

Implementation of bilateral agreements on administrative cooperation: the “Euro-Phoenix” operation (Luxembourg)

Luxembourg Labour and Mines Inspectorate (ITM)

<http://www.itm.lu/detachement-de-travailleurs>

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1. Context and motivations

Four inter-administration bilateral cooperation agreements have been signed since July 8, 2008, on the legal basis of ILO Convention No. 81, between the Labour and Mines Inspectorate and:

- Belgium (SPF Employment / Social Inspection),
- Poland (INT),
- France (DGT – F-L Liaison Office) and
- Portugal (ACT).

The Luxembourg Liaison Office for Posted Workers, or BLLD (bld@itm.etat.lu), of the ITM, which is the competent authority, carries out the legal missions listed in Directive 96/71/CE in each EU member country.

Study visits and **regular follow-up meetings** (annual) have been reciprocally organised with the corresponding liaison offices and/or authorities in EU partner countries (two “trilateral” arrangements).

As of today, **four “high-impact” actions based on shared cross-border controls** with partner inspectorates have been carried out in the “Extended Region” (F/B/D/L) to combat illegal posting, illegal labour subcontracting, etc.

Two were organised by ITM / one by CLS –B / and one by DIRECCTE in Lorraine, France.

The “Euro-Phoenix” operation

Within the framework of an expanded team (of record size) known as “**CIALTI**” (**Inter-Administrative Cell to Combat Illegal Employment**), 47 agents from thirteen supervisory administrations (including ten agents from four other EU Member States) systematically inspected the construction site of the future University of Luxembourg “Maison du Savoir” (House of Knowledge) at Esch-Belval (former steel industry brownfield in the mining area near the French border).

Press release : **The “Euro-Phoenix” International High-Impact Operation, July 2012**

http://www.gouvernement.lu/salle_presse/communiqués/2012/07-juillet/13-itm/

2. Goals

The investigators focused on the respect of safe and healthy working conditions for employees at the site, as well as on all types of illegal cross-border employment, which corresponds to “social dumping” and creates unfair competitive practices against companies legally implanted in the Grand Duchy.

3. Operational partnership and method of implantation

- **A European inter-administrative task force** including agents from labour and employment, social security, tax, customs and police inspectorates:
 - o Belgium Social Law Inspectorate: two inspectors
 Social Inspectorate: one inspector
 - o France DIRECCTE: (BL F-L): two inspectors
 URSSAF: one inspector
 - o Poland INT: two inspectors
 - o Portugal ACT: one inspector
 - o Luxembourg “CIALTI” team
 ITM: five inspectors / two employees
 Customs: fifteen agents
 Police: nine agents
 Joint Social Security Centre: two agents
 Land Registration and Estates Dept. / Anti-VAT Fraud Service): two agents
 Office for the Development of Employment: two agents

- **A pan-European scope for multidisciplinary control**

Through bilateral agreements between ITM and the corresponding labour inspectorates or similar bodies (e.g., Social Inspectorate) in Belgium, France, Poland and Portugal, ten labour and social law inspectors participated as observers in the international operation.

In anticipation of the territorial introduction of an electronic social ID card (“social badge”), which was decided upon during the “sector-specific tripartite” meeting on April 19, 2013 (following the latest major actions in March 2012), starting in 2013 for all persons, employed or self-employed, who are present on a construction site, this “traditional” interdisciplinary control operation (with sealing off, search and occupation of premises during the investigation) was facilitated by appropriate general confinement (exterior fences) and self-control of access by a security company which keeps a list of real-time check-ins and provides employees with simplified badges. Only their retention of various employee identification papers, and even bank cards, in exchange for badges was criticised.

4. Results

In terms of impact, the evaluation of the checking of 105 employees, including 30 part-time employees and 24 posted workers, at the site enabled establishing the following general conclusions:

Health and safety at work: risk of serious, even fatal, accidents related to the absence of group protection. Immediate compliance ordered by ITM and executed onsite by specialised teams.

- Absence of medical check-up to establish fitness for work for posted and Luxembourg employees working at high risk; the posted employees were 50% over the limit of maximum authorised working time (60 hours/week).
- >> Temporary removal from their work stations by ITM and enforced rest.

In spite of shorter deadlines for temporary labour, the employees present on the site had medical certificates of fitness.

- **Respect for labour law and combat against social dumping**

- Omission of a declaration for three posting companies originating from three different Member States.
- Absence of a notification of posting of services for a subcontractor to a group of European companies.
- >> Injunction of compliance within 24 hours ordered by ITM

One southern European company had not notified about all posted employees.

According to their personal declarations to the labour inspectors present, all employees (including posted employees) were paid (including travel expenses, etc.) in compliance with or above the government-legislated scales for the minimum wage and general collective bargaining rates (10.40 euros for non-qualified workers and 12.50 euros for qualified workers).

>>Complementary investigation by ITM concerning the allocation of different categories of related compensation (travel, lodging, meals).

Social Security

Absence of an A1 form for one posted worker.

Additional verification by CCSS concerning the affiliation of three employees to the Grand Duchy of Luxembourg.

Right of establishment (clandestine labour): verification by Customs and Excise Duty agents of the compliance of companies presenting irregularities.

Fiscal fraud or irregularity

Compliance of the companies present with respect to VAT obligations noted by the Anti-Fraud Service of the Land Registration and Estates Department.

Employment

Compensated or non-compensated job-seekers were not detected and the Office for the Development of Employment checked for companies which did not meet the obligation to declare all vacant positions before publishing a want ad.

Immigration

Luxembourg police, who carried out their mission of maintaining public order and escorting “civil” government agents during the control process, verified that no one present on the site was in an irregular situation with respect to residence.

International tracking and administrative cooperation

Through IMI-Net, ITM called on the services of ACT in Portugal to verify the regularity of the situation of company head offices and to authenticate certain documents supplied by the posting companies (certificates, attestations, diplomas, etc.).

5. Impact on participant dynamics

- **Evolution of collaborations implemented**

Inter-administrative cooperation across borders is the only possible answer to the proliferation of sophisticated international structures using migrant workers who are in precarious situations and are often unaware of the basic rights guaranteed by the laws of the host Member States.

- **Difficulties and limits**

The use of multifunctional intercultural interpreters should be generalised (see the service offered by the Luxembourg Red Cross).

- **Positive effects**

The human aspect: gradual creation of direct and informal professional links and friendships between agents at all hierarchical levels of the different supervisory authorities of the Member States.

Valuable exchanges of methods and the genesis of new ideas: this can lead to useful practices for moving ahead and for reinforcing the European social dialogue.

6. Analysis in terms of feedback

This is a challenge worthy of Sisyphus: the construction sites are constantly evolving and everything must be done and done again in an ongoing process.

For major high-impact actions in Luxembourg, colleagues in surrounding countries are now systematically invited to participate (F / D / B); sometimes colleagues from countries which are more distant but are “bilateral” partners (P / PL) are also invited.

The different specialised participants are undoubtedly now aware that they belong to a sort of pan-European “Social Euro-Corps” and follow an ethical code inspired by the grand themes of the ILO (“decent work = solid work”).

It is necessary to train and guide to maturity a new generation of government agents operating in close synergy with the social partners. These agents must be provided with appropriate opportunities (in particular, linguistic and financial) to exchange information with their peers and counterparts in related sectors in other Member States within an economically “useful” relationship with the supervised host MS in the context of a well-structured and durable process.