

# EMN Study on the illegal employment of third-country nationals

## **Belgian national contribution**

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*Deputy Coordinator EMN Belgium*

# Key contributors to this study



**SIRS**  
SERVICE D'INFORMATION  
ET DE RECHERCHE SOCIALE



Office des étrangers  
Vreemdelingenzaken



**FAIRWORK**  
Belgium



**SIOD**  
SOCIALE INLICHTINGEN-  
EN OPSPORINGSDIENST

# Current trends in Belgium



## Sectors:

- Car washes (58%)
- Horeca (53%)
- Manufacturing (47%)
- Cleaning services (45%)
- Beauty institutes (41%)
- Moving services (40%)
- Garages (37%)
- ...



**Employers:** small enterprises

**Employees:** low-skilled

# Revision of the Social Criminal Code

- Social dumping
- **Amount of fines**
- Adaptation of the level of sanction for certain offences
- Introduction of new offences
- Criminal fines applicable to legal persons
- New specific criminal sanction
- Concept of aggravating factor
- Period for repeat offences
- Period for erasure of the administrative fine
- ...

43712

BELGISCH STAATSBLAD — 01.07.2010 — MONITEUR BELGE

FEDERALE OVERHEIDSDIENST JUSTITIE

N. 2010 — 2235

[C — 2010/09589]

6 JUNI 2010. — Wet tot invoering van het Sociaal Strafwetboek (1)

ALBERT II, Koning der Belgen,

Aan allen die nu zijn en hierna wezen zullen, Onze Groet.

De Kamers hebben aangenomen en Wij bekrachtigen hetgeen volgt :

HOOFDSTUK 1

**Algemene bepaling**

Artikel 1

*Bedoelde aangelegenheid*

Deze wet regelt een aangelegenheid als bedoeld in artikel 78 van de Grondwet.

HOOFDSTUK 2

**Het Sociaal Strafwetboek**

Art. 2

*Het Sociaal Strafwetboek*

De hiernavolgende bepalingen vormen het Sociaal Strafwetboek.

**SOCIAAL STRAFWETBOEK**

**EERSTE BOEK**

**DE PREVENTIE, DE VASTSTELLING EN DE VERVOLGING VAN DE INBREUKEN EN HUN BESTRAFFING IN HET ALGEMEEN**

TITEL 1. *Beleid inzake preventie en toezicht*

HOOFDSTUK 1. **Algemene bepalingen**

*Artikel 1. Het beleid van de strijd tegen de illegale arbeid en de sociale fraude*

§ 1. Voor de toepassing van deze titel wordt verstaan onder sociale fraude en illegale arbeid : iedere inbreuk op een sociale wetgeving die tot de bevoegdheid van de federale overheid behoort.

§ 2. Het beleid van de strijd tegen de illegale arbeid en de sociale fraude wordt bepaald door de Ministerraad die de bevoegde ministers met de uitvoering ervan belast.

Het institutioneel kader van coördinatie dat door deze titel wordt omschreven, ligt in de lijn van het beleid ter bestrijding van de illegale arbeid en de sociale fraude.

Dit beleid wordt door de ministers die Sociale Zaken, Werk en Justitie en Zelfstandigen in hun bevoegdheid hebben medegedeeld aan de Sociale Inlichtingen- en Opsporingsdienst, binnen de 15 dagen volgend op de kennisgevingen van de Ministerraad.

*Art. 2. Beleidsplan en operationeel plan*

Jaarlijks wordt een beleidsplan opgesteld en voor 30 april medegedeeld aan de Ministerraad. Het heeft met name betrekking op de

SERVICE PUBLIC FEDERAL JUSTICE

F. 2010 — 2235

[C — 2010/09589]

6 JUIN 2010. — Loi introduisant le Code pénal social (1)

ALBERT II, Roi des Belges,

A tous, présents et à venir, Salut.

Les Chambres ont adopté et Nous sanctionnons ce qui suit :

CHAPITRE 1<sup>er</sup>

**Disposition générale**

Article 1<sup>er</sup>

*Matière visée*

La présente loi règle une matière visée à l'article 78 de la Constitution.

CHAPITRE 2

**Le Code pénal social**

Art. 2

*Le Code pénal social*

Les dispositions qui suivent forment le Code pénal social.

**CODE PENAL SOCIAL**

**LIVRE PREMIER**

**LA PREVENTION, LA CONSTATATION ET LA POURSUITE DES INFRACTIONS ET LEUR REPRESSION EN GENERAL**

TITRE 1<sup>er</sup>. *La politique de prévention et de surveillance*

CHAPITRE 1<sup>er</sup>. **Dispositions générales**

*Article 1<sup>er</sup>. La politique de lutte contre le travail illégal et la fraude*

§ 1<sup>er</sup>. Au sens du présent titre, on entend par fraude sociale et travail illégal : toute violation d'une législation sociale qui relève de la compétence de l'autorité fédérale.

§ 2. La politique de lutte contre le travail illégal et la fraude sociale est définie par le Conseil des ministres qui charge les ministres compétents de son exécution.

Le cadre institutionnel de coordination défini par le présent titre s'inscrit dans la politique de lutte contre le travail illégal et la fraude sociale.

Cette politique est communiquée au Service d'Information Recherche sociale par les ministres qui ont les Affaires sociales, l'Emploi, la Justice et les Indépendants dans leurs attributions de 15 jours qui suivent les notifications du Conseil des ministres.

*Art. 2. Le plan stratégique et le plan opérationnel*

Un plan stratégique est élaboré chaque année et communiqué pour le 30 avril au Conseil des ministres. Il porte notamment sur l'appro-

# Reform of the system of sanctions

## Before (since 2010):

	Imprisonment	Penal sanction	Administrative fine
<b>Level 1</b>			80 € to 800 €
<b>Level 2</b>		either a penal sanction from 400 € to 4.000 €	or an administrative fine from 200 € to 2.000 €
<b>Level 3</b>		either a penal sanction from 800 € to 8.000 €	or an administrative fine from 400 € to 4.000 €
<b>Level 4</b>	either a prison sentence from 6 months to 3 years	and/or a penal sanction from 4.800 € to 48.000 €	or an administrative fine from 2.400 € à 24.000 €

## After (since 1 July 2024):

	Imprisonment	Penal sanction	Administrative fine
<b>Level 1</b>			80 € to 800 €
<b>Level 2</b>		either a penal sanction from 400 € to 4.000 €	or an administrative fine from 200 € to 2.000 €
<b>Level 3</b>		either a penal sanction from 1.600 € to 16.000 €	or an administrative fine from 100 € to 1.000 €
<b>Level 4</b>	either a prison sentence from 6 months to 3 years	and/or a penal sanction from 4.800 € to 56.000 €	or an administrative fine from 2.400 € à 28.000 €

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# Adaptation of the level of sanctions for certain offenses

## Sanctions that are **strengthened** (from level 2 to level 3):

- Appointing a psychosocial prevention advisor without prior agreement of all members representing workers
- Not paying (totally or partially) or paying remuneration late
- Not reimbursing travel expenses
- Not granting meal vouchers or granting them late
- Not respecting the limitations on deductions from remuneration
- Establishing the individual account in an incomplete or inaccurate manner
- Not paying the contributions to the security fund on time
- ...

## Sanctions that are **lowered** (from level 2 to level 1 or from level 3 to level 2):

- Failure to comply with the publicity formalities relating to public holidays
- Failure to comply with certain measures for publicising part-time working hours
- Failure to indicate certain details in the work regulations
- Failure to make the individual account available to officials responsible for supervision
- Failure to keep the general personnel register for the prescribed period
- Failure to transmit the social balance sheet to the National Bank of Belgium
- ...

# Introduction of new offenses

## Offense punishable by a **level 3** penalty:

- Failure to provide the worker with a pay slip upon each final payment of remuneration

## Offenses punishable by a **level 2** penalty:

- Failure to comply with the rules applicable to flexible working hours
- Failure to grant eco-vouchers or to grant them late
- Failure to pay the worker the allowance for the provision of work clothes or the allowance for the maintenance and cleaning of work clothes
- Failure to provide the worker with work tools or failure to pay material allowance
- Failure to issue the worker with the holiday certificate within the prescribed period or to issue it incompletely or inaccurately



Read

Von der Leyen's new Commission already starts on the wrong foot'

100 days after Belgium's elections: Where are we now?

TBT+ Mobility Week: €8 return trip across Belgium by train on Car Free Sunday

TBT+ Stonemanor: The family-run business bringing Britain to Belgium

'Freak event': Why Belgium is spared from Storm Boris

# Modern slavery: 55 victims of human trafficking on Antwerp construction site

Tuesday 26 July 2022

By The Brussels Times Newsroom



Antwerp, Belgium, location, production plant, air view, aerial view, LDPE Plant.



Borealis has been aware of malpractice at its Antwerp building since May

The chemical company Borealis was told about the exploitation of construction workers by a contractor that is building its new production facility at the port of Antwerp in May. A journalist working for the daily 'Gazet van Antwerp' was able to view...

## Challenge 1: complex subcontracting chains



## Measures: legislative reform + increase number of inspections + use of **risk assessment**

- Introduction of social dumping in SCC
- Flemish decree on *ketenaansprakelijkheid*
- Monitoring of specific sectors
- Digitisation of public databases
- Datamining techniques

A woman with long dark hair, wearing a grey dress, is peering through a gap in dark blue, heavy curtains. She is looking towards the camera with a slight smile. The background behind the curtains is dark, suggesting a stage or theater setting. The lighting is dramatic, highlighting the woman and the texture of the curtains.

**Challenge 2: little  
incentive to come  
forward**

# Measures: flash inspections + future safe desk?

- Flash inspections advertised on website + brochures about rights and obligations
- Recommendation to establish safe desk

## SOCIAL FLASH INSPECTIONS INFORMATION FOR SEASONAL WORKERS IN BELGIUM IN AGRICULTURE AND HORTICULTURE

As a seasonal worker you do not have a classic employment contract. You work with oral daily contracts and receive an occasional form, also called a picking card. The employer decides each day who he will hire.

### CAN I WORK AS A SEASONAL (OCCASIONAL) WORKER?

- You may work a maximum of **100** days per calendar year as an seasonal worker in horticulture and **50** days in agriculture. If you work more this work scheme will no longer apply.
- Your first employer of the calendar year will give you your personal form for occasional work, on which you can keep track of the worked days; your employers will sign this form on a weekly basis.
- Your employer declares your working days and hours digitally.
- It is possible that you work as a normal employee, temporary worker or self-employed person.

### YOUR "RIGHTS" AS A SEASONAL WORKER

- You are entitled to a (gross) minimum hourly wage an hour of at least **€ 11,82** (horticulture) / **€ 11,74** (agriculture).
- At the end of each month, you are entitled to a pay slip that mentions your wage.
- Your employer has to pay your net wage by bank transfer. It is advised that you open a Euro bank account.
  - If you have worked at least 50 days in horticultural companies / 25 days in agriculture companies in one year, you are entitled to an end-of-year bonus of **€ 227,43** / **€ 84,45** gross the following year (July).
- Your maximum working hours are limited. Your employer can not make you work more than 11 hours a day and no more than 50 hours a week, no more than 12 days per two weeks.
- Your employer must provide you with all necessary protective equipment (gloves, mouth mask, etc.) **free of charge**. The maintenance and cleaning of this equipment is also at the expense of your employer.
- ~~Your employer provides accommodation? He can charge a (reasonable) cost that is deducted from your wage. This~~

# Thank you for your attention!

## Learn more & get in touch:

- **EMN Belgium:** [www.emnbelgium.be](http://www.emnbelgium.be) / LinkedIn: European Migration Network (EMN) Belgium
- **SIRS/SIOD:** <https://www.sirs.belgique.be/fr/service-dinformation-et-de-recherche-sociale> / <https://www.siod.belgie.be/nl/sociale-inlichtingen-en-opsporingsdienst>
- **Fairwork Belgium:** <https://www.fairworkbelgium.be/en/>