



SIOD

SOCIALE INLICHTINGEN-
EN OPSPORINGSDIENST



SIIS

SOCIAL INFORMATION AND
INVESTIGATION SERVICE

Labour – INT : Supporting migrants' integration into the labour market

Role of the Belgian inspection in protecting migrant workers

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Content of the presentation

- SIIS: coordination body for multidisciplinary inspection activities in Belgium
- General legal provisions
- Prevention of social fraud
- Most common labour and social security law abuses
- Inspections on social fraud
- Labour inspectors' role in facilitating back-payment of due wages
- How can workplace inspectors support access to justice?
- Migrant workers and labour exploitation



SIS: coordination body for multidisciplinary inspection activities in Belgium

Mission

The SIS is a **strategic body** which, on the basis of knowledge and information gathered during inspections (...) as well as scientific support, develops a vision on the fight against social welfare fraud and translates it into concrete strategies. The SIS prepares the strategic plan and operational **action plans** and provides **policy support** (*article 3 of the Belgian Social Criminal Code*)

Vision

*“The SIS is **the lubricant, the oil in the machine**, between the different inspection services to help them cooperate more effectively using the very latest science-based inspection techniques designed to tackle priority phenomena of fraud in a global and integrated manner,”*

The SIS **IS NOT** operational inspection service.



Rights of Migrants - General legal provisions

- Belgian's labour and social security provisions are applicable to all workers (belgian, EU or Non-EU, documented or undocumented)
- No discrimination is allowed/tolerated based on sex, ethnicity, social origin, age, religion, physical condition
- Special provisions for (chain) liability of (sub)contractors and for the client / customer
- All workers must be submitted to the tax department.
- Employers' obligation to have a labour accident insurance for all workers



Rights of Migrants - General legal provisions

- Migrant workers are subject to a work permit and a residence permit (unless specific legal provisions: e.g. posted workers)
- All private employment agencies must have a permit to carry out this business and are subject to regular inspections by several public authorities
- IF NO LEGAL COMPLIANCE => criminal and/or administrative sanctions
- Migrant workers can contact the Belgian inspectorates who have an all time (24/7) access to all working places on the Belgian territory. Access to a private house can be obtained through a special magistrates' order.
- All migrant workers have a legal access to trade unions, employers' organizations, NGOs to help them in case of problems with their employers. They or their representatives have access to labour courts and tribunals



Prevention of social fraud / abuse of migrant workers

BE inspectorates and SIIS use:

- Prevention schemes in cooperation with organisations/institutions: migrant workers are informed via different channels (flyers, posters, brochures, websites, social media, ...) in different languages in Belgium
- Awareness raising campaigns to the public and in specialised institutions (e.g. doctors in hospitals for Trafficking in Human Beings)
- Training sessions for labour inspectors / social security inspectors and other interested public institutions (police, detention centres,...).
- Informing employers and holding information sessions



Most common labour and social rights violations

- Undeclared work
- Underdeclared work
- Economic exploitation
- non-payment of parts of the salary or underpayment of wages
- non-compliance with working hours regulations
- categorizing workers as part-time
- fees deducted for travel or accommodation
- engaging in bogus self-employment
- Unpaid social contributions
- no healthcare coverage
- No work accident insurance



Inspections on social fraud

Detection of problems related to migrant workers is difficult because of the nature of the works (= undeclared work, domestic work, ...)

Inspections are carried out due to complaints or on a regular basis (random) in “problematic” economic sectors mostly in cooperation with police

If THB / labour exploitation : a list of indicators to prove the exploitation (wages, housing situation, withdrawal of passport, poor food, general behaviour of victim,...) => criminal case; if victims cooperate they are protected by law against deportation



Labour inspectors' role in facilitating back-payment of due wages

- All workers have the right to the payment of the correct wages
- Two systems:
 - Either the worker initiates a labour court case (with the help of a lawyer of a trade union) burden of proof !
 - Or may file a complaint at the labour inspectorate who will conduct an investigation. (the burden of proof is shifted to the inspectorate).
- Labour inspectorate may use:
 - Chain liability (the principal / main contractor/ subcontractor(s) for recovering outstanding wages (3 systems)
 - Employers' sanctions directive (minimum 3 months wages due).
 - If non-compliance, employer can be brought before the criminal court



How can workplace inspectors support access to justice?

- Inform workers on the different national means of enforcing their rights (judicial, non- judicial)
- Inform workers how to lodge a complaint with the labour inspectorate or the relevant institution regulating labour matters, giving contact details of these bodies;
- Allow migrant workers to lodge complaints in their own language/provide translated complaints forms;
- leave their contact details to the worker to be contacted later;
- inform workers on how to lodge a complaint through third parties (NGOs, trade unions, etc.) and the contact details of key third parties assisting third-country workers;
- Inform on the national rules on statutory time limits for submitting a complaint.



Vulnerability to labour abuses and exploitation among (TCN) migrants

- Evidence exists that migrant workers are more likely than domestic workers to have their rights violated;
- Dependence on employer: migrants depend on their employer for the renewal of their work and residence permits – limited possibility to change employer
- Lack of systematic information on rights and worker protection mechanisms
- Language barrier: they do not know their rights
- Subcontracting and involvement of recruitment agencies: more difficult to know who is the employer.



Migrant workers and labour exploitation

In case of victims of labour exploitation (forced labour and/or human trafficking), cooperation of the labour inspectorate and the social security inspectorate is legally binding with:

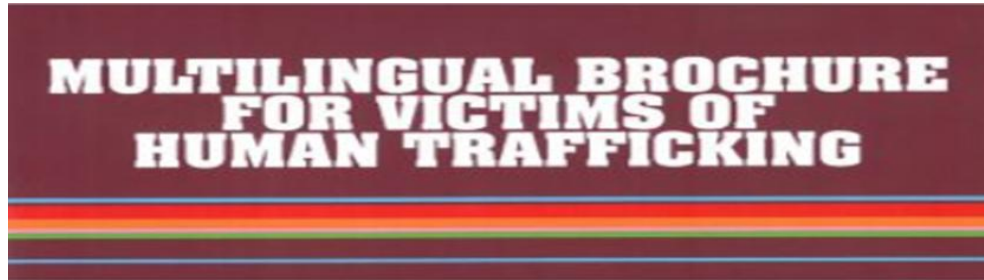
- Federal police
- Federal Migration Centre
- Special reception centres for victims of human trafficking/labour exploitation
- Prosecution officers specialised in human trafficking/labour exploitation
- Aliens Office (part of Home Office)



Role and tasks of social inspectors vis-à-vis presumed victims of human trafficking

From the moment that a possible victim is detected :

1. **Obligation to give information to the victim** (via a multilingual brochure): possibilities for help and guidance /



2. **Inform the reference magistrate human trafficking**: aim is to give a 'photo' of the exploitation situation



From the moment that a possible victim is detected :

3. **Contact a specialized recognized reception center :**
 - **For an essential contact with or without the consent of the magistrate (the alleged victim has a reflection period of 45 days to report the offence/file a complaint)**
 - **They have an extensive expertise in the reception and support of suspected victims authorized to support the victim: accommodation, medical and psychosocial assistance, legal and administrative support (right of residence, civil action, etc.)**

4. **If this concerns a foreigner: contact the Aliens Office (to prevent that the possible victim is being deported via a temporary right of residence)**



What role does the social inspector play in providing access to protection and redress for victims of THB?

- Conduct checks to detect situations of exploitation and identify victims
- Comply with the provisions of the circular (inform the victim, inform the magistrate, contact a reception center and the Aliens Office, if applicable)
- Conduct thorough investigations and respond to requests from the judicial authorities
- Gather as much information as possible (hearings, photo's, etc.) to write a comprehensive report
- Forward all useful information to the magistrate (aim: to prosecute the perpetrator and assess the damage suffered by the victim)
- INITIAL FINDINGS AND INITIAL CONTACTS ARE DECISIVE FOR THE COURSE OF THE INVESTIGATION AND THE PROTECTION OF VICTIMS
- Attempt to obtain payment of remuneration (Competence of the labour inspectorate)
- Where applicable, declare benefits to social security / entitlement to social rights (competence of NSSO)



Abbreviations

Abbreviation	Meaning
SIIS	Social Information and Investigation Service
THB	Trafficking in Human Beings
NGO	Non-governmental organisation
NSSO	National Social Security Office
TCN	Third Country National



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