

The multidisciplinary approach: the need for cooperation

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Fraud
is a catch-all term
is not error
is not abuse (of law/rights)

1. The different forms of social fraud are becoming increasingly complicated and 'organised'. Even for the *mere detection* of a fraud scheme a sound knowledge of labour and social security law is of cardinal importance.

- **Agree.** Moreover, mainly social inspection services possess this knowledge, and other services to a much lesser extent, or even insufficiently.
- **Agree.** Moreover, only social inspection services possess this knowledge, and other services to a much lesser extent, or even insufficiently.
- **Disagree.** Not only social inspection services possess this knowledge. Other services, too, can play an important role here.
- **Disagree** for other reasons.

- Social inspection services:
 - specific competences
 - specific knowledge
 - specific tools

- Some issues:
 - who is who?
 - compatibility of concepts (legal interoperability)
 - compatibility of tools (semantic interoperability)
 - legal compatibility: in some Member States contributions +/- tax

- Prevention: detection of indicators

Indicators = red flags or signaling functions: data-mining and data-matching

- related to undertaking's structure and its functioning, and those related to the employees' living and working conditions
- but operationalisation
- profiling the fraudster
- but also bottlenecks
 - ❖ good quality data
 - ❖ potent databases and processing mechanisms
 - ❖ return on investment
- Go hand in hand with other steps and efforts!

2. Also to efficiently combat (organised) social fraud, a sound knowledge of labour and social security law is of cardinal importance.

- **Agree.** Besides, mainly social inspection services possess this knowledge, and other services to a much lesser extent, or even insufficiently.
- **Agree.** Besides, only social inspection services possess this knowledge, and other services to a much lesser extent, or even insufficiently.
- **Disagree.** Not only social inspection services possess this knowledge. Other services, too, may play an important role here.
- **Disagree** for other reasons.

- Legal issues with regard to enforcement:
 - issue of data? (privacy and data protection regulation)
 - ❖ between social inspection services and other administrative bodies
 - ❖ between social inspection services and judicial services
 - *non bis in idem* (e.g. administrative versus criminal sanctions)
 - ECHR
 - proportionality

3. Even though forms of social fraud are becoming increasingly complicated and 'organised', the schemes often bear *strong resemblance* with forms of fraud from other fields of law (e.g. income tax fraud, VAT fraud etc).

- **Agree.** Collaboration with other services which are at first sight not or less competent is useful, but only in certain cases.
- **Agree.** Collaboration with other services which are at first sight not or less competent is highly useful. Besides, it is a good way to learn tips and tricks and to keep up to date.
- **Disagree.** Collaboration is necessary only in a limited number of cases. It is better to simply deliver the information about the dossier to the other services. It is then up to them what to do with it. Too often does collaboration result in the inefficient allocation of time and resources, which are scarce and which could be better used in another, more operational manner.
- **Disagree.** Instead of having every service collaborate with any other possible service, it is better to set up multidisciplinary 'dedicated' teams for those cases which require collaboration. Besides, all too often collaboration means a waste of time and resources and thus a lack of efficiency. In addition, there is the risk that disproportionate measures are taken, which is simply unlawful and illegal.
- **Disagree** for other reasons.

- Fraudsters rarely commit only one type of fraud
- Even more so when fraud is organised
- Cross-border elements
- Different types of organised fraud schemes show strong resemblance
 - use of legal persons
 - use of bankruptcy
 - use of cross-border elements
 - creative use of legal loopholes

4. Forms of social fraud are often ‘organised’ and increasingly make use of cross-border elements in order to prevent detection and particularly enforcement, or in order to make this more difficult or impossible.

- **Agree.** This is also why collaboration and exchange of information are so important. Fortunately, in most cases this goes smoothly.
- **Agree.** This is also why collaboration and exchange of information are so important. Unfortunately, all too often does this involve problems.
- **Disagree.** Social fraud is still and foremost a national issue and in most cases an issue between the employer and the employee, or between the government and the citizen. Therefore, too much attention and resources are spent on cross-border problems, as a result of which too little attention is paid to the real problems.
- **Disagree** for other reasons.

- Cross-border elements within the European legal framework
- EU labour law and social security law provisions are not 'perfect mirrors': and have a different perspective!
- National competences versus European rules on administrative cooperation but lack of incentives and sanctions or binding procedures
- Legal value of data and evidence
- Cross-border cooperation and information exchange is often too slow, too time consuming whereas fraudsters react fast (e.g. bankruptcy, moving fraud scheme to another MS, involving another (shell) company etc)

- Use of electronic information exchange and e-tools including systems of data-matching and data-mining
- But how to exchange? European instruments? Fraud instruments?
- Different national databases: cross-border access and connection?

the **Achilles' heel**
to **monitoring**
the **compliance** with and
the **enforcement** of
the applicable legislation :
cross-border cooperation

between competent administrations and
stakeholders and, in the wake of this, the
cross-border exchange of information

5. The fight for decent work and against social fraud cannot be fought at national level alone..

- **Agree.** Fortunately, initiatives exist at inter- and supranational level (ILO, EU, Benelux, bilateral initiatives) which offer an adequate response to this.
- **Agree.** However, initiatives at inter- and supranational level (ILO, EU, Benelux, bilateral initiatives) offer only a first step towards a response to this. More resources and attention should indeed go to expanding, widening and deepening these initiatives.
- **Disagree.** This fight is primarily a competence of the Member States. There is no need for inter- or supranational interference. Furthermore, Member States are perfectly capable of setting up and optimising their collaboration and information exchange themselves.
- **Disagree** for other reasons.

Different reactions and initiatives

- National measures: often not in accordance with EU law
- Bilateral agreements and initiatives:
 - however: bilateral agreements between all MSs?
 - legal value often extremely questionable
 - ❖ in the light of data protection regulation
 - ❖ legal value of data and evidence obtained
 - often (very) limited scope
 - ❖ often not treaties but rather LOIs or MOUs
 - ❖ also content often very limited in scope
 - ❖ true multidisciplinary approach often lacking (mostly because concluded between 2 services, departments or ministries with same or similar competences)

Different reactions and initiatives

- Regional (multilateral) agreements and initiatives:
 - testing ground
 - supranational
 - interconnectable and open
 - concluded at national level so open for multidisciplinary approach

Different reactions and initiatives

- European initiatives
 - too often fall short because EU lacks competence
 - Enforcement Directive: multidisciplinary approach?
 - platform UDW:
 - ❖ competences?
 - ❖ multidisciplinary?
 - Quid
 - ❖ Europol
 - ❖ Eurojust
 - ❖ or even broadening OLAF? After all: fraud has a serious impact on MS budgets and thus on the budget of the EU