

FONDS DE SÉCURITÉ D'EXISTENCE DES OUVRIERS DE LA CONSTRUCTION
(CONSTRUCTION WORKERS' WELFARE FUND)

**OFFICE PATRONAL D'ORGANISATION ET DE CONTROLE
DES RÉGIMES DE SÉCURITÉ D'EXISTENCE (OPOC)**
**(Employers' Office for the Organisation and Control
of Welfare Schemes)**
Non-profit-making Association

STAMP SCHEME

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Loyalty Stamp Scheme Application to foreign undertakings

Foreign undertakings which transfer personnel to Belgium for the purpose of carrying out construction work must adhere to the sector-related loyalty stamp scheme laid down by collective labour agreement. The purpose of this information note is to explain exactly what this scheme involves, what the obligations are for the foreign undertaking and what formalities have to be completed.

What exactly does the loyalty stamp scheme consist of?

Loyalty stamps are an advantage granted to construction workers by the 'Fonds de sécurité d'existence des ouvriers de la construction' (Construction Workers' Welfare Fund). This advantage consists of paying an annual bonus to workers who have worked in one or more construction firm(s) during the year of service (that is to say, between 1st July and 30th June of the following year). This bonus rewards the worker for his loyalty to the construction sector and is intended to encourage him to continue working in that sector.

This advantage is not paid directly by the employer to his workers. It is granted by the 'Fonds de sécurité d'existence' (Welfare Fund) and the employer pays a contribution to the Fund in order to finance the advantage. This is a sector-related solidarity mechanism.

The OPOC ('Office patronal d'organisation et de contrôle des régimes de sécurité d'existence' or Employers' Office for the Organisation and Control of Welfare Schemes) collects and cashes the contribution used to finance the advantage. The OPOC therefore works on the order and on behalf of the 'Fonds de sécurité d'existence' and handles the management of the loyalty stamp scheme.

Does this scheme also apply to foreign undertakings?

The loyalty stamp scheme is an integral part of the minimum working terms and conditions laid down by collective labour agreement. Foreign undertakings which transfer personnel to Belgium for the purpose of carrying out construction work must also comply with this agreement, in accordance with Belgian legislation.

The principles of European law and case law confirm this obligation but also provide for a relaxation of this scheme. Under certain circumstances, foreign employers established in one of the European Union member States, and the workers whom they employ on a temporary basis in Belgium, can benefit from this relaxation. The condition for this is that an advantage comparable to that of the loyalty stamps (= "comparable scheme", see below) should be granted to those workers for the period of their employment in Belgium, in accordance with the schemes to which their employer is subject in his country of establishment.

When is the situation one of a comparable scheme?

A foreign employer is subject to a comparable scheme when he is obliged, in accordance with schemes in force in his own country, to pay, on top of the normal wage, either a bonus (loyalty bonus, Christmas or 13th month bonus) or contributions used to finance such a bonus. In general, this involves a bonus that is granted every year and the amount of which corresponds approximately to one month's wage. The granting of this bonus may be linked to conditions relating to the number of years of service with and presence in the undertaking. When an undertaking declares that it is acquainted with a comparable scheme, but that scheme does not fit this definition, it must **justify the similarity of that scheme, in detail and in writing, to the OPOC departments**. On the basis of the submitted documents, these departments will then decide whether or not the equivalence has been proven.

What formalities does the foreign undertaking have to comply with?

Whether or not it is subject to a scheme comparable to the stamp scheme, the foreign undertaking must, in any event, declare its activities to the OPOC departments.

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The OPOC sends an information form to the undertaking, which must complete and return that form. The undertaking also indicates on the form whether or not it is subject to a scheme comparable to the stamp scheme. After the form is received, a registration number is allocated to the undertaking.

- The undertaking is subject to a comparable scheme

The undertaking must describe this comparable scheme by answering a few questions about it.

If the undertaking points out a comparable scheme, the OPOC makes a note of it. Unless it emerges from the relevant documents submitted

that the scheme referred to is not comparable or that the justification provided by the undertaking is insufficient to prove the similarity of the scheme, the OPOC agrees that the undertaking does not have to make a wage declaration or pay contributions. However, the undertaking still has to provide the OPOC, every three months, with a list showing the identity of the workers whom it has transferred to Belgium during the past three months. The exemption from the wage declaration and payment of the stamp contribution is valid unless the departments of the Belgian Social Legislation Inspectorate has noted that the scheme has not been implemented - or not implemented correctly – for the period of employment in Belgium. To this end, the OPOC will pass on the file to the departments of the Social Legislation Inspectorate to enable them to check the actual situation and the fulfilment of that obligation.

- The undertaking is not subject to a comparable scheme

At the end of each quarter of the calendar year (and, at the latest, at the end of the month following that quarter), the undertaking must declare the gross wages (in full) of its workers for the work that they have supplied in Belgium during the relevant three-month period. This declaration is made using a specific declaration form which the OPOC sends to the undertaking.

The employer must pay the OPOC a contribution equivalent to 9.12% of the total amount of the declared wages. This must also be done, at the latest, by the last day of the month following the three-month period for which the contribution is payable.

The contribution must be paid into account no. 310-1322950-53. Payments from abroad may be made via account number "IBAN: BE53 3101 3229 5053 – BIC: BBRU BE BB".

The contribution goes to ensure the actual granting of the loyalty stamp advantage to the relevant workers.

	<i>Final date for submitting the declaration and paying the contribution</i>
3rd quarter (1st July – 30th September)	31st October
4th quarter (1st October–31st December)	31st January
1st quarter (1st January – 31st March)	30th April
2nd quarter (1st April – 30th June)	31st July

Real advantage for the foreign worker

Provided that his employer declares the wages and pays the contributions that are payable, the worker transferred to Belgium actually receives the advantage of the loyalty stamps. These stamps are granted once a year, when the year of service has passed (1st July – 30th June). During the course of September and October, the OPOC sends the loyalty cards to the employer (or to his authorised agent or representative in Belgium). These cards show the sum to which the worker is entitled. The advantage is equivalent to 9% of the gross wage earned for the work carried out in Belgium during the year of service.

The payment is made in the following ways:

- The employer has an authorised agent or representative in Belgium
 - o The workers are **still present** in Belgium: The loyalty cards are passed on via the employer to the workers, who can request payment from the payment bodies of the Belgian trade unions or from the OPOC.
 - o The workers are **no longer present** in Belgium: The authorised agent or representative receives the loyalty cards but does not have to pass them on to the undertaking. The cards can be returned to the OPOC by the authorised agent or representative, together with a list showing the identity of the workers, their exact address and their bank account number abroad (**stating the IBAN number and the BIC reference!**).

The authorised agent or representative is responsible for the accuracy of this information. If the worker does not have a bank account, the payment will be made by "banker's cheque" or "international money order". The account number of the authorised representative or agent representing the interests of the undertaking must not, under any circumstances, be referred to on the stamp card.

- The employer does not have an authorised agent or representative in Belgium

The employer receives the loyalty cards and gives them to his workers, who can request their payment from the OPOC (or, if they are still in Belgium, from a Belgian trade union payment body). For payment by the OPOC, the worker sends his card to the OPOC, stating on it (if necessary) his correct address and his bank account number (**with the IBAN no. and the BIC reference!**).

If the worker does not have a bank account, payment will be made by "international money order".

Not having things in order means a deduction from the invoice!

In certain cases, Belgian legislation relating to joint liability for social security and tax debts compels works owners and building contractors to make deductions when they pay invoices from their building contractor or subcontractor. Those deductions go to social security and the tax department. This is the case, among other things, when their contracting partner is not registered as a building contractor (registration being granted by the competent provincial registration commission) and/or if he has not paid his social security contributions. This legislation provides for an exception with regard to employers not established in Belgium, who are not registered as building contractors. The works owner or building contractor does not have to make a deduction for social security if that employer has no social security liabilities in Belgium and if all his workers are in possession of a valid certificate of transfer (= "E101" form).

Not having social security liabilities in Belgium means that the employer must have everything in order with respect to the loyalty stamp scheme! The best guarantee of this is the correct declaration

of wages and the payment of the contribution. Only then can the OPOC confirm that that building contractor has everything in order.

If the foreign employer cites the existence of a comparable scheme, the OPOC will still give its decision subject to the departments of the Social Legislation Inspectorate not having noted that the scheme has not been implemented – or not correctly implemented - for the period of employment in Belgium.

What about the bad weather stamp scheme?

In addition to loyalty stamps, the 'Fonds de sécurité d'existence' (Welfare Fund) also grants the bad weather stamp advantage to construction workers. This involves a lump sum bonus intended to compensate for the loss of pay in the case of a working day that is started and subsequently interrupted due to bad weather.

Foreign undertakings and the workers they transfer to Belgium are not automatically subject to this scheme. However, because of this fact of not being subject to the bad weather scheme, the foreign employer must then comply with the general legal provisions in Belgium which stipulate that a fully guaranteed daily wage must be granted in the event of a working day being interrupted as a consequence of bad weather.