

## **Multipartite Territorial Convention to Combat Fraud and Illegal Work: Hainaut Province in Belgium (Belgium)**

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### **1. Observations and motivations**

Faced for some time with a high unemployment rate and a large number of company closings, the province of Hainaut must continue to develop its efforts to relaunch economic activity and revalue human resources.

The province is, in particular, subject to unfair competition.

Different forms of illegality related to this situation lead to harmful consequences for both workers and companies:

- workers in these situations do not have social coverage or lack sufficient coverage, they do not benefit from adequate safety measures at construction sites and working conditions and their remuneration does not correspond to what regulations require;
- as concerns companies, they are confronted with a breakdown of the building sector and consequently to unfair competition.

These illegal practices also imperil the mechanisms of solidarity implemented by social partners within the sector.

The parties who signed the convention have thus decided to elaborate a common strategy to combat the phenomenon of undeclared work and its consequences by uniting their efforts and jointly orienting their actions.

The occurrence of unfair competition has become even more worrisome since the mechanism for registering companies was eliminated in September 2012.

Implemented in 1978 to combat social and fiscal fraud, the non-mandatory registration of companies was an effective way to provide provincial control of construction companies. It was a sort of “label” granted to companies which followed social and fiscal legislation. This registration enabled other companies and private individuals using the services of these companies to benefit from certain financial advantages.

The commission which granted or refused registration was made up of members of government services (social and fiscal), trade unions and professional organisations in the building sector.

## **2. Goals**

- Combat social fraud and undeclared work and its negative consequences for workers and companies.
- Improve sector image and make participants responsible for their actions.
- Carry out specific actions in Hainaut Province within the context of a global policy of combat against social fraud throughout Belgium.

## **3. Partners signing the convention**

- FPS for Employment, Labour and Social Consultation – General Administration for the Control of Social Laws and Labour Well-Being
- FPS for Social Security
- National Employment Office
- National Social Security Office
- Hainaut Construction Confederation (employer organisation)
- Centrales Générales FGTB du Hainaut (trade union organisation)
- CSC Bâtiment et Industrie du Hainaut (trade union organisation)

A representative of SIRS (Social Information Research Service) also attends the monthly meetings.

## **4. Method implemented**

Conclusion and implementation of a convention signed by all parties on April 1, 2009.

Provincial meetings are held monthly.

The agreement defines:

### **- Scope of the convention**

This convention applies to all persons (individuals, companies) who engage in business activity in Hainaut Province or who are headquartered in Hainaut Province and whose activity falls under (or should fall under) the authority of the joint commission for construction.

### **- Operating means:**

- **through an office**

The office provides support to signatories for preventive actions.

It supports inspection services by carrying out analyses, in particular as concerns control methods, cross-referenced databases and instances of fraud.

If necessary, it coordinates control actions by inspection services in specific cases.

- **through a committee**

The committee is composed of representatives of the signatory parties.

It meets monthly and acts as a secretarial office, in particular for actions implemented (see below); the committee:

- participates in data collection (while strictly following legislation concerning the respect of personal data, information privacy and the secrecy of legal proceedings);
- organises and carries out preventive actions;
- detects unfair competition, for example through the analysis of company contracts;
- communicates the necessary information to the appropriate social inspection service or to the labour auditor;
- formulates proposals for new objectives or changes in existing regulations.

An official of the Directorate for Social Law Control ensures daily management of the secretarial office.

- **Contact and collaboration with other bodies**

Labour auditors (a public Ministry) are regularly informed of on-going actions.

Signatories affirm their intention to take action to establish or intensify collaboration with their colleagues or similar bodies in other countries.

At the level of the social inspection services, this type of action aims in particular to ensure the exchange of useful data for the completion of inspection service files; this should be done systematically when an administrative cooperation agreement has been signed with the country of origin of the individual or company being controlled.

In late 2012, signatories implemented a specific workgroup on posting.

## **5. Type of actions carried out**

- **Data verification**

Joint commission no. 124 of the construction industry is responsible for checking all individuals exercising an activity in the building sector, whether temporary or permanent, in Hainaut Province.

Both Belgian nationals and foreigners are concerned by this verification. It consists of a joint examination by the partners on the committee.

As examples, the following issues have been analysed:

- the appropriate joint commission for delivery of concrete (certain companies are under the joint commission for transport although their main activity is delivering ready-made concrete, an activity under the joint commission for construction).
- the joint commission for the placement of solar panels (according to the partners, there is incoherency with the joint commission for electricity in the scope of application).
- the use at building sites of agricultural tractors which are subject to a special technical and fiscal exemption and which are under the joint commission for agriculture.

Non-compliance with the proper joint commission leads to unfair competition for companies in the building sector and a non-compliance of worker remuneration with the rates established by this joint commission.

- **Preventive actions**

- Organisation of information campaigns (preparation of brochures and website documentation, etc.), study days and sensitisation actions directed toward:
  - sector companies and the contracting owners they work for,
  - salaried and self-employment,
  - accounting offices,
  - temporary work agencies,
  - social bureaux specialised in the sector.

Example:

- A press campaign was organised for the establishment of the convention.
  - A letter was sent to all public contracting owners in Hainaut Province (community and provincial administrations, work services) informing them of the mandatory requirement for maintaining a daily list of workers (in compliance with the Royal Decree dated 26/09/96 establishing the general rules of execution for public sector contracts - MB 18/10/96).
- Organisation of training for all convention partners to assist the social partners in relaying information to companies and workers.

Example :

- The following training sessions were organised: coordination of safety on temporary and mobile construction sites; Article 30b - declaration of works/declaration of subcontractors; invoice deductions; principle of responsibility; new social penal code; posting of foreign company workers; Limosa documents; supply of personnel and subcontracting.

- **Detection actions**

A future action: the analysis of company contracts.

The convention states that contracts drawn up between clients and companies or between contractors and subcontractors may be examined with respect to the rates established, since these rates may indicate the use of illegal labour.

Contract “feasibility” is analysed from the angle of price setting and scheduled deliveries, taking into account the number of workers employed and the volume of services corresponding to these workers.

The convention also states that the company contract is communicated to the social partners in an anonymous way only.

- **Enforcement actions**

The partners communicate the information they have on significant cases of fraudulent or suspect practices to the secretarial office.

Inspection services carry out targeted investigations on this basis when the information obtained indicates the commission of serious social offences and/or continuing or repeated social offences.

Thus, a control of “ghost” companies (letterbox companies without real offices, no way to contact the company manager, etc.) was carried out in 2010/2011.

In 2012, information supplied by the social partners led to numerous inquiries in the context of posting.

In addition, regular checking of construction sites which have been geographically targeted are organised in coordination with well-being at work Control according to information provided by the social partners concerning unsafe situations.

**A few figures**

In 2010, 19 inquiries were carried out at the request of partners. Targets were:

- Foreign labour
- Posting
- Unemployment violation

Ten inquiries gave rise to infringement notices.

- **Criminal indemnification by the social partners**

The convention also states that, in compliance with Article 324 of the Programme I Law dated December 27, 2006, a professional organisation which has drawn up a partnership convention may bring criminal indemnification related to undeclared labour and social fraud.

This same professional organisation informs the other signatory professional organisations and government services.

Government services commit to informing the professional organisations when, at the closing of an investigation, the findings are made known to the corresponding labour auditor.

## 6. Impact of action on issues encountered

- **Difficulties and limits:** number of possible controls, follow-up of controls by judicial authorities, difficulty in controlling the application of collective bargaining agreements, etc.
- **Positive effects:** exchange of relevant information, better-targeted controls, well-coordinated control operations, application of the proper joint commission according to main company activity.

## 7. Impact on participant dynamics

- **Positive effects**

Those who were directly involved in the Hainaut partnership convention are convinced of the added value of working together.

Each participant has information from his or her area of intervention which enables inspection services to more effectively combat social fraud, in particular social dumping and unfair competition, which, as each partner is aware, are as harmful to workers as they are to companies and the State.

- **Negative effects**

In certain areas where partnership conventions have been drawn up, we have observed that there is still distrust among partners or a certain amount of corporatism which prevents the implementation of a positive dynamic.

## **8. Analysis in terms of feedback**

Overall, action has been positive even though it is still necessary:

- for inspection services, to make control agents more fully aware of the benefit of information provided by social partners;
- for the partners, to better target their requests for control.