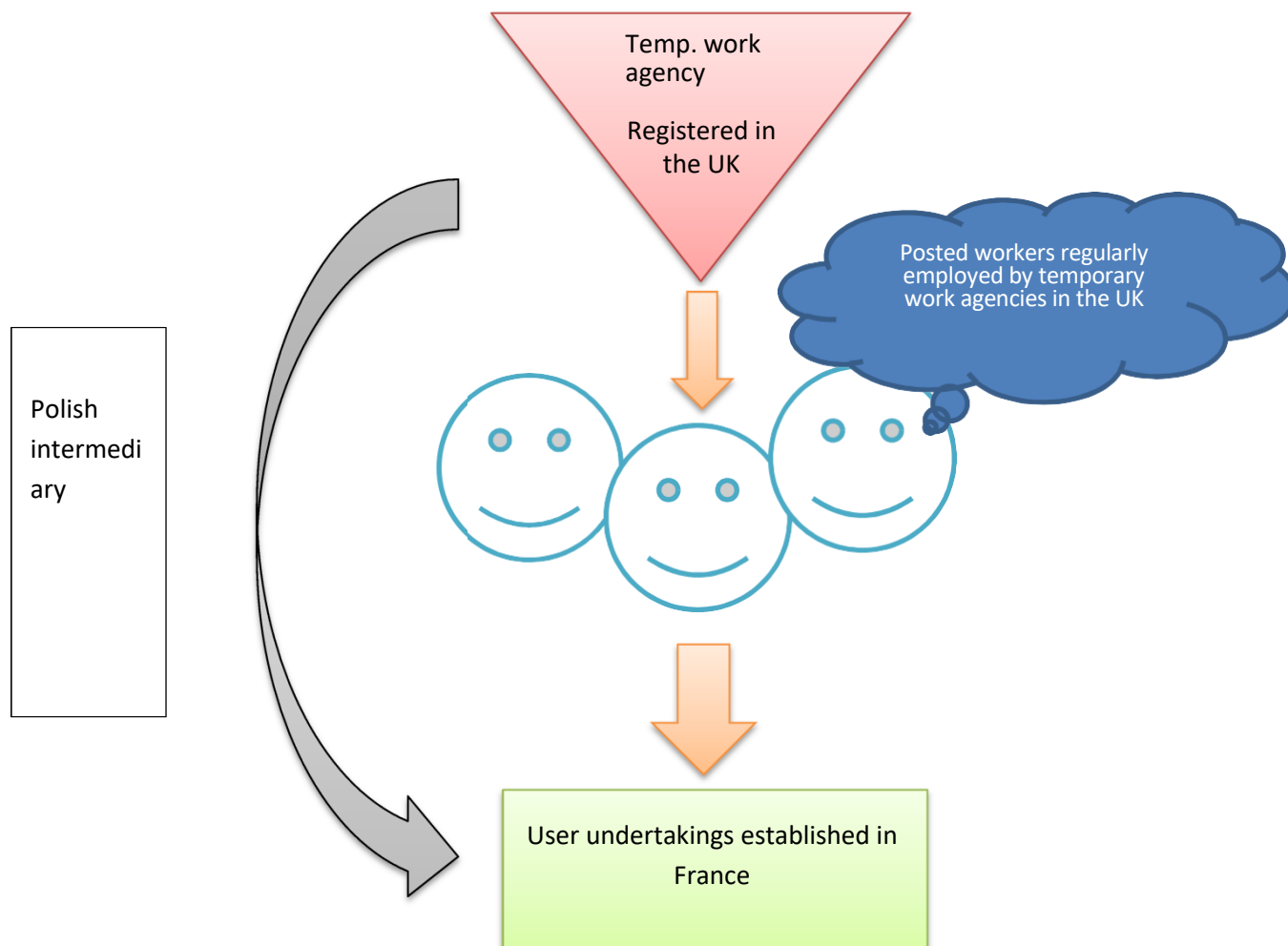
DGT – GNVAC –EURODETACHEMENT – HAMBOURG, 12 septembre 2019

Method for handling complex fraud

COMPLEX CASES OF FRAUD USING BOGUS TEMPORARY WORK AGENCIES WHO HIRE OUT WORKERS TO USER UNDERTAKINGSUTILISATRICES

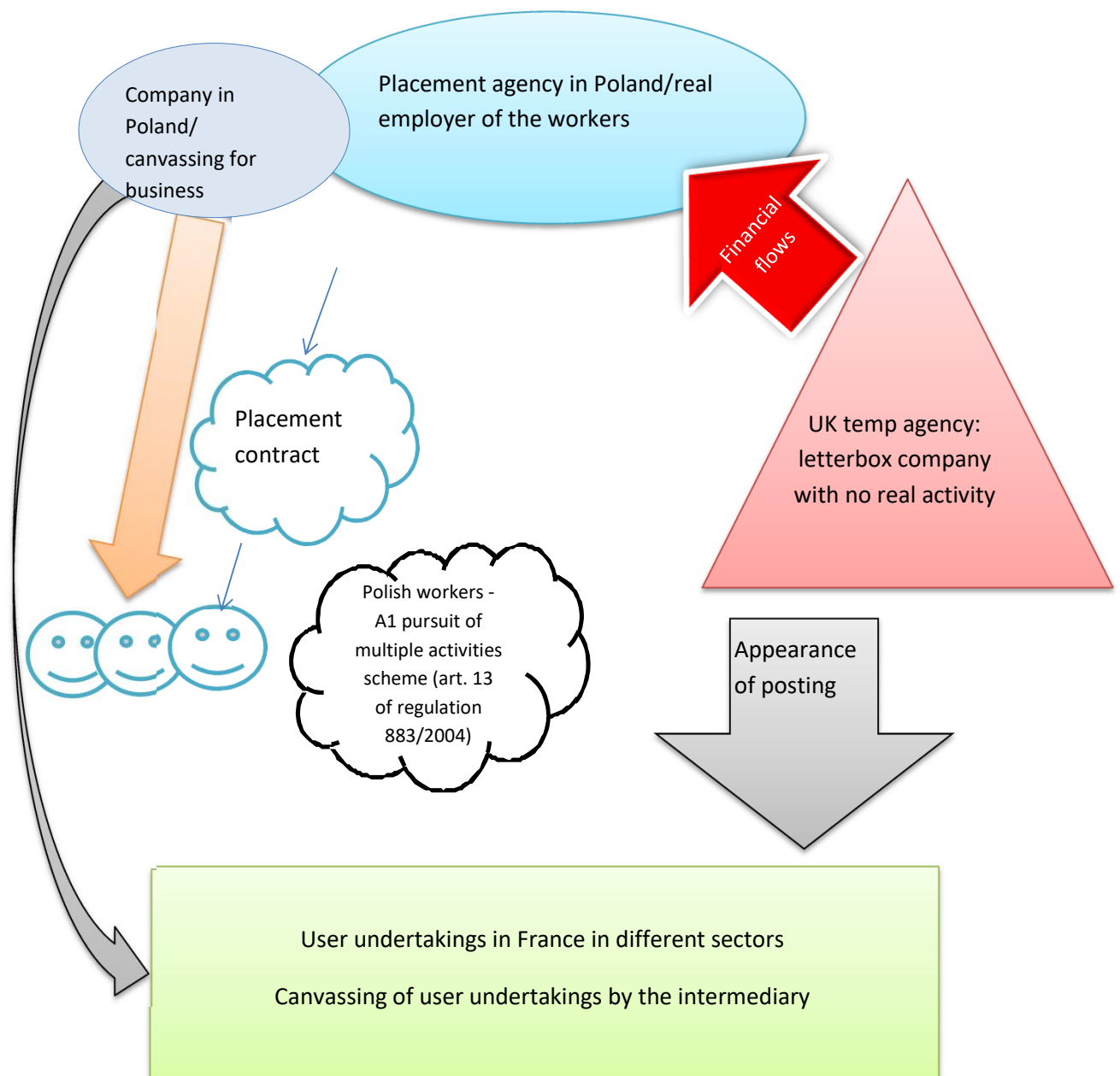
ARRANGEMENT PRESENTED DURING INSPECTIONS

A temporary work agency registered in the UK posts Polish temporary workers to user undertakings in France



ARRANGEMENT WHICH EMERGED DURING EXAMINATION OF THE CASE

- A placement agency registered in Poland is in fact the real employer of the posted workers.
- The posted workers are not employed by temporary work agencies located in the UK, these companies do not exercise any activity in the country in which they are registered.
- Workers presenting A1 certificates under the pursuit of multiple activities scheme (countries concerned by Poland/France multi-activity)



1. Action of the labour inspectorate:

- ✓ Collection of information across the entire territory by the French national monitoring, support and inspection group (GNVAC)
 - From labour inspectors
 - Posting declarations (SIPSI information system)
- ✓ Information sharing (article L8271-2 of the labour code) with:
 - A legal investigation department - Gendarmerie (Central Office to Combat Illegal Employment)
 - A public prosecutor's office
 - Services fiscaux Tax departments
 - Social security bodies :
 - URSSAF/CCMSA/ACOSS
 - CLEISS (database– A1)
 - Administrative cooperation between French/Polish labour inspectorates then French/Belgian, both host countries. IMI - Liaison offices
 - Exchanges of information:
 - Labour inspectorate / Cleiss
 - Cleiss / ZUSS
 - Cleiss / UK social security office

2. Exchange of information between administrations

- Exchange with the tax administration

- About a French business agent.
- The tax administration has data identifying the main user undertakings (clients).
 - Access to VIES (VAT number validation
http://ec.europa.eu/taxation_customs/vies/vatRequest.html) only allows the labour inspectorate to check the validity of the VAT number

- Exchange with social security bodies

- France / Poland - CLEISS asked the Polish social security if the A1s were authentic. ZUSS withdrew the A1s
- France UK - CLEISS/UK social security organisation:
 - The address of the British company corresponds to a residential block; the owners live in Poland.
 - No business activity is exercised.
 - No information on the employment of workers by this company.
- URSAFF (French agency in charge of collecting social security contributions) in one region: social losses estimated at > €1,800,000 (for a single user).

- Exchanges between administrations in charge of undeclared work (Operational Group to coordinate Combating Illegal Employment) GOC LTI. This body run by the DGT/GNVAC, the French directorate general of labour, groups the administrations and bodies fighting undeclared work at central level.

3. Operational judicial phase

- The aggregated information (reported in a memo from the GNVAC sent to a public prosecutor's office in 2016) makes it possible to target a major French user of labour.
- The strategy. The decision was taken to target one of the main users of hired labour rather than covering a large number of user undertakings at the same time which would have slowed down the judicial investigation. This strategy was decided following discussions between the public prosecutor's office/gendarmerie/labour inspectorate (GNVAC + URACTI).
- ✓ 2nd half of 2016: 1st judicial operation (searches of the head office of one of the main user undertakings, the premises of an intermediary, accommodation; interviews with employees and managers).
- ✓ 1st half of 2017: 2nd judicial operation: several people in custody and interviews with employees. The following are accused of illegal work as part of an organised gang:
 - the managing director of the French user undertaking
 - the user undertaking
 - the HR director of the user undertaking
 - a person working for the user undertaking who liaised with the sending country of which they are a national
 - another user undertaking
 - the business agent
 - accessory to concealed work as part of an organised gang
 - misuse of corporate assets
- ✓ 2nd half of 2017: Criminal hearing - a guilty plea entered
 - Convictions The managing director of the user undertaking plus four others including the intermediary were found guilty of concealed work/ illegal subcontracting of workers (or accessory thereto). Sentenced to a fine + forfeiture of seized assets (> €500 000€ - should be recovered by the URSSAF; the estimated loss for the URSSAF is in excess of €1,800,000).
 - the foreign companies are not covered (dissolved, no legal representatives).
 - the user undertaking envisages directly employing the workers which were previously hired out.

4. Difficulties and positive factors

- **Difficulties:** complexity, modifications to transnational fraudulent set-ups over time: changes of managing directors of the letterbox companies.
 - Impossible to contact the directors; companies dissolved; making things harder for the legal and inspection departments;
 - Not always possible to obtain information about the real activities in the countries of establishment within the requisite time frame;
 - Different notions in regulations: social, labour, tax;
 - The fraud persisted despite the inspections and legal action: a new company has already emerged. Inspectorates have to work hard within a short time frame;
 - Difficulty of re-instating workers' rights.
- Positive factors
 - The ability of the central labour inspectorates of the different Member States to exchange information; this contributes to a better understanding of the legal systems in the country sending the posted workers (civil employment contracts in Poland, for example).
- Data bases:
 - **Posting:**
 - SIPSI (labour inspectorate); teledclaration of postings
 - A1 Social security databases A1
 - Some shared criteria for these databases (employer's or host company's address; sending/host country etc.)
- Initial results:
 - withdrawal of A1 certificates
 - convictions and forfeitures

Appendix 2

Jan Cremers/20-02-2019

« Complex cases » summary

After the kick-off meeting, a survey was mailed to all the (potential) participants of the Riga Focus group *Complex cases*. In total, we received 12 contributions from 10 countries. This overview summarises the received answers.

1. Have you identified complex constructs/artificial legal entities in your work (related to compliance and enforcement)?

	Dimensions						
	More than 2 countries	Multi-level chain of involved firms	Frequent use of bankruptcy / transfer of undertaking	Several (intertwined) social policy areas	3 rd country workers involved	Falsified documents	Fake posting
Belgium	x	x	x	x			x
Bulgaria	x		x	x	x	x	x
France	x	x	x	x	x	x	x
Germany Berlin	x			x	x		x
Germany Hamburg				x			x
Germany Hamburg 2				x			x
Italy	x			x			x
Latvia	x	x			x		
Netherlands		x		x			x
Norway		x	x				
Poland	x	x		x	x		x
Portugal	x	x		x	x		

2. How do you deal with these constructs (standard procedures/methodology/specialized teams)?

The tackling of complicated/complex arrangements takes place through different methods:

- Most often, the investigation starts with an analysis of all available and accessible data. Some countries include at this stage already research that leads to a further identification of the undertakings involved (history, registration, legal and social track record).
- Standardised, ordinary inspections supplemented with information that results from exchanges with other competent authorities.
- Regional specialised teams. For instance, in France regional teams cooperate with the police, the social security administration and the tax authorities.

- d. Ad hoc joint inspections with other national competent authorities, joint campaigns (for a certain period or with a focus on a special sector).
- e. Permanent structures with other national competent authorities. For instance, Norway has installed 7 joint centres, composed of representatives of the labour inspectorate, the tax authorities, the social security administration and the police. Their work is based on a protocol/agreement on how to cooperate. In Belgium, a specialised team was established at national level, inside the National Office for Social Security that cooperates with the Inspectorate in complex cases. In Portugal a permanent working group of the inspectorate monitors posting issues and assist the directly involved inspection services.
- f. Administrative cross-border cooperation through IMI.
- g. Joint inspections and assistance based on bilateral/multilateral cooperation and exchange agreements. For instance, the three Baltic States have concluded [an agreement on trilateral cooperation](#) that provides possibilities for meetings/visits of specialists in different policy fields and promotes exchange of information and cooperation among these specialists. Also joint inspections are included. Poland has concluded 13 agreements with authorities responsible for supervision of working conditions in other European countries.

3. Which instruments do you use?

There is a broad range of instruments that is used:

- a. In specific cases, the Inspectorate, involved NGOs and social partners work with specialised lawyers, researchers or other professional support (and with the regional courts or other legal and administrative bodies). Also interpreters are consulted.
- b. Direct forms of information exchange and investigations, next to the IMI-system; phone, conference calls, e-mail. Some offices also use the Internet (in general and/or Google Maps) as information source.
- c. Assessment of notification and other declarations, posting registers, social security registration, data processing, through standardised procedures or with the use of IT-systems. The Belgium LIMOSA-system is well-known in this respect.
- d. More in-depth investigations with workplace checks and inspections, interviews of workers, witnesses, clients and suspects, analyses of documents and different forms and contracts. The aim is to collect evidence and the building up of a case file, with standardised audit reports based on check lists that can be used in different languages.
- e. Follow-up of cases through cooperation with other national/foreign competent authorities and/or liaison offices.
- f. Investigations of national company registers (and/or Chamber of Commerce) and an overall assessment of all the elements necessary to check the genuine character of the service provider.
- g. Some authorities have started with risk-assessment and other preventive policy measures. Moreover, prominent cases (or detected 'models') are sometimes used for training purposes and to make inspectors aware of relevant indications and signals.

- h. In many cases the inspectorate may impose an administrative fine or penalty. Sometimes, they have the competence to (temporary) close down a workplace.

4. Which instruments are effective (and why)?

The assessment of the effectiveness of the available instruments shows a broad variety of opinions. Most respondents agree that joint inspections and analyses can be seen as prerequisites to success. Others mention the possibility of a direct elimination of fraudulent practices or termination of the provided services is an important and effective tool, as is the dissuasive penalisation. Also the joint and several responsibility, for instance as regards remuneration for work or compensation for overtime, can play a protective role. The cooperation with other national authorities that have stronger competences is also seen as an effective method, for instance in the Latvian case, the cooperation with the State Border Guard. An important tool is also the revision of the position of a posted worker into a workers that falls under the free movement of workers. In some countries, for instance Belgium and Italy, the inspections dealt with cases that led to a situation where workers could be seen as employees of the final user undertaking, and therefore fully subject to the national regulatory frame.

5. Which obstacles are you confronted with?

The obstacles that competent authorities and enforcement bodies are confronted with stem to a great extent from the transnational character of the transactions.

- To check the identity and the regularity of foreign firms is extremely complicated and the investigation is hampered by territorial limitations.
- Moreover, the knowledge of the host and home country regulatory frame in the area of cross-border mobility is sometimes lacking. Thus it is not always obvious to find the right counterpart or contact person.
- The work can be very time-consuming and the use of interpreters and the translation of documents is costly.
- A difficulty is also that the competences of colleagues in other countries not always match with the requests and to build up a more integrated cooperation over different disciplines takes time.
- And in certain cases, the processing takes too long or there is no response at all.
- It is signalled that a lack of understanding regarding their own position of the workers involved can be a serious handicap in the procedure.
- The answers through IMI can be rather superficial.
- Not all bodies have entrance to the data bases of the different disciplines (for instance, the registration of A1-forms).
- The deployment of virtual offices, a frequent change of ownership, often combined with the impossibility to find a legal representative at the address of registration, hinder the organisation of inspections as written demands return undelivered.

6. Positive/negative experiences?

Most of the negative experiences can be derived from the obstacles mentioned beyond. Too long procedures, superficial results from IMI-requests, a lack of accuracy and incomplete answers frustrate the investigation. Negative is also that, even in situations where a case is successfully

handled and terminated, the same fraudulent actors can start all over again (in another constituency). In general, sanctioning is not dissuasive. This can lead to the powerless feeling that there is impunity before the law. Sometimes, there is also a lack of feedback or reporting on the policy pursued and the action taken after joint activities or mutual interaction.

Positive is the fact that once colleagues get to know each other (both national and international) and better understand the competences and limits, the cooperation can be very efficient and effective. Bilateral and multilateral agreements facilitate the work and result in more added value in investigations. The fact that through joint action, the mutual trust and operational cooperation have improved is seen as a very positive experience. Another positive experience is that awareness has grown and confidence has increased over the years. More collaboration brings more synergy.

7. Which other national/European/International actors do you cooperate with? Positive impact?

The national cooperation has extended over the years, and the respondents indicate that there is more and more cooperation across the whole area of social policy (working conditions, pay, pay and labour related taxes and social contributions). In several countries this goes hand in hand with cooperative contacts with the social partners. In some countries, the national cooperation has extended to the policy, the immigration office and regional or local authorities. In some countries contacts are established with embassies or consulates.

Most bodies have established cooperation agreements or joint projects with the (foreign) colleagues that do matter in the mobility and the in- and outflow in their country. First of all, this takes place between regional borders at pan-European level or direct neighbouring countries (the Nordic region, the Baltic States, the Mediterranean region), secondly between countries that traditionally have an open economy, thirdly between countries that have, after the EU-enlargement, been confronted with strong migration and mobility tendencies. Some (not all) refer to administrative cooperation with other liaison offices and the use of IMI, others recall the participation in various events and projects. In addition, the successful cooperation with the most concerned social partner organisations is mentioned.

8. What were the consequences of your actions for workers/companies/user undertakings (clients)?

The respondents are relatively modest about the consequences of their actions. Their work contributes to a higher awareness of both workers and companies about their rights and obligations as well as the sources of information that interested parties can use if necessary. It can lead to a better protection of the workers and the tackling of abusive practices, notably in cross-border matters. It is also noted that, in some cases, the involved workers were no longer recruited through abusive intermediaries, but directly engaged. Sometimes, the user undertaking is forced to engage the worker, after an overall assessment of the factual elements of the employment relation. In such a situation, the free movement of workers principle of equal treatment in the country where work is performed applies totally. Sometimes, the direct result is the settlement of pay or entitled compensation. Overall, the action contributes to the settlement of a regular and legal status of the involved workers.

The actions can lead to a 'disciplining' of employers and user undertakings, but also to further clarification about the consequences of working abroad. An effect can be that enterprises are better prepared to hire European workers in a genuine way and that user undertaking are becoming more aware of the risks of using intermediates. Involvement of the social partners (trade unions and employers at national and European level) increases the trust in the institutions responsible for monitoring compliance. It is also indicated that firm penalties and strict action, for instance leading to the withdrawal of undertakings breaking the law, act as a clear signal that distortion of competition through fake provision of services is not tolerated and genuine posting is promoted.