

GUIDELINES FOR CONCERTED AND JOINT INSPECTIONS

December 2020

List of abbreviations

Abbreviations	Definition
CJIs	Concerted and Joint Inspections
EC	European Commission
EDPB	European Data Protection Board
ELA	European Labour Authority
EU	European Union
EU-OSHA	The European Agency for Safety and Health at Work
GDPR	The General Data Protection Regulation
ILO	International Labour Organization
IMI	The Internal Market Information System
KPI	Key Performance Indicator
MS	Member State(s)
NLO	National Liaison Officer
PIR	Post Inspection Report
SPO	Social Partner Organization

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1. Introduction

The increasing complexity of labour mobility abuse requires more complex cross-border inspections. These cross-border inspections can effectively tackle complex fraud schemes by amalgamating resources, information and knowledge from various enforcement bodies. As inspections also require a good understanding of the applicable law in the partner countries involved, the documents required as evidence, and the most appropriate investigative techniques and external assistance, it is necessary to involve relevant stakeholders - other Member States, national or international organisations (such as EU-OSHA, EUROPOL, EUROJUST), including, if relevant, social partners.

A very important aspect of CJIs is information sharing. Information must always be shared securely (using IMI, other EU systems or encrypted digital communication, depending on the type of information) and ensuring the foreign partner meets all the GDPR requirements.

Cross-border inspections can enhance prevention and compliance by providing valuable information on the motivation of offenders and guidance on future cross-border cooperation activities. In order to better target and prevent future labour mobility abuse, national inspectorates should make greater use of risk assessment tools and inspection results in other countries. The European Labour Authority provides practical support for cooperation, focusing on the development of standardized cooperation tools and the dissemination of results and successful joint inspection procedures.

1.1 Importance of CJIs

Freedom of movement of workers and the freedom to provide services are two of the four freedoms of the European Union. Ensuring workers' mobility and the freedom of cross-border provision of services are key objectives of the single market. Over 17.6 million Europeans live in a Member State other than that of their nationality.¹ Businesses also benefit from the internal market and operate across borders on a daily basis. Self-employed persons establish their

business in other Member States. Cross-border activity is an inherent feature of the EU, which benefits individuals, economies and societies as a whole. However, growing intra-EU labour mobility and ongoing economic and social disparity contributes to an increase in cross-border labour mobility issues across the EU. The need for CJIs is increasing, especially in areas such as abuse of posting of workers, bogus self-employment, fraudulent letterbox companies, bogus temporary work agencies and undeclared work.

Effective cross-border joint actions can help enforcement bodies across Europe address those issues. Concerted and joint inspections are part of these actions and can be an effective deterrent by bringing together the investigative powers, expertise and resources of multiple partners. They also encourage cooperation between enforcement bodies across the EU and demonstrate to the public that complex cross-border fraud is being tackled.

Cross-border inspections are still not common in many Member States. According to a EUROFOUND study², the majority of Member States (19) have experience with joint cross-border labour inspections and the use of evidence collected during them, but they state that the practice is not common. Usually these cross-border inspections are carried out as information sharing and rarely as visits of inspectors from other Member States.

Enforcement bodies have abroad limited authority and capacity to tackle labour mobility issues, as their powers are limited to national jurisdictions. In addition, EU and cross-border measures currently available are mainly based on bilateral level (and memoranda of understanding) and information exchange. However, the increasing complexity of labour mobility abuse demands better risk assessment and coordination of inspections across more countries and the EU as a whole. For example, fraudulent letterbox companies often operate in several Member States. They have limited lifespan, vary in size, and regularly change their corporate names and place of registration. They quickly adapt to avoid an inspection. All these factors undermine the collection, comparison and verification of documents and company records required to build a

¹ 2019 Annual report on intra-EU labour mobility available online ([link](#))

² Eurofound (2019), Joint cross-border labour inspections and evidence gathered in their course, available online ([link](#))

compelling case³.

In September 2017, European Commission President Jean-Claude Juncker announced the creation of a European Labour Authority in his State of the European Union address to the European Parliament. Subsequently, the European Labour Authority (hereinafter “ELA”, “the Authority”) was established by Regulation (EU) 2019/1149 (hereinafter “the ELA Regulation”) of the European Parliament and of the Council, which entered into force on 31 July 2019.

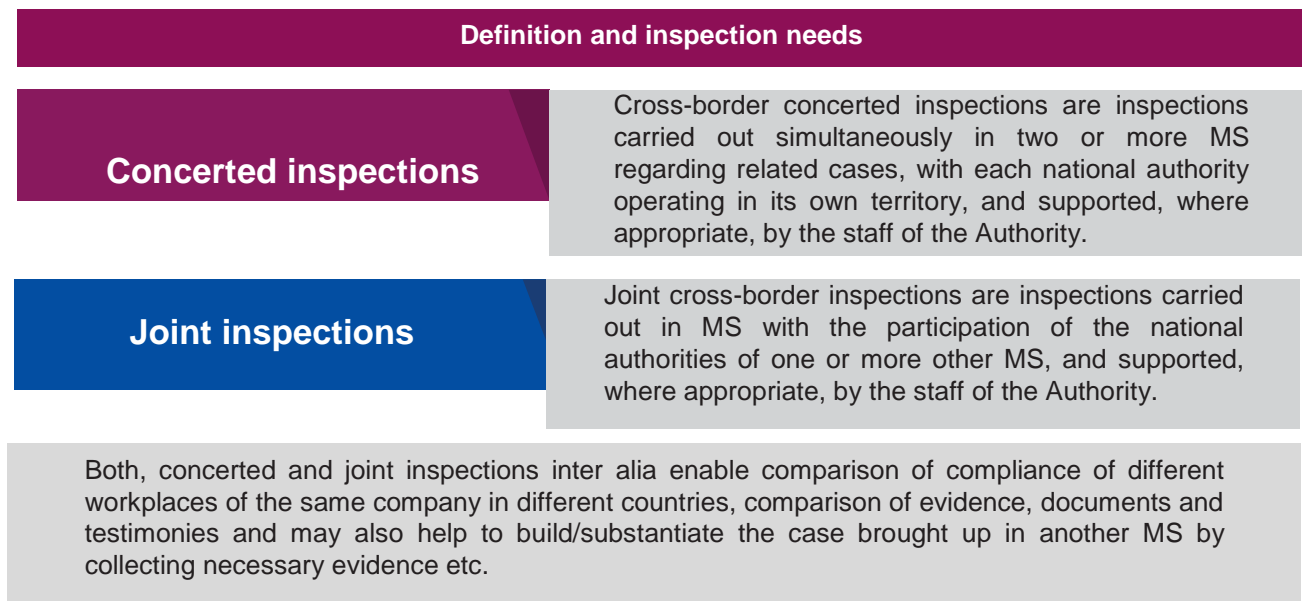
The objective of the Authority, as set out in Article 2 of the ELA Regulation, is to contribute to ensuring fair labour mobility across the Union and assist Member States and the Commission in the coordination of social security systems within the Union. To this end, ELA shall:

- ☑ Facilitate access to information on rights and obligations regarding labour mobility across the Union as well as to relevant services.
- ☑ Facilitate and enhance cooperation between Member States in the enforcement of relevant Union law across the Union, including facilitating concerted and joint inspections.
- ☑ Mediate and facilitate a solution in cases of cross-border disputes between Member States.
- ☑ Support cooperation between Member States in tackling undeclared work.

According to Article 8(1) of the ELA Regulation, the Authority shall coordinate, and support concerted or joint inspections in areas within the Authority's competence (see Figure 1).

³ European Platform tackling undeclared work (2019), Cross-border concerted and joint inspections in the fight against undeclared work

Figure 1. Type of the inspection



Joint inspections at one location in one Member State can generate in-depth knowledge or clarify specific case information that cannot be clarified by information exchange alone.

For example, highlighting abusive posting of workers by communicating with them in their native language to determine if they were actually posted.

As to the left, but with wider scope: covering a single company or several companies with several offices or branches or several companies in the same economic sector.

Joint or Concerted inspections in several Member States are conducted to address more complex and/or evolving cross-border labour mobility issues, such as temporary work agencies or networks operating in more than one Member State. They are carried out to tackle rapidly changing legal entities, or multiple sub-contractors.

Source: European Platform tackling undeclared work (2019), Learning resource paper from the thematic review workshop on cross-border concerted and joint inspections Lisbon, Portugal, 28 February–1 March 2019

1.2 The main actors and workflows for the CJIs supported by ELA

According to Article 8(1) of the ELA Regulation, one or more Member States may request the initiation of concerted and joint inspections. Moreover, the Authority may, on its own initiative, suggest to the Authorities of the Member States concerned that they carry out a CJI. Additionally, according to Article 8(1) of the ELA Regulation, social partner organisations at national level may bring cases to the attention of the Authority (see Figure 2).

Figure 2. Initiator of the inspection



ELA

can suggest
concerted and joint
inspection



MS

can request
concerted and joint
inspection



SPO

can bring case to
the attention of the
ELA

These actors can initiate three basic workflows to plan, implement and follow-up the CJI supported by ELA. This document describes these workflows, focus at the entire inspection process from the point of view of the initiators.



Best practice

It is important to consider the possibility of setting up mixed teams composed of different competent authorities and, where relevant, other stakeholders, to carry out an inspection.

1.3 Aim of the guidelines

This document covers the necessary aspects to help Members States with the execution of cross-border concerted or joint inspections with particular focus on the use of the tools and templates developed by ELA.

They provide practical guidance for national enforcement bodies on how to prepare, implement, and follow up effective cross-border inspections to ensure that the EU rules on labour mobility are enforced in a fair, simple and effective way.

These guidelines also include an analysis of the legal basis for CJIs, use of evidence in CJIs and the role of inspectors in the hosting Member States (for more details see [Annex 4](#)).

The guidelines should be read together with the Practitioners' toolkit developed by the European Platform tackling undeclared work⁴ that provides for details on the strategic approach to cross border undeclared work and steps for successful inspection.

These guidelines are relevant for inspectors within relevant enforcement bodies (e.g. Member States' inspectorates or other authorities) and aim to support them by providing step-by-step instructions on how to conduct a CJI (see Figure 3).

The scope of the Authority includes:

- ✓ Free movement of workers (Regulation (EU) No 492/2011 and Directive 2014/54/EU);
- ✓ EURES (Regulation (EU) 2016/589);
- ✓ Posting of workers (Directive 96/71/EC (as amended by Directive 2018/957/EU) and Directive 2014/67/EU);
- ✓ Social security coordination (Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, Regulation (EU) 1231/2010) and in so far as they are still applicable, Council Regulations (EEC) No 1408/71 and (EEC) No 547/72, and (EC) No 859/2003;
- ✓ Social aspects of international road transport rules (Regulation (EC) No 561/2006; Directive 2006/22/EU; Regulation (EC) No 1071/2009).

⁴ [European Platform tackling undeclared work \(2019\). Practitioners' toolkit: cross-border concerted and joint inspections](#)

1.4 Steps for a successful CJI

1.4.1 Planning concerted and joint inspections

Correct planning of an inspection is crucial. Without this, the inspection is unlikely to be effective and may end up without the required outcomes. Planning ensures the success of activities and efficient allocation of resources.

CJI planning begins with the identification and specification of a case that requires cross-border cooperation (completion of the [Case description in Annex 1](#)) and ends with the final agreement on cross border concerted and joint inspection in [Annex 2](#) (hereinafter 'Agreement'). This Agreement includes the Inspection Plan ([Annex 2a](#)) to be completed by the initiator of the CJI together with the stakeholders involved during the planning phase.

1.4.2 Implementing concerted and joint inspections

The implementation phase describes the on-site stages of concerted and joint inspections.

During the implementation phase, all team members follow the instructions included in the Agreement and/or Inspection Plan. Decisions (including any unexpected developments or necessary flexibility within the Agreement) are made by the coordinators via the specified communication channels.

Inspectors look to clarify details of inspection cases, for example, by identifying all activities and workers onsite. The employer or responsible manager may be asked to provide a list of all registered workers, their employment status (labour contracts and contract type: self-employed, employees of a subcontractor or temporary workers), their working hours, wages, A1

forms, work and residence permits. This information is then compared with the statements of workers, documents and official registers or databases. The same check may be applied to employees of a subcontractor (eventually in a follow-up visit). The precise methodology of an inspection is based on the main goal and the mutual agreement of the involved authorities.

If the CJI is initiated on the basis of information provided by the SPO, ELA assesses the case and identifies which measure (if any) is appropriate for addressing the case and notifies all involved parties.

1.4.3 Following up concerted and joint inspections

Following up on cross-border inspections is necessary to achieve the following three key objectives:

- ✓ Increasing the effectiveness of concerted and joint inspections.
- ✓ Increasing capacity of inspectors and other relevant authorities to assess and address the risks of new and complex cases of labour mobility.
- ✓ Altering the behaviour of employers and employees (e.g. increasing the number of declared workers at the inspected company or in the sector).⁵

During this phase the follow-up actions agreed in the Post Inspection Report ([Annex 3](#)) are implemented.

Figure 3. Steps for successful CJIs



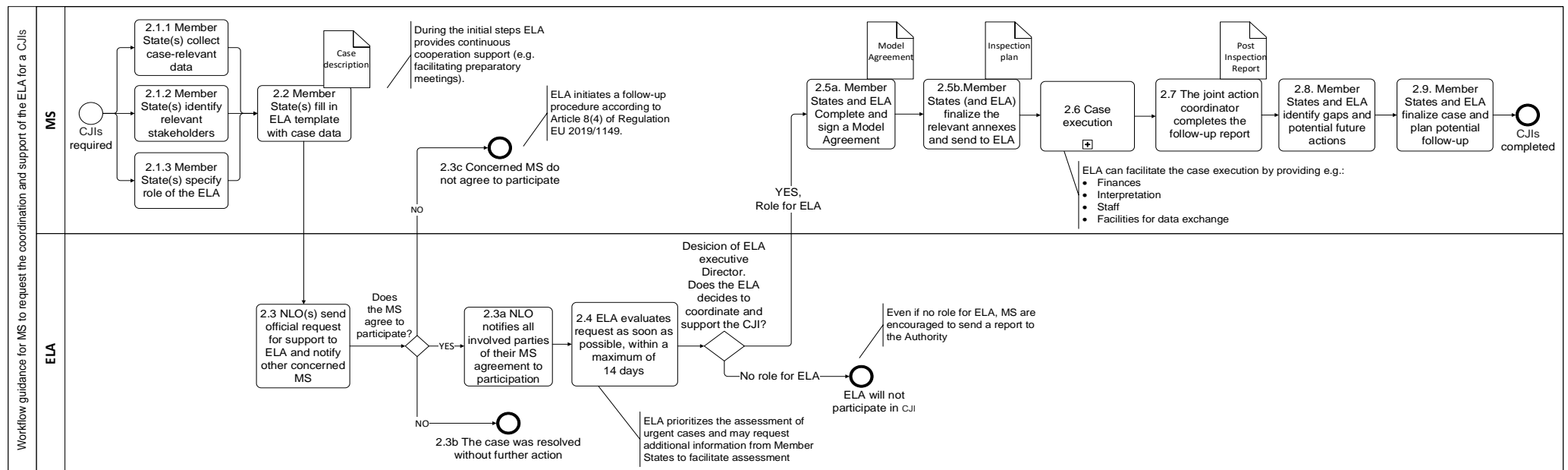
⁵ Source: European Platform tackling undeclared work (2019), Learning resource paper from the thematic review workshop on cross-border concerted and joint inspections Lisbon, Portugal, 28 February–1 March 2019

2. Workflow guidance for Member States to request the coordination and support of ELA for a CJI

According to Article 8(1) of the ELA Regulation, Member States may request the initiation of concerted and joint inspections. The workflow guidance for Member States defines and offers practical steps on how to prepare, implement and follow-

up on effective concerted or joint inspection. This workflow guidance also considers cases where one or more Member States decide not to participate in a concerted or joint inspection.

Figure 4. Workflow guidance for Member States to request the coordination and support of ELA for a CJIs



* The numbering of the individual steps in the workflow guidance is in accordance with the detailed description below.

Explanatory Notes



2.1 Identify and specify the case

2.1.1 Member State collect case-relevant data

An inspection should be initiated as a result of serious complaints, reoccurring cross-border issues or risk assessment outcomes. The CJI aims to tackle:

- ✓ Non-compliance with applicable European and national rules on the free movement of workers, and/or
- ✓ Non-compliance with the applicable European and national rules on the free movement of services (posting of workers).

The short-term targets of the CJI are imposing penalties, recovered contributions, business closure, protection of mobile workers, etc. The long-term target is for example the reduction of undeclared and underdeclared work in a specific sector or the effective compliance with the applicable rules laid down in the European and national legal system (e.g. minimum salary, working hours, correct payment of social security contributions, etc.).

The main goal, the short-term and long-term targets of CJI are specified in an agreement.



Important

It is highly recommended that the Member State has already done some investigative activity concerning the relevant case before starting joint measures and contacting the parties involved.

2.1.2 Member State identify relevant stakeholders

The increasing complexity of labour mobility abuse requires more complex cross-border inspections in two or more Member States. It allows the investigation of cases along the entire supply chain, including the operations of a number of companies/sub-contractors located in different countries. Inspections require good understanding of the law in the partner countries involved, the documents required as evidence and the most appropriate investigative techniques or external assistance (by police, social partners, etc.). Therefore, in some complex cases, it is necessary to involve other stakeholders - other Member States, national or international bodies (such as EU-OSHA, EUROPOL, EUROJUST), including, if relevant, social partners and paritarian institutions of the social partners. The initiator of the CJI will identify and

specify why they should be involved and which actions they should take.

When an inspection is carried out with the participation of other stakeholders, it is essential that all stakeholders are involved in the planning process. The objectives of the inspection, the role of each stakeholder, the methodologies used, the person(s) taking the lead and the way in which the information will be shared and reported must be clear to each stakeholder.

Police and prosecutors can support cross-border inspections in high-risk sectors or complex fraud and labour exploitation cases by closing workplaces, using alternative investigation techniques (e.g. phone tapping/ house search) and by guaranteeing the safety of inspectors.



Potential support from Eurojust and Europol

EUROJUST

EUROJUST is the EU's judicial cooperation agency. Its remit covers organised crime, serious crime and terrorism. In particular, Eurojust, acting via its national desks or as a 'college', can request the relevant Member State authorities to set up joint investigation teams. National desks are entitled to participate in such teams, including their initiation. Judicial cooperation in criminal matters and police cooperation enables various forms of joint investigations, i.e. investigations where officials from one Member State participate in investigations in another Member State's territory. Officers can help identify criminal activities, provide key information and collect evidence, circumventing the need for formal requests for mutual legal assistance. They can also help improve the digital, intercultural and language skills of national labour inspectors and their technical and legislative knowledge.

EUROPOL

EUROPOL is the EU agency for law enforcement cooperation. It supports and reinforces actions by the relevant Member State authorities and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and crimes impacting a common interest covered by Union policy.

Europol can assist in cases involving fraud with

social security benefits, the economic exploitation of (non-documented) workers or failure to pay social security contributions. It can provide a European investigation order, a joint investigation team and cross-border enforcement via a European Arrest Warrant (EAW) and the mutual recognition of financial penalties.

Source: European Platform tackling undeclared work (2019), Learning resource paper from the thematic review workshop on cross-border concerted and joint inspections Lisbon, Portugal, 28 Feb. – 1 March 2019

Social partners (employer associations and trade unions) can help highlight labour law irregularities, or fraud schemes by labour market analysis and local information on working conditions and subcontractors. For example, in some countries, social partners or paritarian institutions set-up and run by them check compliance with collective agreements; information that can complement risk analysis or inspection activities. Social partners can also help prepare cross-border inspections, supporting with expertise on assessing labour, health and safety standards. As in national inspections, social partners may also participate in cross-border inspections to support inspectors with their knowledge of the sector and specific labour mobility issues. However, as with the status of foreign inspectors, the status of a social partner representative may also encounter legal barriers.

For more information see examples of cooperation with partners.⁶



How can ELA help?

ELA liaises with EUROPOL and, if applicable, with EUROJUST to investigate and prosecute cases, where required, e.g. human trafficking cases or complex fraudulent networks. National Liaison Officers may request support from EUROJUST and/or EUROPOL for information from their database, legal/practical steps to cooperate with a Joint Investigation Team and to facilitate secure data exchange.

By establishing permanent working arrangements with EUROPOL and EUROJUST to operationalise cooperation procedures.

By providing continuous cooperation support (e.g. facilitating preparatory meetings).

2.1.3 Member States specify role of ELA

Together with ELA, the Member State specifies the role of ELA and the support (staff, conceptual, logistical, technical, legal, or support related to translation) required from ELA in order to undertake the inspection, including the estimated costs (transport, accommodation, interpretation, legal advice, IT-tools, etc.).

2.2 Member States fill in ELA template with case data



Important

According to Article 8(5) of the ELA Regulation, Member States and the Authority shall **keep information** about envisaged inspections **confidential** with regard to third parties.

Background on the case

Member State should provide a general description of the initial complaint or information gathered. All relevant information about the case and available evidence should be mentioned in the Case description ([Annex 1](#)), for example, from preliminary research or a joint risk assessment, previous investigations, including identified infringements, and information about actions already taken to tackle the problem at a national or EU level, the results of such actions and the involvement of other Member States or stakeholders (if applicable).

- ✓ Description and background of the case, including Member States where the infringements occurred, companies or employers concerned, and previous measures to address the case, if known.
- ✓ Motivation for the request, and scope of the issue included.
- ✓ Identification of relevant national or European legislation.
- ✓ Barriers that ELA involvement can help overcome.

⁶ Source: European Platform tackling undeclared work. Thematic review workshop on CJIs, Lisbon, Portugal, 28 February – 1 March 2019.

Sector and entity(-ies) to be inspected in each Member State

Member State will specify the economic sector in which the company operates. Significant differences exist between an inspection of a construction site, agricultural site, or of the hospitality sector (HORECA). Different registration and licensing regulations apply to working hours, and types of documents that must be held by the companies.

If known, Member State will specify also the name of the company(ies) to be targeted.

Coordinator(s) of the inspection

The general coordinator will be in charge of organisational and procedural matters, including drafting reports. The appointed person should be, in principle, one of the national coordinators or ELA responsible officer. Member State will provide the contact details of the entity and person in charge of the national coordination of the proposed concerted/joint inspection for the requesting Member States and, if possible, for the other Member States concerned.

Other stakeholders and number of participating persons

Member State will specify other involved national or international organisations including, if relevant, social partner organisations and describe why they should be involved and which actions they should take.

Number of companies and mobile workers concerned by the inspection

Member State will indicate the estimated number of companies and mobile workers (including posted, self-employed, other status (e.g. company owner, volunteer)) directly involved in the case, so ELA can assess the impact of the possible infringements on workers and/ or on the labour market.

Information on the number of registered and actual (including undeclared) workers will determine the number of inspectors needed on-site.

Estimated costs to be paid by ELA and other support

Together with ELA, the Member State will specify the support required from ELA in order to undertake the inspection, including the roughly estimated costs

(transport, accommodation, interpretation, legal advice, IT-tools, etc.).

2.3 NLO(s) send official request for support to ELA and notify other concerned Member States

When NLO(s) send official request for support to ELA and notify other concerned Member States, three outcomes are possible:

- ☑ All Member States agree to participate in the CJI, i.e. particular NLOs notify other involved parties of agreement to participation.
- ☑ Resolution without the cross-border inspection is agreed and no further action is needed.
- ☑ One or more Member States do not agree to participate.

In the event that one or more Member States decides not to participate in a concerted or joint inspection, the national authorities of the other Member States shall only undertake such an inspection in the participating Member States. Member States that decide not to participate shall keep information about such an inspection confidential.

According to Article 8(4) of the ELA Regulation, the Authority shall establish and adopt the modalities to ensure appropriate follow-up where a Member State decides not to participate in a concerted or joint inspection. In such a case:

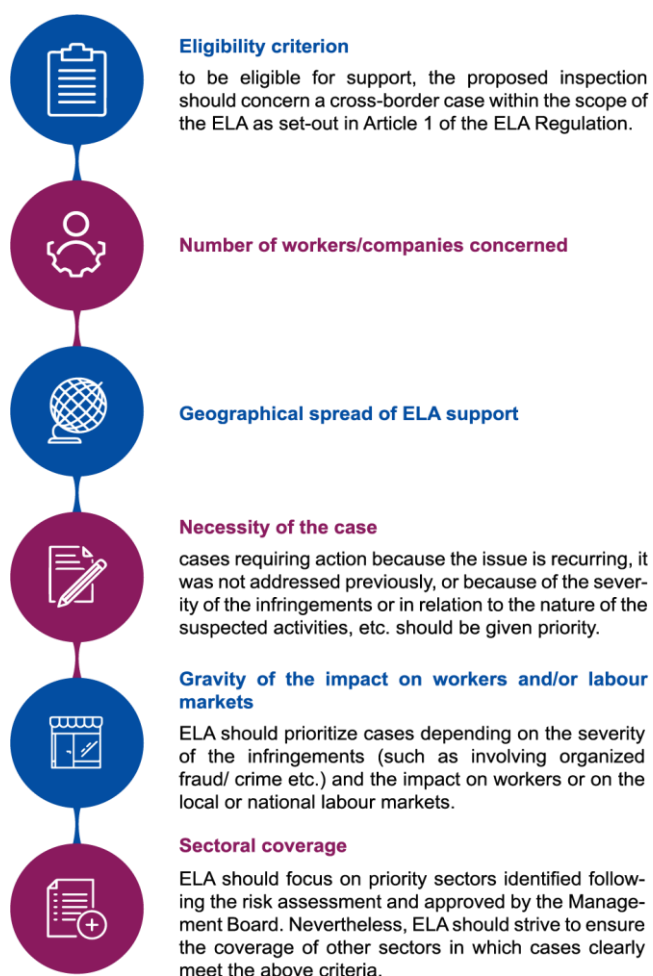
- ☑ The Member State concerned shall inform the Authority and the other Member States concerned in writing, including by electronic means, without undue delay of the reasons for its decision and about the measures it plans to take to resolve the case (specifying concrete actions and period), if any.
- ☑ Once known, the concerned Member State shall inform the Authority and the other Member States about the outcomes of the measures they took.
- ☑ The Authority may suggest that a Member State which did not participate in a concerted or joint inspection, undertake its own inspection on a voluntary basis.

2.4 ELA evaluates request for support CJI

ELA evaluates request based on a set of agreed criteria as soon as possible, but not later than in 14 days. ELA prioritizes the assessment of urgent cases and may request additional information from Member States to facilitate assessment. Urgent cases will be given priority, but the evaluation criteria will still apply.

The following criteria will serve as a basis for ELA to evaluate requests for inspections.

Figure 5. Criteria for ELA to assess the



If ELA's assessment concludes that there is no role for ELA in the particular case, it does not participate in the inspection.

The template of the Agreement, including the Inspection Plan, is always applicable when ELA participates in CJIs.

When ELA does not participate in CJI, the use of the template of the Agreement, including Inspection Plan, as well as reporting to ELA about the outcome of the

CJI ([Annex 3](#)), is encouraged as guidance for the participants.

The templates of the Agreement and the Inspection Plan may be adapted to the laws and practices of Member States participating in CJIs. For example, parts of these templates may be duplicated as needed, depending on the number of Member States taking part in a CJI (for Member State B, C, D, etc.). Once finalized, both documents should provide detailed instructions on how to proceed during a CJI.

2.5 Member States and ELA complete and sign the Agreement and agree on the specificities of CJI

The signing of the Agreement ([Annex 2](#)) (and completion of the Inspection Plan ([Annex 2a](#))) is the last step for formalizing the main responsibilities and steps to be taken by the parties to achieve their objectives regarding labour mobility abuse.

In case at the time of signing of the Agreement the Member States involved do not possess sufficient information to complete the Inspection Plan, they may choose to do so at a later stage.

Although agreement of all participating Member States is a prerequisite for initiating concerted or joint inspections, according to Article 8(4), the Authority shall establish and adopt the modalities to ensure appropriate follow-up where a Member State(s) decide(s) not to participate in a concerted or joint inspection.

2.5.1 Decide on the type of concerted or joint inspection

The choice of when and what type of cross-border inspections to perform depends on individual cases. Cross-border inspections are typically chosen as a method for tackling the large scale and complex cross-border cases of labour mobility abuse. For example, fraudulent temporary work agencies and letterbox companies require different types of evidence, often from a number of countries. The decision to perform a cross-border inspection is based on:

- ☒ The geographic scale of the case which covers two or more Member States (even if the geographic scope of the initial cross-border inspection is limited to two countries, this can still lead to a larger-scale inquiry in different countries);

- ✓ The understanding that cross-border cases are more complex and sophisticated, and are used when violations cannot be proven by other means (such as clarifying via information exchange);
- ✓ When the motive for undeclared work is ingrained, so that indirect inspections to increase commitment to lawful behaviour will not work.

If partners decide that a cross-border inspection is the most efficient way to address labour mobility abuse, they need to specify if the inspection is of a general nature or intended to target a specific issue, determine the most appropriate type of CJIs and make the following preparations:

- ✓ Concerted inspections do not require a full understanding of the investigative powers of the partner organisation on-site. However, they do require a good understanding of the applicable law of the partner countries involved, the documents required as evidence, and the most appropriate investigative techniques or external assistance (by police, social partners, etc.). As concerted inspections may still require on-site visits (by the enforcement authorities in each country), both Member States should agree on the questions to be asked during interviews and the type of testimonial needed.
- ✓ Joint inspections at one or more company sites in one country: for this type of action, briefings between the teams and team leaders with all participating authorities on the tasks to be undertaken during the inspection are needed.
- ✓ Joint inspections at one or more locations in two or more Member States. Prosecution of complex fraudulent networks operating across the EU/EEA requires additional measures, such as coordination meetings and data collection from multiple sources.

EU enforcement agencies such as EUROJUST and EUROPOL can also help. In more complex labour mobility abuse cases, it is advisable to share activities and findings with other Member States.

2.5.2 Select appropriate timing

Cross-border inspections must be carefully timed, which also depends on whether they are proactive or reactive:

- ✓ Proactive visits can be regular (preventative inspections), follow-up to check compliance, or part of a strategic approach to target identified risk companies or sectors.
- ✓ Reactive visits usually follow an accident or complaint registered by workers, trade unions, non-governmental organisations or employers, an IMI request from another Member State, or media attention.

Both types of inspection can be announced or unannounced, according to the national practice. The timing of a cross-border inspection therefore depends on these factors, plus sector-specific characteristics.

Concerted inspections can have a stronger effect if carried out simultaneously in each Member State. This creates a surprise effect which may lead to more evidence being obtained.

2.5.3 Briefings

A briefing/ debriefing should be held before/after an inspection. It is imperative that all concerned units/persons, and where applicable ELA staff, are present in particular in the briefing before the inspection.

2.5.4 Coordination of the data exchange

The enforcement bodies should specify which person(s) will be responsible for the exchange of all relevant data, including, if relevant, the inspections unit of ELA and specify which communication channels will be used. Depending on the type of information, data transfer via IMI, other EU systems or encrypted digital communication may be necessary.

Basic principles for exchanging information

- ✓ If possible, use IMI to exchange information. This is a secure method for sharing data with multiple Member States. Otherwise, use other EU systems or encrypted digital communication, if necessary, depending on the type of information.
- ✓ Technical support and legal advice can be obtained from ELA, EUROJUST, EUROPOL and EUROFISC (e.g., EUROJUST National Liaison Officers can provide advice on national evidentiary requirements).

- ✓ Ensuring encryption and password-protected databases, computers, laptops, mobile phones.
- ✓ Using common templates (made available by ELA and/ or national authorities) to ensure national legislation and data protection rules are followed.
- ✓ Use guidelines: the European Data Protection Board (EDPB) guidelines and the data protection guidelines for IMI users.

Required information/documents/evidence to be obtained at the inspected entity(-ies) should be identified (non – exhaustive list) in the Inspection Plan:

- ✓ Timesheets, payslips,
- ✓ Written contracts,
- ✓ E-mails regarding the personnel,
- ✓ All incoming/outgoing invoices,
- ✓ Bank transactions,
- ✓ A1 certificates,
- ✓ Other information/documents/evidence.



How can ELA help?

By enhancing cooperation and exchange of information between Member States across the entire range of labour mobility legislation. NLOs provide a physical contact point between the EU level, the national administration(s) and the authorities of other Member States working with their peers from other countries.

Support for the identification of relevant contacts.

Promote the use of electronic tools and procedures for message exchange (such as IMI, EESSI).

Encourage the use of innovative approaches for cooperation and promote the use of electronic exchange mechanisms and databases.

2.5.5 Identify the anticipated measures

The involved authorities should identify anticipated measures to be taken by the team(s) during CJIs:

- ✓ Visiting the main inspected entity following standard procedures,
- ✓ Interview of the employer,
- ✓ Hearings for the employees,
- ✓ Visiting the accountant's office following standard procedures,
- ✓ Searching for relevant documents and making copies,
- ✓ Other measures.

2.5.6 Define methodology and further instructions

Interviewing the employees and other concerned persons (not limited to):

- ✓ The method by which the employees and other concerned persons (employer, site manager, representatives, etc.) should be interviewed, in accordance with national legislation, and without prejudice to the competences and collective rights of social partners, where applicable, under national law and/ or practice.
- ✓ Method to be used to explain to workers their rights and obligations and how they can benefit from cooperation.
- ✓ Standardised interview questionnaires for different types of interviewees (workers, foreman, manager, driver, client, etc.). Good knowledge of the questionnaires before the inspection is necessary.
- ✓ The possibility to use interpreters (burden of proof and following legislative requirements correctly) and/ or cultural mediators (to facilitate contact between inspectors and interviewed persons, in particular, when dealing with third country nationals) if necessary.
- ✓ Using mixed teams (i.e. labour, social security, tax inspectors and/or police etc.).

Collecting information (not limited to):

- ✓ What information needs to be given increased attention to, e.g. what people are doing, who they are working with, etc.
- ✓ Method for recording information. Where appropriate, and if allowed by national legislation, consider taking photo/video.
- ✓ Pay close attention to submitted identity documents to ensure identification of false documents.
- ✓ Note details of company vehicles (registration numbers, etc.).
- ✓ Specify any special evidence that should be collected (e.g. video evidence, original documents).
- ✓ If employees mention receiving social benefits in another Member State, contact Member State for verification.
- ✓ If the owner of an inspected entity is encountered during the inspections in another Member State, collect extensive information regarding owner.

Safety instructions (not limited to):

- ✓ The safety of the participants is always paramount.
- ✓ Checks should always be carried out in pairs, as a minimum.
- ✓ Participants should maintain eye contact as much as possible.
- ✓ Participants should never leave a colleague alone on company premises. Leaving the inspected location must always be done in consultation with the general coordinator.
- ✓ Indicate the inspectorate/institution that will provide safety equipment.

Logistic arrangements (not limited to):

- ✓ Method of transport to the inspection site.
- ✓ Identification of documents that all participating units will have.

- ✓ Tools to be provided to the inspection team: e.g. portable scanners, flash drives, photo / video cameras, etc.

Additional instructions or any other measures (not limited to):

- ✓ If paper documents are discovered, these, if applicable and legally possible, can/may/must be seized for making digital copies and a receipt must be issued to the inspected entity.
- ✓ Information that is important to obtain for future reference when interviewing administrators (e.g. names, e-mails and phone numbers)
- ✓ For legal questions, ELA legal team is available via [e-mail, telephone].

2.6 Case execution

2.6.1 Utilise available tools during CJIs

The inspectorates participating in the CJIs must agree on the type of information and the questions legally permitted and admissible as evidence in the participating countries (to be specified in section 4 of the Inspection Plan).



Language support during inspections (Ireland)

The Workplace Relations Commission in Ireland uses various tools to overcome language barriers during joint inspections.

Around 10% of Ireland's inspectorate's staff are foreign language labour inspectors. All regional offices have at least one foreign language inspector, all of whom are Eastern European as their compatriots form the greatest proportion of foreign workers. As well as English, they speak at least one other language.

The WRC's website contains the main guidelines, published in the language spoken by employees in high-risk sectors. Online translation tools are embedded in the home page and inspectors also use translation apps on their devices. The WRC uses multilingual information sheets and they are also developing multilingual questionnaires.

Source: The Workplace Relations Commission, Ireland

Subsequently, standardised tools for cross-border inspections may be developed, such as, bilingual or multilingual questionnaires, standard information documents, comparison of investigative powers and underlying national legislation, etc. These tools can be reused and fine-tuned, if necessary, during future inspections, according to the experience of the previous inspection.

Multi-lingual questionnaires and electronic devices to translate help address language barriers. Phones and tablets may also be used to access information such as company data in social security/tax/business registers, to verify data on a particular worker or company or to communicate with workers on-site, as illustrated in the following example.

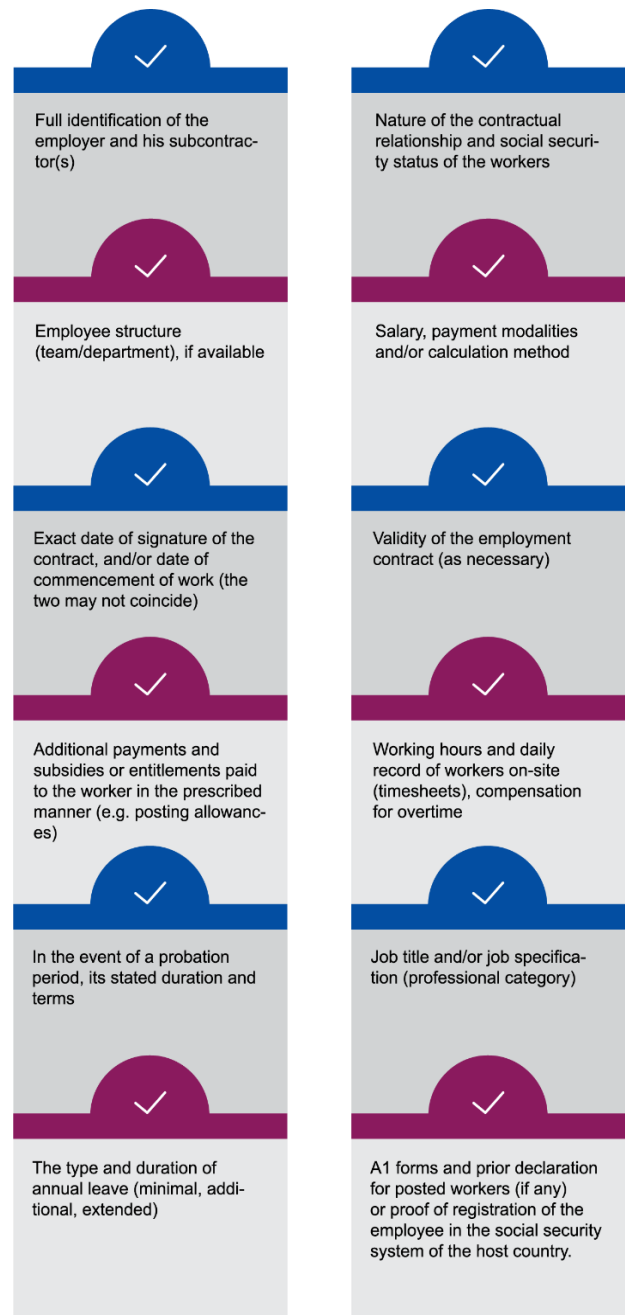
Multi-lingual questionnaires must follow national legislation, including data protection rules. During joint inspections, the foreign language inspectors seek the trust of workers by speaking their native language and by having an understanding of their cultural nuances. Visiting inspectors can also better identify and collect evidence on violations of the home-country legislation and report back on possible corrective measures.

Identifying the relationship between workers and employers is not always straightforward, as many workers are temporary, or are recruited by external parties. Communicating in the appropriate language can help identify the relevant employer.

Inspection check list⁷

The information to be verified depends on the scope of the investigation (for example, working hours are not relevant to a letterbox company). Generally, the information presented in Figure 6 is relevant for a cross border inspection.

Figure 6. Inspection check list



Full identification of the employer and his subcontractor(s)	Nature of the contractual relationship and social security status of the workers
Employee structure (team/department), if available	Salary, payment modalities and/or calculation method
Exact date of signature of the contract, and/or date of commencement of work (the two may not coincide)	Validity of the employment contract (as necessary)
Additional payments and subsidies or entitlements paid to the worker in the prescribed manner (e.g. posting allowances)	Working hours and daily record of workers on-site (timesheets), compensation for overtime
In the event of a probation period, its stated duration and terms	Job title and/or job specification (professional category)
The type and duration of annual leave (minimal, additional, extended)	A1 forms and prior declaration for posted workers (if any) or proof of registration of the employee in the social security system of the host country.

⁷ International Labour Organization, (2017). Conducting Labour Inspections on Constructions: A guide for labour inspectors. Geneva: International Labour Organization, available online ([link](#))

2.6.2 Verifying data can expand the scope of the case

Following an on-site visit, collected information is checked and analysed.

This process can uncover additional infringements or irregularities, such as tax evasion, health and safety violations, social benefit fraud, human trafficking, etc. These findings should be shared with other national or foreign authorities like the financial police, customs, the prosecution office or occupational safety and health authorities, which can then conduct their own checks and investigations or decide whether to join the cross-border inspection.

Data collected during a single site visit can be insufficient and result in the inspection being extended, requests for additional information or checks in another Member State (e.g. if the case involves letterbox companies registered at multiple locations).⁸

In the context of inspections and for the purposes of this document, the term “irregularity” means any infringement or suspected infringement of Union Law which is identified during an inspection and does not directly fall within the scope of the inspection.



How can ELA help?

By passing on all relevant information to other bodies when infringements or irregularities fall within their scope of competence.

By providing assistance with preparing a report if the joint action coordinator has a problem with filling in some parts, explaining how to measure KPIs, etc.

In the event that the Authority, during a CJI or in the course of any of its activities, becomes aware of suspected irregularities of Union Law, it may report those suspected irregularities, where appropriate, to the Member States concerned and to the Commission.

2.6.3 Use of collected data as evidence

Concerted and joint inspections can be an effective measure against complex fraud schemes, as they combine resources, information and knowledge of several enforcement bodies. Despite this, collaboration between enforcement bodies can be challenging due to incompatible legal frameworks between Member States and data sharing issues (for more details see [Annex 4](#)).

Once facts are clarified, evidence can be used in administrative or criminal procedures in accordance with national law and practice. However, the data collected during an inspection can't always be used in evidence, or as proof of violation. Enforcement bodies should therefore consider the evidence needed by a prosecutor or administrative authorities to proceed, as regards detailed reports and evidence. For that to happen, the national legislation of all Member States involved must align on the procedures for collecting information and its relevance as evidence in court.

A criminal law approach is relevant to large-scale and complex cases, involving different types of violation. Here, possible cooperation with the police and EUROPOL and EUROJUST (outlined in Step 2 of the planning phase above) is useful to proceed with a prosecution, or to decide on additional investigation.

Administrative or criminal procedures can result in financial penalties, public tenders being withdrawn, recovery of unpaid wages and social security contributions or withdrawal of fraudulent benefits. Depending on the severity of the case, the relevant authorities may decide to apply a temporary business closure penalty to prevent a company declaring insolvency to evade responsibility.



Important

ELA collected data concerning the role of inspectors and conditions for use of evidence from cross-border inspections in order to prepare an overview of national practices. For more information see [Annex 4](#).

⁸ European Platform tackling undeclared work (2019), Learning resource paper from the thematic review workshop on cross-border concerted and joint inspections Lisbon, Portugal, 28 February–1 March 2019

2.7 The joint action coordinator completes the follow-up report

An inspection is not complete until the joint inspection coordinator has completed the Post Inspection Report ([Annex 3](#)). The authority of a Member State that carries out a concerted or joint inspection shall report to the Authority on the outcome of the inspection in that Member State and on the overall operational running of the concerted or joint inspection within six months of the end of the inspection.

2.7.1 Monitor and evaluate the results of CJIs

Cross-border inspections are evaluated to check if they have met the pre-set inspection targets and to identify any unforeseen impact from the action.

In order for the responsible bodies to collect information on an ongoing basis on progress towards the objectives and to report in accordance with the ELA Regulation, a set of target quantitative and qualitative indicators have been developed and are mentioned in the Post Inspection Report.

The quantitative aspect focuses on statistics and includes structured data (numerical) that can be plugged into a spreadsheet and analysed using statistical methods.

The qualitative aspect is exploratory, focuses on insights and covers unstructured information that is summarised and interpreted subjectively, as opposed to mathematically.

As stated above, the joint action coordinator is required to complete the Post Inspection Report, which will also evaluate the KPIs quantitatively and qualitatively.

2.8 Member States and ELA identify gaps and potential future actions

Based on KPIs evaluated in the Post inspection report, Member States and ELA identify gaps and potential future actions - critical reflection and potential improvement of processes for future inspections.

Effective evaluation does more than collect, analyse, and provide data. It makes it possible to collect and use information, to learn continually, to build on the experience to improve tools and procedures, as well as to enhance the efficiency of the inspections.

2.9 Member States and ELA finalize case and plan potential follow-up

Member States and ELA finalize case and plan potential follow-up - identify necessity for follow-up to inspections based on the findings. If a follow-up inspection requires ELA coordination and support, a new agreement should be signed.

2.9.1 Communicating key findings

In addition to communicating with enforcement bodies outlined in the planning phase, internal and external communication can maximise the impact of cross-border inspections:

- ☒ **Externally**, to inform other authorities, including those in other Member States, in order to:
 - Enable expansion of the case and the benefits of its findings,
 - Enhance understanding of complex cases operating in several countries,
 - Improve measures by countering or preventing similar fraud schemes, and sharing lessons learnt.
- ☒ **Internally**, to share results and lessons learnt with colleagues and inspire a cross-border working culture.

Sharing results widely with the public can also increase the impact of an inspection. Examples of the methods used by labour authorities for sharing results and learning from past inspections to improve their future work are presented in the text box.

Methods for sharing information:

- ☒ Press releases,
- ☒ Social media,
- ☒ Leaflets,
- ☒ Workshops for sharing experiences,
- ☒ Common learning online platforms and forums,
- ☒ Possible creation of an EU-wide database containing inspection case summaries.



How can ELA help?

By promoting the exchange and dissemination of experience and good practices, including examples of cooperation between the relevant national authorities.

By organizing common learning (on-line) platforms and forums.

By maintaining a knowledge database with key findings and lessons learnt from all cross-border inspections.



Examples of follow-up communication

Information sharing

Greek and Belgian authorities disseminate findings from joint inspections to stakeholders, including the administrations of the labour inspectorate and cooperating institutions, business associations and trade unions. Within the Benelux framework, the Netherlands and Belgium have developed strong interpersonal connections, leading to regular sharing of results, for the prevention and risk assessment. They also share results of inspections in press releases to help prevent future undeclared work.

Use of debriefing and liaison sheets

In France, a debriefing is organised following every joint inspection, using exchange of information and liaison sheets.

Logging the inspection data into an online system

In Spain, information on the joint inspections is registered in the INTEGRA system (the Labour and Social Security Inspectorate database) by the inspectors involved. Findings are disseminated to the labour inspectorates.

Source: Survey among Platform members, February 2019. Presentation at the thematic review workshop held in Portugal on 28 February 2019–1 March 2019; European Platform tackling undeclared work. Follow-up visit on cross-border concerted and joint inspections, The Hague, The Netherlands, 3 July 2019.

2.9.2 Encourage learning

Inspection results can offer insight into emerging fraud schemes and fine-tune risk assessment systems by creating red flags or risk indicators and highlighting useful information to be collected during future cross-border inspections.

Results can also be used to revise trainings and manuals, develop good practices for sharing success stories and improve templates (agreements, reports, on-site questionnaires).



How can ELA help?

By providing mutual learning and training activities tailored to a national inspectorate's staff participating in cross-border activities to strengthen the capacity of national authorities on labour mobility and social security coordination and improve consistency in the application of Union law.

By developing sectoral and cross-sectoral training programmes, including for enforcement bodies, and dedicated training material, including via on-line learning methods.

By updating guidelines, templates (agreements, reports, on-site questionnaires) according to the best experience of the inspection.

2.9.3 Prevent future issues as regards labour mobility abuse

Where cross-border inspections uncover widespread problems in the labour market, inspection results can also be used to develop national or EU-wide awareness raising campaigns to tackle them. Such awareness-raising campaigns include campaigns to inform individuals and employers, especially SMEs, of their rights and obligations and the opportunities available to them.

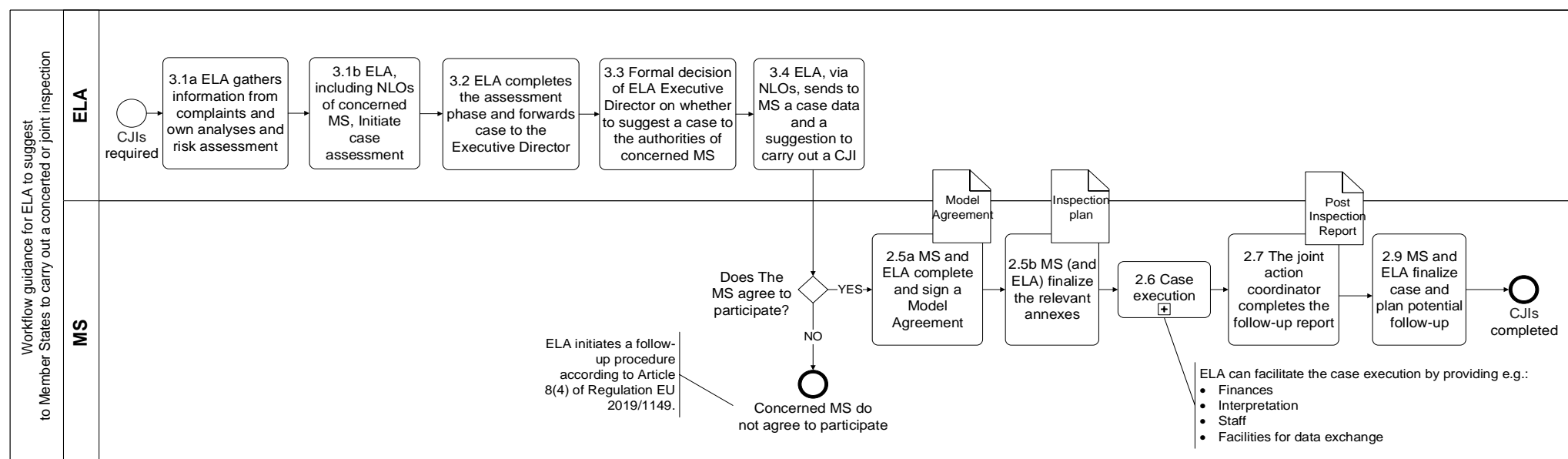
Risk assessment and analyses regarding labour mobility and social security coordination across the Union can also be an effective tool. ELA assesses risk in cooperation with the Member States and, where appropriate, the social partners. The risk assessment and analytical work address topics, such as labour market imbalances, sector-specific challenges and recurring problems; ELA may also carry out focused in-depth analyses and studies to investigate specific issues. When carrying out its risk assessment and analytical work, ELA must, to the extent possible, use relevant and current statistical data available from existing surveys, and ensure complementarity with, and draw on the expertise of other Union agencies or services and of national authorities, agencies or services, regarding fraud, exploitation, discrimination, skills forecasting and health and safety at work.

3. Workflow guidance for ELA to initiate a CJIs

According to Article 8(1) of the ELA Regulation, the Authority may on its own initiative propose to the authorities of the Member States concerned that they undertake a concerted or joint inspection (CJI). The workflow guidance for ELA (see Figure 7) defines and offers practical steps on how to propose the initiation of CJIs to the

concerned Member States. This part of the guidelines describes steps 1 to 5 in detail, as the other activities, starting with the signing of the Model agreement, are the same as the activities described in section 2.

Figure 7. Workflow guidance for ELA to initiate a CJIs



*The numbering of the individual steps in the workflow guidance is in accordance with the detailed description in other sections of this document. Steps 3.1 to 3.4 are further specified in Chapter 2. Steps 2.5 to 2.9 are further specified in Chapter 3, as they are identical regardless of whether the initiator of the CJI is a Member State or ELA.

Explanatory Notes



3.1 ELA gathers information from complaints and own analyses and risk assessment

An inspection should be initiated as a result of serious complaints, reoccurring cross-border issues or risk assessment outcomes (Figure 8).

Risk assessment enables more efficient identification, analysis and evaluation of cases related to labour mobility issues. Risks can be categorised in line with specific economic sectors (e.g. agriculture, transport, construction, HoReCa), types of companies (e.g. letterbox companies, temporary work agencies) or groups of workers (e.g. posted workers, recruiters, frontier workers, long-term residents).

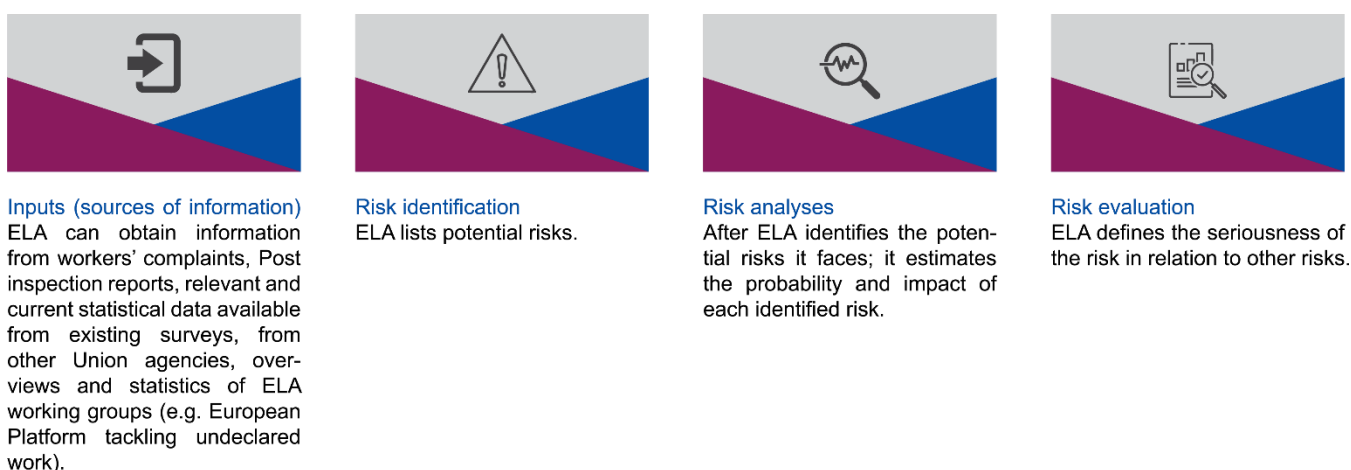
ELA, together with NLOs of concerned Member States, collects all available information, and on the basis of the Case description template ([Annex 1](#)), prepares an internal document summarizing all the important information obtained.

EUROPOL, EUROJUST), including, if relevant, social partners. ELA will identify and specify why they should be involved and which actions they should take.

When an inspection is carried out with the participation of other stakeholders, it is essential that all stakeholders are involved in the planning process. The objectives of the inspection, the role of each stakeholder, the methodologies used, the person(s) taking the lead and the way in which the information will be shared and reported must be clear to each stakeholder.

Police and prosecutors can support cross-border inspections in high-risk sectors or complex fraud and labour exploitation cases by closing workplaces, using alternative investigation techniques (e.g. phone tapping/ house search) and by guaranteeing the safety of inspectors.

Figure 8. Risk assessment system towards tackling labour mobility issues



ELA identifies relevant stakeholders

The increasing complexity of labour mobility abuse requires more complex cross-border inspections in two or more Member States. It allows the investigation of cases along the entire supply chain, including the operations of a number of companies/sub-contractors located in different countries. Inspections require good understanding of the law in the partner countries involved, the documents required as evidence and the most appropriate investigative techniques or external assistance (by police, social partners, etc.). Therefore, in some complex cases, it is necessary to involve other stakeholders - other Member States, national or international bodies (such as EU-OSHA,

Social partners (employer associations and trade unions) can help highlight labour law irregularities, or fraud schemes by labour market analysis and local information on working conditions and subcontractors. For example, in some countries, social partners check compliance with collective agreements; information that can complement risk analysis or inspection activities. Social partners can also help prepare cross-border inspections, supporting with expertise on assessing labour, health and safety standards. As in national inspections, social partners may also participate in cross-border inspections to support inspectors with their knowledge of the sector and specific labour mobility issues. However, as with the status of foreign inspectors, the status of a social partner

representative may also encounter legal barriers. For more information see examples of cooperation with partners.⁹

3.2 ELA completes the assessment and forwards case to the Executive Director

Based on the obtained information, ELA assess the relevance of the case. The assessment of the case is based on a set of agreed criteria.

Developing criteria for ELA to assess the case are the same as in the point 2.4 of these guidelines. When ELA completes the assessment phase, the case is submitted to the Executive Director.

3.3 Formal decision of ELA Executive Director on whether to suggest a case to the authorities of concerned Member States

Based on the assessment phase and evaluation of the case according to the criteria defined above, ELA Executive Director decides whether to suggest a case to the authorities of concerned Member States.

Concerted and joint inspections shall be subject to the agreement of the Member States concerned.

3.4 ELA, via NLOs, sends to Member State case data and a suggestion to carry out a CJI

ELA, via NLOs, sends case data (letter providing most available information as describe in the Case description template) and a proposal to carry out a CJI to Member State.

Two outcomes are possible:

- ✓ Concerned Member State agree to participate and proceeds to sign a Model Agreement with ELA.
- ✓ Concerned Member State do not agree to participate.

In the event that one or more Member States decides not to participate in a concerted or joint inspection, the

national authorities of the other Member States shall only undertake such an inspection in the participating Member States. Member States that decide not to participate shall keep information about such an inspection confidential.

According to Article 8(4) of the ELA Regulation, the Authority shall establish and adopt the modalities to ensure appropriate follow-up where a Member State decides not to participate in a concerted or joint inspection. In such a case:

- ✓ The Member State concerned shall inform the Authority and the other Member States concerned in writing, including by electronic means, without undue delay of the reasons for its decision and about the measures it plans to take to resolve the case (specifying concrete actions and period), if any.
- ✓ Once known, the concerned Member State shall inform the Authority and the other Member States about the outcomes of the measures they took
- ✓ The Authority may suggest that a Member State which did not participate in a concerted or joint inspection, undertake its own inspection on a voluntary basis.

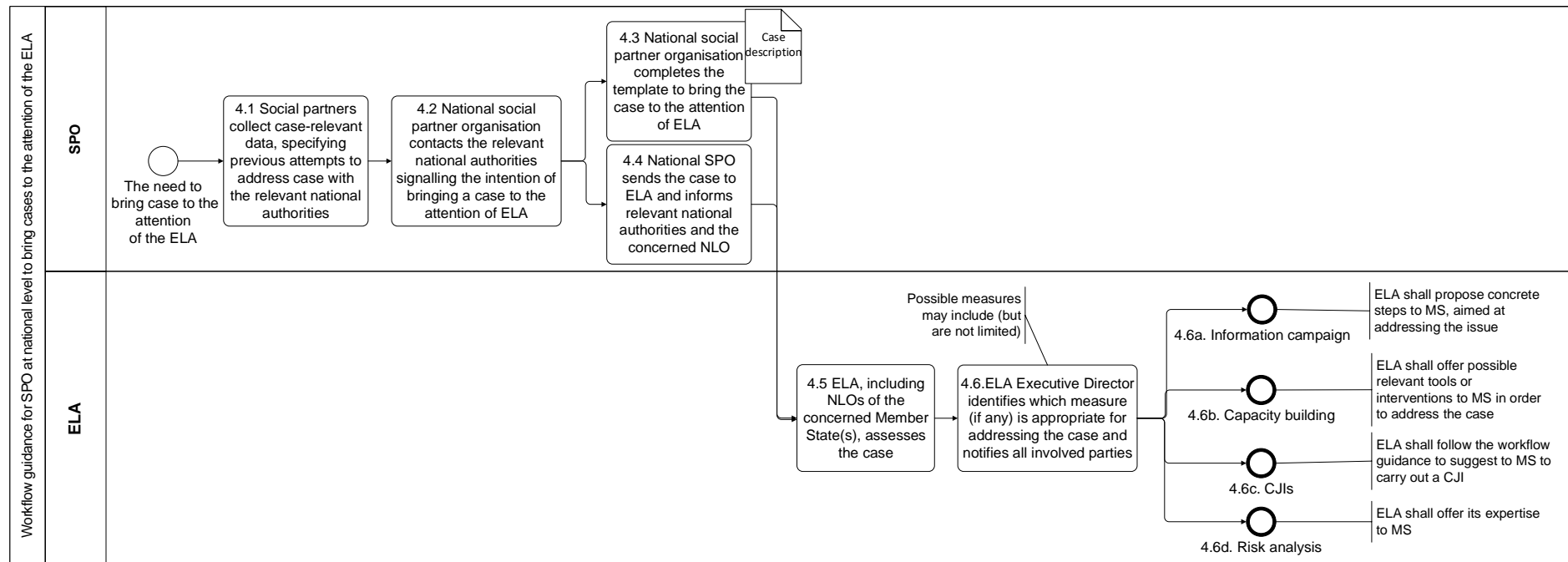
⁹ Source: European Platform tackling undeclared work. Thematic review workshop on CJIs, Lisbon, Portugal, 28 February –1 March 2019.

4. Workflow guidance for SPO at national level to bring cases to the attention of ELA

According to Article 8(1) of the ELA Regulation, social partner organisations at national level may bring cases to the attention of the Authority. The

workflow guidance for SPO (see Figure 9) defines and offers practical steps on how to bring cases to the attention of ELA and assess these cases.

Figure 9. Workflow guidance for SPO at the national level to bring cases to the attention of ELA



* The numbering of the individual steps in the workflow guidance is in accordance with the detailed description below.

Explanatory Notes



4.1 Social partners collect case-relevant data, specifying previous attempts to address case with the relevant national authorities

Social partner organizations at national level (employer associations and trade unions) can counter the potential labour mobility issues by bringing a case to the attention to ELA as a result of serious complaints, reoccurring cross-border issues or risk assessment outcomes.

SPO collect case-relevant data, specifying previous attempts and provide information and experience regarding labour mobility issues to ELA.

SPO can help highlight labour law irregularities, or fraud schemes by labour market analysis and local information on working conditions and subcontractors. For example, in some countries, social partners check compliance with collective agreements; information that can complement risk analysis or inspection activities.

The case should address:

- ✓ Non-compliance with applicable European and national rules on the free movement of workers, and/or,
- ✓ Non-compliance with the applicable European and national rules on the free movement of services (posting of workers).



Examples of actions by SPO

The most common activities are **joint initiatives** which build on already existing bargaining arrangements. In Denmark, the Netherlands and Italy, the social partners jointly agreed on establishing systems for monitoring the application of collective agreements (either in the temporary work agency sector or agriculture).

In some countries (for example, Slovenia and the Netherlands), there is **cooperation between trade unions and labour inspectorates**.

Some trade unions have established **systems for handling complaints** (particularly from migrant workers) and/or for monitoring abusive behaviour of employers in high-risk sectors. This was reported in Slovenia by the Association of Free Trade Unions (ZSSS), in Cyprus by the Pancyprian Federation of Labour (PEO) and in Italy by the Italian Confederation of Trade Unions (CISL). In the Netherlands, affiliates of the Dutch Federation of Trade Unions (FNV) have established complaint desks to report on illegal practices. These may relate to breaches of collective agreements and other illicit activities, as well as allegations of trafficking.

Other forms of SPO involvement are information or **awareness-raising campaigns**, such as that reported by the German Confederation of Trade Unions (DGB). The campaign is coordinated by the Work and Life Association (Arbeit und Leben e.V.) in Berlin and supported by the International Labour Organization (ILO) and the International Organisation for Migration (IOM).

The example from the Czech Republic illustrates how **dialogue, joint initiatives and campaigns** by the government, social partners and NGOs can result in an integrated approach based on tripartite cooperation. The Czech Republic adopted regulations and policies which were developed in cooperation with the social partners and NGOs. To ensure effective monitoring, regular training of personnel from relevant public authorities is provided and the number of labour inspections has increased. Social partners adopted general and company-level agreements, while employers are also considering developing a blacklist of non-compliant labour market intermediaries to raise awareness and fight unfair competition.

Source: Eurofound, Regulation of labour market intermediaries and the role of social partners in preventing trafficking of labour

4.2 National social partner organisation contacts the relevant national authorities signalling the intention of bringing a case to the attention of ELA

National social partner organisation summarizes all the important information obtained in the first step and distribute it to the relevant national authorities, signalling the intention to bring a case to the attention of ELA. SPO discusses with the national authorities about the concerns and their impacts arising from the information obtained related to labour law irregularities, or fraud schemes by labour market analysis, local information on working conditions and subcontractors and so on.

The outcome of the discussions may be, among others, as follows:

- ✓ SPO and the relevant national authorities assess the need for an action. In case a cross-border inspection is envisaged, the Member State may proceed in accordance with the Workflow guidance set out in Section 2.
- ✓ In case SPO and the relevant national authorities do not agree on the need for an action or on the type of an action or national authorities do not act upon the request of the SPO, the SPO may bring the case to the attention of ELA.

4.3 National social partner organisation completes the template to bring the case to the attention of ELA

National social partner organisation completes the template Case description ([Annex 1](#)) to bring the case to the attention of ELA (to the extent it has the necessary information). For more information on filling in the Case description, see section 2.2 of these guidelines.

4.4 National social partner organisation sends the case to ELA and informs relevant national authorities and the concerned NLO

SPO sends the completed Case description to ELA. It must also provide this information to the relevant national authorities and NLOs.

4.5 ELA, including NLOs of the concerned Member State(s), assesses the case

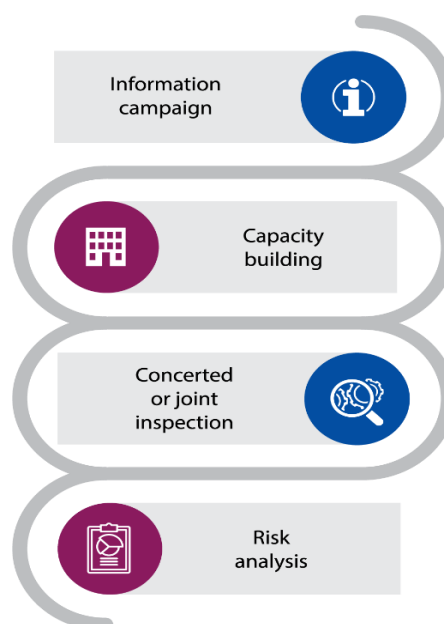
ELA, including NLOs of the concerted Member States assess the case based on a set of agreed criteria as soon as possible, but not later than in 14 days. ELA prioritizes the assessment of urgent cases and may request additional information from SPO to facilitate the assessment. Urgent cases will be given priority, but the evaluation criteria will still apply.

Developing criteria for ELA to assess the case are the same as in the point 2.4 of these guidelines.

4.6 ELA Executive Director identifies which measure (if any) is appropriate for addressing the case and notifies all involved parties

On the basis of the above assessment, ELA Executive Director identifies which measure (if any) is appropriate for addressing the case and notifies all involved parties, motivating the decision. Possible measures include (but are not limited to) information campaign, capacity building, CJIs, or risk analysis (see Figure 10). In case of suspected irregularities that do not fall directly under the scope of ELA, the Authority may report them to relevant stakeholders (section 2.6.2).

Figure 10. Measures for addressing the case



4.6.1 Information campaign

Awareness-raising campaigns, including campaigns to inform individuals and employers, especially SMEs, of their rights and obligations and the opportunities available to them. ELA shall propose concrete steps to Member State, aimed at addressing the issue, where relevant involving social partners.

4.6.2 Capacity building

ELA offers relevant tools or interventions to Member States to address the case through the following activities:

- ✓ In cooperation with national authorities and, where appropriate, the social partners, develop common non-binding guidelines for use by Member States and the social partners, including guidance for inspections in cases with a cross-border dimension, as well as shared definitions and common concepts, building on relevant work at national and Union level.
- ✓ Promote and support mutual assistance, either in the form of peer-to-peer or group activities, as well as staff exchanges and secondment schemes between national authorities.
- ✓ Promote the exchange and dissemination of experiences and good practices, including examples of cooperation between the relevant national authorities.
- ✓ Develop sectoral and cross-sectoral training programmes, including for labour inspectorates, and dedicated training material, including through online learning methods.

4.6.3 Concerted or joint inspection

ELA decides to initiate procedures under the Workflow guidance to propose to Member States to carry out a CJI. In this case, ELA shall proceed in accordance with the Workflow guidance set out in Section 3. Social partners can be involved in the execution of an inspection in accordance with national law and practice. ELA ensures that social partner organizations are informed about the progress and outcomes of the case.

4.6.4 Risk analysis

ELA offers its expertise to Member States to carry out a risk assessment/ analysis. Under the Regulation, ELA, in cooperation with Member States and, where appropriate, the social partners, assesses risks and carries out analyses regarding labour mobility and social security coordination across the Union. The risk assessment and analytical work addresses topics such as labour market imbalances, sector-specific challenges and recurring problems; ELA may also carry out focused in-depth analyses and studies to investigate specific issues. In carrying out its risk assessment and analytical work, ELA, to the extent possible, uses relevant and current statistical data available from existing surveys, and ensures complementarity with, and draws on the expertise of Union agencies or services and of national authorities, agencies or services, including in the areas of fraud, exploitation, discrimination, skills forecasting and health and safety at work.



How can ELA help?

Offering technical, administrative, financial or other support for an information campaign to address the issue.

Annex 1 Case description

CASE DESCRIPTION

This inspection shall be carried out in accordance with the law or practice of the Member State where the inspection takes place. This Agreement shall not affect any existing bilateral/multilateral agreements nor memoranda of understanding concluded by the participating Member States. The parties to this Agreement shall only complete those parts that bare relevance for the case at hand.

Subject:

Reference number:

1. Background on the case

Please provide a general description of the initial complaint or information. Briefly list all relevant information about the case and evidence already available, for example via preliminary research or joint risk assessment, investigations already carried out, including identified infringements, and provide information about actions already taken to tackle the problem at national or EU level, the results of those actions and the involvement of other Member States or stakeholders (if applicable).

2. Sector and entity(-ies) to be inspected in each Member State

Please specify the sector and, if possible, at this stage, the name of the company(-ies) to be targeted.

3. National coordinator(s) of the inspection

Please provide the contact details of the entity and person in charge of the national coordination of the proposed concerted/joint inspection for the requesting Member State and, if possible, for the other Member States concerned.

4. Other stakeholders and number of participating persons

Please specify all other involved national or international organisations including, if relevant, social partner organisations.

5. Number of companies and mobile workers concerned by the inspection

Please specify the estimated number of companies and mobile workers (including posted, self-employed, other status (e.g. company owner, volunteer)) directly concerned by the case so that ELA can assess the impact of the possible infringements on workers and/or on the labour market.

6. Estimated costs to be paid by ELA and other support

Please provide details on the support requested to ELA for the inspection, including the roughly estimated costs involved (transport, accommodation, interpretation, legal advice, IT-tools, etc.).

Annex 2 Model Agreement

MODEL AGREEMENT **XX/2020** ON CROSS-BORDER CONCERTED AND JOINT INSPECTIONS

This inspection shall be carried out in accordance with the law or practice of the Member State where the inspection takes place. This Agreement shall not affect any existing bilateral/multilateral agreements nor memoranda of understanding concluded by the participating Member States. This Agreement shall not entail any legal obligation for the signing parties, other than the ones described in Regulation (EU) 2019/1149. The parties to this Agreement shall only complete those parts that bare relevance for the case at hand.

1. Parties to the agreement

Member State A

Name of the coordinating national enforcement body:

Member State B*

Name of the coordinating national enforcement body:

European Labour Authority

2. Coordinators

General coordinator

Name of the general coordinator of the concerted/joint inspection:

[The general coordinator will be in charge of organisational and procedural matters, including drafting reports. The appointed person should be, in principle, one of the national coordinators or ELA responsible officer.]

Member State A

Name of the responsible national coordinator:

Member State B*

Name of the responsible national coordinator:

European Labour Authority

Name of the responsible ELA Officer:

Name of National Liaison Officer for [Member State A]:

Name of National Liaison Officer for [Member State B*]:

3. Role of visiting officials from other Member States and ELA

(Art. 9(3) and 9(5) of the founding Regulation)

* If applicable, add Member States C, D, etc.

4. Format and time-frame of the inspection

Please specify if the inspection is joint or concerted and if it is of general nature or targeting a specific issue

The parties agree to perform a:

- ☐ **concerted** general inspection
- ☐ **concerted** targeted inspection
- ☐ **joint** general inspection
- ☐ **joint** targeted inspection

for [indicate specific period], to take place in the following Member State(s):

5. Scope of the concerted/joint inspection

For the definitions of the terminology used, you can consult for reference the [Glossary of Terms](#) developed within the European Platform tackling undeclared work.

The concerted/joint inspection aims to tackle:

- ☐ the non-compliance with the applicable European and national rules on the free movement of workers, and/or
- ☐ the non-compliance with the applicable European and national rules on the free movement of services (posting of workers)

Specify the economic sector targeted:

Specify the short-term and long-term targets of this inspection:

[Short-term targets can be penalties recovered, recovered contributions, business closure, protection of mobile workers etc. Long-term targets can be a reduction of undeclared work in the specific sector.]

6. ELA coordination and support

Please specify the type of coordination or support agreed with ELA and, if relevant, quantify the indicative amount of the requested financial support:

[ELA can provide conceptual, logistical and technical support and, where appropriate, legal expertise, including translation and interpretation services.]

7. Other stakeholders

List any organisations that will be involved in the inspection and specify their role.

8. Inspection plan

Parties to this Agreement will draw up a detailed plan of this inspection in accordance with the template set out in the Annex.

Signatures

Member State A	Member State B*	European Labour Authority
Name: Function: Institution: Date:	Name: Function: Institution: Date:	Name: Function: Date:

Annex 2a Inspection Plan

INSPECTION PLAN

This Inspection Plan document is always applicable when ELA staff participation is envisaged in a concerted or joint inspection (CJI). When no ELA staff participation is envisaged, the use of this Inspection Plan document as guidance for the participants is encouraged and it can be used on a voluntary basis. This document is adaptable to the laws and practices of Member States participating in CJIs, and it provides detailed examples on how to proceed during a CJI. Parts of this document can be duplicated as needed, depending on the number of Member States taking part in a CJI (for Member State B, C, D, etc.)

Subject:

Reference number:

Briefing & debriefing

General agreement of the briefing & debriefing method

Example: Before and following the inspection, a (de)briefing will take place at [location and time]. It is imperative that all concerned units/persons, and when applicable ELA staff, are present for preparing and evaluating the action, exchanging feedback and determining potential subsequent actions needed. In order to inform the participants to the concerted or joint inspection the goals should be explained:

- obtaining administrative documents
- interviewing of the employees and managers

Briefing MS A:

Team A1

Address:
Time of meeting:

Team A2

Address:
Time of meeting:

Briefing MS B*:

Team B1

Address:
Time of meeting:

Team B2

Address:
Time of meeting:

Time of entry on inspection site: (dd/mm/yyyy hh:mm)

Inspected entity: (name and contact details)

Owner/management: (name and contact details)

Sub-contractors/related companies: (name and contact details)

Other parties to be inspected: (name and contact details)

Coordination of the data exchange

Please specify which person(s) will be responsible for the exchange of all relevant data, including, if relevant, the coordination unit of ELA and specify which communication channels will be used (e.g. IMI). Provide contact details, such as a name, phone number, and e-mail address.

* If applicable, add Member States C, D etc.

Practical agreements in Member State A

1. Composition of team(s) in Member State A:

Team 1: *e.g. Team responsible for investigating the main inspected entity, (sub)contractors,*

Meeting place:

Meeting time:

Team coordinator: *[name and contact details]*

Name	Phone number	Role
		e.g. Chief of police
		e.g. Chief of labour inspections
		e.g. Labour inspector
		e.g. ELA Staff

2. Describe the anticipated measures to be taken by team(s) in Member State A:

e.g.

- visiting the main inspected entity following the usual procedures
- interview of the employer
- hearings of the employees.
- visiting the accountant's office following the usual procedures
- searching for relevant documents and making copies

3. Desired information / documents / evidence to be obtained at the inspected entity(-ies) from [dd/mm/yyyy] onwards:

e.g.

- Timesheets, payslips
- Written contracts,
- E-mails regarding the personnel,
- All incoming/outgoing invoices,
- Bank transactions,
- A1 certificates

4. Methodology and further instructions:

a) Interviewing the employees and other concerned persons:

- Describe the way the employees and other concerned persons (employer, site manager, representatives...) should be interviewed, in accordance with the national legislation, and without prejudice to the competences and collective rights of social partners, where applicable, under national law and/ or practice.
- Underline the need to explain to workers their rights and obligations, and how can they benefit from cooperation).
- Use standardised interview questionnaires for different types of interviewees (workers, foreman, manager, driver, client...).
- Familiarise with the questionnaires before the inspection.

- Use interpreters (burden of proof and following correctly the legislative requirements) and/or cultural mediators (to facilitate contacts between inspectors and interviewed persons, in particular, when dealing with third country nationals) if necessary.
- Make use of mixed teams.

b) Collecting information

- When entering the workplace, pay close attention to what people are doing, who they are working with, what work clothes they wear, etc. Be sure to make a note somewhere because the visual observations are important. Where appropriate and if allowed by national legislation consider taking pictures/ video.
- Pay due attention to the submitted identity documents. It is possible that false documents are submitted.
- Note the details of the company vehicles (registration number, etc.).
- If applicable, specify any special type of evidence that should be gathered (e.g. video evidence, original documents).

c) Requests for the colleagues in Member State B*:

- In case employees mention receiving social benefits in Member State B, please contact [name] for verification.
- In case the owner(s) of inspected entity(ies) is encountered during the inspections in Member State B, please gather extensive information regarding [xxxxx].

d) Safety instructions:

- The safety of the participants is always paramount.
- Checks are always carried out in couples of at least two people.
- Participants keep as much eye contact as possible.
- Participants never leave a colleague alone in the company. Leaving the inspected location must always be done in consultation with the general coordinator.
- Indicate the inspectorate/institution that will provide the safety equipment.

e) Logistical arrangements:

- Transport to the inspection location will be arranged by [name] and shall depart from [location] at [time].
- All participating units will carry identification documents
- The following tools will be provided to the inspection teams: [portable scanners, flash drives, photo/video cameras etc.]

f) Further instructions or any other business:

- In case paper documents are discovered, these shall be seized for making digital copies and a receipt note shall be issued to the inspected entity.
- When interviewing administrators, it is important to obtain their names, e-mails and telephone numbers for future reference.
- In case of legal questions, ELA legal team shall be available via [e-mail, telephone].

* If applicable, add Member States C, D etc.

Annex 3 Post inspection report

DRAFT POST-INSPECTION REPORT XX/2020 FOR CONCERTED AND JOINT INSPECTIONS

This Post-inspection report shall be drafted in accordance with the law or practice of the Member State where the inspection takes place. The Post-inspection report shall only be completed in the parts that bare relevance for the case at hand.

According to the law or practices of the Member States in which the inspection takes place some findings of the inspectorates can be subject to communication to social partner organisations. According to the law or practices of the Member States in which the inspection takes place some findings can be subject to non-communication to the other parties (e.g. criminal cases).

Subject:

Reference number:

1. Description of the inspection (Content can be copy/pasted from the inspection Agreement document if still up to date)

Describe which institutions/enforcement bodies/social partner organisations in each Member State were directly involved and mention the respective national coordinators.

Member State A:

Member State B*:

Other stakeholders:

Date of the inspection:

Describe the case before the inspection:

* If applicable, add Member States C, D etc.

Specify the purpose of the concerted or joint inspection (general, targeted, follow-up) and issues inspected:					
Describe the process of the concerted or joint inspection (number of people involved, investigation methods used, etc.):					
Specify the costs incurred during the inspection:					
2. Involvement of ELA and/or other stakeholders (Content can be copy/pasted from the inspection Agreement document if still up to date)					
When applicable, please describe any cooperation with the European Labour Authority:					
When applicable, please describe any cooperation with other organisations (e.g. Europol, Eurojust, social partners):					
3. Details of the entity(-ies) being inspected (Content can be copy/pasted from the inspection Agreement document if still up to date)					
<ul style="list-style-type: none"> Name(s): Legal status (company, partnership, etc.): Relation to other entities and companies (e.g. subsidiaries): Description of business(es)/economic sector(s): Number of mobile workers: Other relevant information about the entity(-ies): 					
4. Specify the total number of companies and mobile workers (including posted, self-employed, other status (e.g. company owner, volunteer)) concerned by the inspection	Companies	Mobile workers	Posted workers	Self-employed	Other status (e.g. company owner, volunteer)
5. Describe the results of the concerted or joint inspection. Where appropriate, indicate the number of companies and mobile workers (including posted, self-employed, other status (e.g. company owner, volunteer)) concerned by the infringement in respective areas					
Non-compliance with labour rights of EU mobile workers (e.g. underpayment/ non-payment of wages)					
Incorrect payment or non-payment of social security contributions and/or unlawfully obtained social benefits					

Cross-border undeclared work					
Non-genuine posting of workers					
Bogus self-employment					
Bogus, fraudulent or illegal temporary work agencies					
Letterbox companies and fictitious company constructions					
(Organised) illegal employment of third country nationals					
Trafficking of human beings and/or labour exploitation					
Other findings (including suspected irregularities in the application of Union law):					
Total number of companies/ mobile workers concerned by the above mentioned infringements	Companies	Mobile workers	Posted workers	Self-employed	Other status (e.g. company owner, volunteer)
6. Specify, if applicable, which other laws were breached based on which findings	<ul style="list-style-type: none"> • Tax law: • Company law: • Criminal law: • Immigration law: 				
7. Can the inspection teams use the data collected during the inspection as evidence?					
8. When applicable, provide additional information in case any special type of evidence is needed (video, certified copies, original documents, etc.)					

9. Please clarify who will lead any follow-up of the inspection	Member State A:	Member State B*:	ELA:
Criminal prosecution (<i>involvement of a public prosecutor</i>)			
Civil procedures via social partner organisations			
Administrative fine			
Recovery of social contributions			
Payment of wages			
Recovery of undue social benefits			
Tax contributions			
Other coercive measures (license withdrawal, public procurement, etc.)			
Conciliation or other out-of-court dispute resolution procedures			
Follow-up inspections (including with ELA support)			
Any other follow-up activities (such as liaising with or reporting to EU institutions and bodies, international organizations, third countries' authorities or other stakeholders)			
10. Did you communicate the results to other relevant authorities (in other Member States)?			
11. Should there be any further cross-border actions, e.g. preventative campaigns based on the above mentioned findings, including with ELA support? Please specify:			
12. What are the lessons learnt? What operational changes are necessary to update the inspection process?			

13. Key Performance Indicators ¹⁰					
Quantitative KPIs					
Number of penalties from cases (administrative, civil and/or criminal)					
Number of tax/social contribution recoveries and back payments from cases (administrative, civil and/or criminal)					
Number of administrative advices, warnings or ordinances etc. issued to companies					
Qualitative KPIs					
Availability and adequacy of relevant material and guidance for the execution of CJI	<input type="checkbox"/> Not at all available	<input type="checkbox"/> Slightly available	<input type="checkbox"/> Moderately available	<input type="checkbox"/> Very available	<input type="checkbox"/> Completely available
	<input type="checkbox"/> Not at all adequate	<input type="checkbox"/> Slightly adequate	<input type="checkbox"/> Moderately adequate	<input type="checkbox"/> Very adequate	<input type="checkbox"/> Completely adequate
Knowledge of EU legislation and/or national practices of other MS in the context of cross-border labour mobility law enforcement	<input type="checkbox"/> Very low	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High	<input type="checkbox"/> Very high
The level of communication and cooperation among CJIs participants	<input type="checkbox"/> Very low	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High	<input type="checkbox"/> Very high
Ease of the use of evidence in administrative or criminal proceedings resulting from CJIs	<input type="checkbox"/> Completely difficult	<input type="checkbox"/> Very difficult	<input type="checkbox"/> Moderately difficult	<input type="checkbox"/> Very easy	<input type="checkbox"/> Completely easy
Amount of human resource involved in CJI	<input type="checkbox"/> Completely insufficient	<input type="checkbox"/> Slightly insufficient	<input type="checkbox"/> Sufficient	<input type="checkbox"/> Very sufficient	<input type="checkbox"/> Completely sufficient

¹⁰ Fill in "N/A" (not available) for the KPIs that are not available at the time of preparing this report or cannot be reported to ELA

Perceived language barriers during CJI	<input type="checkbox"/> Very low	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High	<input type="checkbox"/> Very high
Qualitative assessment	<i>Please provide additional comments or suggestions about possible improvements regarding to your quality assessment.</i>				

Annex 4 Overview of the legal basis for CJIs in Member States

Research objective and scope

The main objective of this brief overview is to map the legal basis, if existent, of joint cross-border inspections at EU Member States level and answer the question if evidence gathered during these inspections in one Member State may be used in national court proceedings or administrative proceedings in another Member State and explain what limitations, if any, are present for the visiting inspector in the host country.

To this end the following research questions have been addressed by the study in cooperation with the Experts of the ELA Working Group on Inspections throughout the period of June – August 2020 (see tables below for more information):

- ✓ Is there a legal basis for joint cross-border labour inspections at EU Member State level?
- ✓ What are the competences of a visiting inspector during a cross-border joint inspection conducted in the respective EU Member State?
- ✓ May evidence gathered during these inspections in one Member State be used in national court or administrative proceedings in another Member State?

While the practice of cross-border inspections, whether it is a joint operation or a concerted one, is still not common we can conclude that the cooperation among the Member States is becoming more frequent. The Internal Market Information system (IMI system) plays a significant role in the secure exchange of information among the Member States and enables to use the evidence from foreign countries in the domestic administrative or court proceedings in most of the cases.

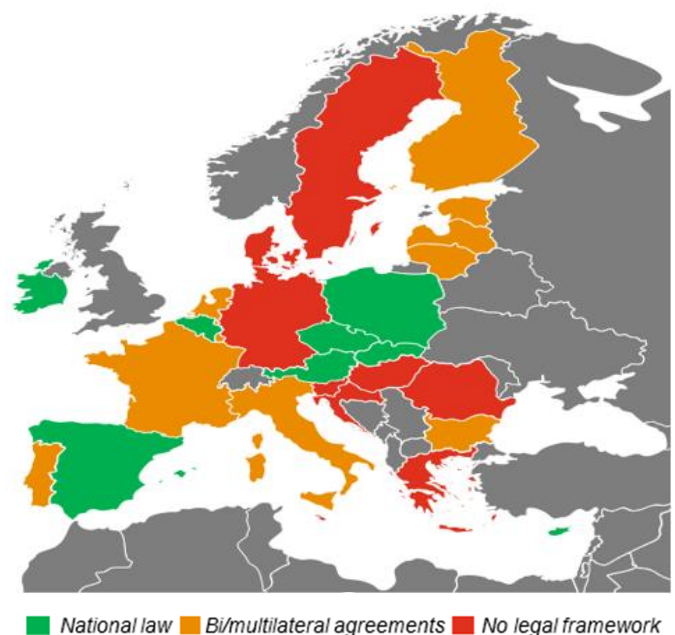
Unclear legal basis for cross-border inspections hinders more frequent cooperation

The brief research on the supporting legislative framework showed significant variance in the legal basis for cross-border cooperation (see Figure 11 Legal basis for cross-border joint inspections in Member States). While there are number of countries with legislative provisions that could be adapted for the CJI purposes, e.g. position of external expert during the inspection, specific provisions in legislation for cross border CJIs are rare. Nevertheless, countries where the legal basis is not present can implement cross-border inspections based on, for example, ad hoc temporary agreements.

While there is a possibility for cross-border cooperation in most of the Member States the unclear legal basis is hindering the cooperation to some extent, when inspectors or coordinators are not sure if they are allowed to perform a CJI under current legislation.

Overall, **8 Member States** have some form of a **national law** regulating possibilities of cross-border inspections (while not always specific provisions for this situation). **10 Member States** have concluded some **form of bilateral/multilateral agreements** for cross-border inspections but do not have any specific national law for such cooperation in place. **9 Member States** reported that they **do not have any legal framework on cross-border inspections**. In some countries a legal deed is not required to carry out a CJI - ad hoc agreements may be concluded without an existing specific legal basis.

Figure 11. Legal basis for cross-border joint inspections in MS



Note: In some countries, legal deed is not required to carry out a CJI; ad hoc agreements may be concluded without existing specific legal basis.

Source: Mapping of national legislation 2020, WG on Inspections

Visiting inspectors are allowed to be present as observers in most of the Member States

Comprehensive legal framework for cross-border cooperation helps Member States overcome the initial barriers and encourage the joint or concerted activities. The research shows that some provisions of the national legislation can usually be applied to allow for participation of a foreign inspector during the inspection in the role of an observer (see Figure 12 Role of the foreign inspector during the inspection).

In **25 Member States** a visiting inspector will have **limited competence** corresponding to an observer role or other specific competences.

In **2 Member States (Greece and Malta)** a visiting inspector will have **no competence at all**. In none of the Member States a visiting inspector will have full competence during a cross-border joint inspection, i.e. a competence matching the competence of a local inspector.

Figure 12. Role of the foreign inspector during the inspection



■ Full competence ■ Limited competence / observer ■ No competence

Source: Mapping of national legislation 2020, WG on Inspections

Evidence from other Member States can be used in court or administrative proceeding in most of the Member States

While the legal basis for cross-border cooperation is not explicit in the majority of Member States the evidence gathered through cooperation with other Member States can be usually used in court or administrative proceedings. The use of the IMI system is cited in most of the cases as the “go-to” supporting mechanism for cooperation or even requirement for admission of evidence in court or administrative proceedings.

With respect to use of **evidence gathered during an inspection conducted in another Member State before a court**, 23 Member States allow such use of the evidence (see Figure 13. The use of evidence from other Member States in domestic court proceedings). It is recommended to provide the evidence via the IMI system in most of the cases to ensure that it is admissible.

4 Member States responded that the use of such evidence before their courts may be problematic. For example, in Bulgaria there is conflicting jurisprudence on the subject of admissibility and in Romania admissibility depends on court decision in a given case.

Figure 13. The use of evidence from other MS in domestic court proceedings



■ Admissible ■ Can be used with limitations ■ Not allowed

Source: Mapping of national legislation 2020, WG on Inspections

With respect to use of evidence in **administrative proceedings**, 24 Member States allow such use of the evidence. (see Figure 14. The use of evidence from other Member States in domestic administrative proceedings). Again, it is recommended to provide the evidence via the IMI system in most of the cases to ensure proper processing and use in administrative proceedings. Only 2 Member States (Greece and Malta) have responded that evidence gathered during an inspection conducted in another Member State cannot be used in administrative proceedings in their Member State.

Figure 14. The use of evidence from other MS in domestic administrative proceedings



■ Admissible ■ Can be used with limitations ■ Not allowed

Source: Mapping of national legislation 2020, WG on Inspections

Is there a legal framework for cross-border joint inspections? (Detailed results)

Member State	YES – national law	YES – multilateral/ bilateral agreements	NO
Austria	Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG), Section 17 paragraph 1		
Belgium	Social Criminal Code (Art. 56 and Art. 57)	Yes, various bilateral/multilateral agreements are concluded (details not provided)	
Bulgaria		Bilateral agreements concluded with France, Germany, Poland and Norway.	
Croatia			No.
Cyprus	Law No 63(i) of 2017 which provides for posting of workers in the framework of provision of services and other relevant matters, Part II: Application of the Law provisions, article 17 and 18.		
Czech Republic	Act No. 255/2012 Coll. the Control Act (Section 6) provides for the possible participation of an inspector from another Member State during an inspection conducted in the Czech Republic.		
Denmark			No.
Estonia		Cooperation agreements with limited scope of the framework concluded with South-Finland, Baltic States and Norway, which allow taking joint actions. The cooperation agreement with Poland is more focused on the exchange of information.	
Finland		Bilateral agreement with Estonia.	
France		Agreements concluded with Germany, Belgium, Bulgaria, Luxembourg, Spain, Netherlands and Portugal. Agreement with Italy is being finalized (20 Oct 2020 data).	
Germany			No.
Greece			No.
Hungary			No.
Ireland	Section 35 of the Workplace Relations Act 2015 provides the basis for bilateral agreements to (a) furnish information and (b) provide such other assistance as will facilitate the performance of the functions of the other party.	Concluded agreements with the UK and Portugal.	
Italy		Agreements with France and Romania are being finalized (20 Oct 2020 data).	

Member State	YES – national law	YES – multilateral/ bilateral agreements	NO
Latvia		Cooperation agreement with Estonia and Lithuania that allows taking joint actions.	
Lithuania		Cooperation agreements with the Baltic States (Estonia and Latvia) and Norway that allow taking joint actions. The cooperation agreement with Poland is more focused on the exchange of information.	
Luxembourg		Treaty establishing the Benelux Union (intergovernmental cooperation between Belgium, the Netherlands and Luxembourg); bilateral agreement with France.	
Malta			No.
Netherlands		Yes, various bilateral/multilateral agreements are concluded (details not provided).	
Poland	Art. 22(3) of the Act of 13 April 2007 on the National Labour Inspectorate – in the scope covering observance of labour law, in particular rules and regulations of occupational safety and health, as well as provisions on legality of employment and other paid work. The said provision does not refer to inspections conducted by the Social Insurance Institution.	Agreement with Bulgaria, Denmark, Estonia, Norway and Slovakia. The National Labour Inspectorate has also concluded cooperation agreements with labour inspections from other countries of the European Economic Area, which, in principle, stipulate information exchange.	
Portugal		Portugal-Spain joint inspections and exchange of information on work accidents, minimum wages of posted workers, lodging conditions (Galicia – Braga), Bilateral agreements with France and Bulgaria on exchange on information	
Romania			No.
Slovakia	Act No. 125/2006 Coll. on the Labour Inspection (Article 7 (3)(q) and Article 15) provides for the possible participation of an inspector from another Member State during an inspection conducted in the Slovak Republic in the position of an invited external expert.	Agreement on bilateral cooperation and exchange of information with Poland.	
Slovenia			No.
Spain	Act 23/2015 regulating the system of Labour and Social Security Inspectorate	Concluded agreements in force with Poland, Portugal and France.	
Sweden			No.

What are the competences of a visiting inspector during a joint inspection conducted in your Member State? (Detailed results)

Member State	Full competence	Limited competence / observer	Other / Not allowed
Austria		The possibility to participate as an observer is restricted to inspection of minimum remuneration and compliance with administrative requirements to be met by posting companies.	
Belgium		The competences should be described in bilateral agreements but in practice no bilateral agreements specify the specific role of the inspector.	
Bulgaria		A visiting inspector may be present but only in the capacity of an observer and with the explicit consent of the employer (which is subject to the inspection).	
Croatia		Observer only.	
Cyprus		A visiting inspector may be present but only in the capacity of an observer.	
Czech Republic		A visiting inspector may participate in the capacity of an entity with a special status, the so called "invited person" if the inspector is authorized by such an invited person by the Czech inspection authority for the purposes of an inspection. The specific rights of the invited person are derived from the purpose of the inspection, in which he/she takes part, i.e. the invited person participates in those actions of the inspecting party, which correspond to the reason for his/her participation in the inspection.	
Denmark		A visiting inspector can be part of an inspection as an observer provided that the employer (owner) of the inspected company allow the presence of a visiting inspector.	
Estonia		Observer only.	
Finland		A visiting inspector may be present but only in the capacity of an observer.	
France		Observer only.	
Germany		A visiting inspector may be present but only in the capacity of an observer and with the explicit consent of the employer (which is subject to the inspection). In its role as an observer, the visiting inspector does not have competences at all.	
Greece			The legal framework for inspections establishes sole and exclusive inspection competences to the national labour inspection body. Existing legislation leaves no possibility for presence of other inspectors.
Hungary		Since there is no legal framework regulating cross-border joint inspections in Hungary, the competences are not set out in legal regulations, but a visiting inspector may potentially be present during a cross-border joint inspection as an observer.	
Ireland		Observer only.	
Italy		Observer only.	

Member State	Full competence	Limited competence / observer	Other / Not allowed
Latvia		Only observer, if the consent of the owner of the object to be inspected has been obtained.	
Lithuania		Observer only.	
Luxembourg		Observer only (no competence at all).	
Malta			Maltese law does not contemplate the possibility of visiting inspectors participating in inspections.
Netherlands		Foreign inspectors can accompany Dutch inspectors during an inspection, but they do not have any competence and they can be denied access to the premises by the employer (owner) of the inspected company.	
Poland		A visiting/foreign inspector may conduct an inspection only together with a local inspector, after being granted a personal authorization. Foreign labour inspectors may not commence any activities on their own. Their role in the inspection is of auxiliary nature to the primary role of the Polish inspectors. The presented competence does not refer to inspections conducted by the Social Insurance Institution.	
Portugal		Observer only.	
Romania		Observer only.	
Slovakia		Limited competences in comparison to a Slovak labour inspector, however, broader than observer only: a visiting inspector can have the role of an invited external expert based on a written authorisation of the labour inspectorate and may e.g. (i) enter premises accompanied by the Slovak labour inspector, (ii) perform control, tests, investigations and other activities, demand information and explanations regarding observation of certain provisions and obligations arising from collective agreements, (iii) demand presentation of documentation, records or other documents necessary for performance of labour inspection and demand copies thereof, (iv) take samples of materials and substances. Visiting inspector has these competences only within the ongoing labour inspection performed by a Slovak labour inspector.	
Slovenia		Inspectors from other Member States (or any other participants) may be present at the inspection, with a prior permission of an employer.	
Spain		On the basis of bilateral agreements, authorities of other Member States can take part in an inspection carried out in Spain, not only as observers but also taking part with limited competences.	
Sweden		Observer only.	

Can evidence gathered during an inspection conducted in another Member State be used as evidence before a court? (Detailed results)

Member State	YES	NO / Limitations
Austria	Yes.	
Belgium	Yes.	
Bulgaria		Conflicting jurisprudence on the subject of admissibility. In procedural law there are no explicit provisions made regarding the use and admissibility of such evidence in court.
Croatia	Evidence must be provided through the IMI system.	
Cyprus	Evidence must be provided through the IMI system.	
Czech Republic	In general, any evidence that can help clarify the subject matter of the case can be produced as evidence in court proceedings, provided that it was obtained lawfully. In administrative and criminal proceedings, evidence searched, obtained or performed in an unlawful manner may not be in principle used in proceedings before court.	
Denmark	Yes.	
Estonia	Evidence collected by the competent authority of a foreign state is also considered to be evidence when implementing liability under Working Conditions of Employees Posted to Estonia Act. In Estonia the fines are not dealt by court unless employers challenge the fine given by Labour Inspectorate.	
Finland	Documents from another Member States may be used in criminal proceedings in Finland. A Finnish competence authority may make a request to a competent authority of another Member State to provide or serve a document if permitted by the law of the Member State in question. The request shall be made in compliance with the procedure required by the Member State in question and what has been agreed between Finland and the Member State in question. The procedure of receiving documents from another Member State is usually conducted via IMI system but there is no legal requirement for this procedure for criminal investigation based on the Act on Posting Workers.	
France	Evidence must be provided through the IMI system.	
Germany		Data/information exchanged between the competent authorities of the Member States by means of mutual assistance (formal mutual assistance requests/ exchange of information without prior request (spontaneous exchange) in the administrative procedure.
Greece	With reservations: evidence may be used only formally translated and is under free evaluation of the national court.	
Hungary	Yes.	

Member State	YES	NO / Limitations
Ireland		An exception is provided for under Section 27 (7) of the Workplace Relations Act 2015 in relation to self-incriminating statements or admissions given pursuant to an inspector's powers to require an individual to provide additional information and answers questions.
Italy	It should be noted that evidence gathered by public officials (such as Italian inspectors) has a stronger value before a court. Moreover, when it comes to posting of workers cases, use of the IMI system is recommended, considering its clear legal basis.	
Latvia	Documents must be obtained a legitimate way and provided through the IMI system. Evidence must be officially translated into Latvian and the evidence must meet the same conditions as evidence gathered in Latvia.	
Lithuania	Evidence must be provided through the IMI system.	
Luxembourg	On the basis of supporting documents in the context of an infringement of national legislation.	
Malta	The general principle that applies is that best evidence must be produced. Therefore, the foreign inspector who gathered the evidence may be required to testify.	
Netherlands	Evidence must meet the same conditions as evidence gathered in the Netherlands. Information exchanged through the IMI system will meet these conditions in most circumstances.	
Poland	Yes. Evidence has to be gathered in a lawful way in accordance with the Polish legislation and it is subject to an arbitrary assessment of a national court. As a general rule, foreign language documents need to be translated into Polish and further legalisation may also be required.	
Portugal	Evidence must be gathered lawfully in accordance with Portuguese law.	
Romania		Admissibility of evidence depends on the (decision of the) court.
Slovakia	Yes, evidence must be gathered lawfully in accordance with Slovak law and it is under free evaluation of the national court.	
Slovenia	For a foreign document to be used as evidence it must be certified and under the condition of reciprocity it has the same probative value as a domestic public document. Nevertheless, use of evidence depends on the circumstances of a particular case. Relevant provisions of procedural statutes must be complied with.	
Spain	Yes.	
Sweden	Yes.	

Can evidence gathered during an inspection conducted in another Member State be used as evidence in administrative proceedings? (Detailed results)

Member State	YES	NO / Limitations
Austria	Yes.	
Belgium	Yes.	
Bulgaria	Yes.	
Croatia	Evidence must be provided through the IMI system.	
Cyprus	Evidence must be provided through the IMI system.	
Czech Republic	In general, any evidence that helps clarify the subject matter of the case can be produced as evidence in administrative proceedings, if it was obtained lawfully. Evidence gathered by an inspection authority in another Member State must be provided to the Czech inspection authority in such manner that proves that the evidence is provided by a specific foreign authority, when the evidence is being provided and how it is being provided (be it via IMI, postal service operator or another way). Evidence in other than Czech or Slovak language must be provided together with an official translation into Czech, unless such translation is not required by the administrative authority.	
Denmark	Yes.	
Estonia	Evidence collected by the competent authority of a foreign state is also considered to be evidence when implementing liability under Working Conditions of Employees Posted to Estonia Act, in case of administrative proceedings. As a comment we in practice ask the evidence to be forwarded to us through IMI system to follow data protection rules.	
Finland	If the case does not concern the imposition of a financial administrative penalty or fine but instead evidence gathered in another Member State and requested by the Finnish Occupational Health and Safety authorities, we understand that there is no legal requirement for the use of IMI system. Based on the Finnish Act on Posting Workers a competent Finnish authority may make a request to a competent authority of another European Union Member State to provide or serve a document if permitted by the law of the Member State in question. The request shall be made in compliance with the procedure required by the Member State in question and what has been agreed between Finland and the Member State in question.	
France	Evidence must be provided through the IMI system.	

Member State	YES	NO / Limitations
Germany		Data/information exchanged between the competent authorities of the Member States by means of mutual assistance (formal mutual assistance requests/ exchange of information without prior request (spontaneous exchange) in the administrative procedure.
Greece		No.
Hungary	Yes.	
Ireland	Evidence must be obtained pursuant to an inspector's powers under Section 27 the Workplace Relations Act 2015.	
Italy	When it comes to posting of workers cases, use of the IMI system is recommended, considering its clear legal basis.	
Latvia	Evidence must be officially translated into Latvian and the evidence must meet the same conditions as evidence gathered in Latvia.	
Lithuania	Evidence must be provided through the IMI system.	
Luxembourg	On the basis of supporting documents in the context of an infringement of national legislation.	
Malta		No.
Netherlands	Evidence must meet the same conditions as evidence gathered in the Netherlands. Information exchanged through the IMI system will meet these conditions in most circumstances.	
Poland	Official documents of foreign origin are in principle subject to free assessment of the adjudicating authority, unless specific legislation or international agreements provide otherwise. Foreign language documents need to be translated into Polish and legalization may also be required.	
Portugal	Evidence must be gathered lawfully in accordance with Portuguese law.	
Romania	Evidence must be provided through the IMI system.	
Slovakia	Evidence should be sent through the IMI system or other single mechanism as this increases the evidence's legal force. However, in general, evidence may be furnished using any means which (i) is suitable to determine and clarify the actual state of affairs, and (ii) is in compliance with the law.	
Slovenia	For a foreign document to be used as evidence it must be certified and under the condition of reciprocity it has the same probative value as a domestic public document. The reciprocity does not apply to certificates. Nevertheless, use of evidence depends on the circumstances of a particular case. Relevant provisions of procedural statutes must be complied with.	
Spain	Evidence can be used in the administrative proceedings whose initiation corresponds to the labour and social security inspectorate.	
Sweden	Yes.	

Getting in touch with the European Labour Authority

By e-mail:

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- by visiting website: <https://www.ela.europa.eu/contact.html>

Finding information about ELA

Online

Information about the European Labour Authority is available on the website:
<https://www.ela.europa.eu/index.html>

EU Publications

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EU law and related documents

For access to legal information from the EU, including all EU law since 1951 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>

