



European Platform Undeclared Work

Follow-up visit: Cross-border concerted and joint inspections

3 July 2019, The Hague, The Netherlands

Executive Summary

The follow-up visit aimed to continue discussions about effective concerted and joint inspections¹ between members of the European Platform tackling undeclared work; focusing on the practical experience of the Dutch Platform member.

The event followed the thematic review workshop held in Lisbon on 28 February to 1 March 2019 and a learning resource paper on the same topic. The visit was part of a mutual learning process among Platform members and will lead to the development of a toolkit about cross-border inspections.

The event was hosted by the Dutch Inspectorate of Social Affairs and Employment and brought together Platform members and observers from Belgium, Greece, Lithuania, Norway, Portugal, Slovakia, Sweden and the United Kingdom. Representatives from Eurofound and the European Commission also attended the visit.

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, capacity and data sharing issues.

The follow-up visit explored existing approaches to plan, deliver and follow-up cross-border inspections and discussed how national authorities and the European Labour Authority can further support these activities.

Strategies to address undeclared work across borders

Cross-border inspections are resource-intensive, while enforcement authorities are often already stretched to address national cases of undeclared work. A more strategic and systematised approach to tackling cross-border undeclared work in enforcement authorities could help to plan cross-border inspections more effectively and efficiently.

This approach requires regular risk assessment, a review of the most appropriate solutions and an evaluation of their effectiveness. The Dutch 'Intervention Toolbox' demonstrated how a review of potential risk groups, customised intervention tools and monitoring could be transferred to the cross-border level. International cross-border inspections could therefore start with a shared risk assessment to target inspection and other cross-border activities. Within the Benelux cooperation, this is done via a comparison and ranking of the companies in national risk assessment tools, such as the information system 'LIMOSA' in Belgium.

After the risk assessment, enforcement bodies need to assess what types of cross-border activities (or a combination of them) are the most effective way to address identified cases of undeclared work, bearing in mind that concerted or joint inspections are one of the many tools at disposal for cross-border cooperation. Inspections (cross-border or not) are often targeted at intended offenders; for example, the Dutch Inspectorate of Social Affairs and Employment aims to target deliberately fraudulent temporary work agencies (identified via reported underpayment or a shortage of staff) through this measure.

¹ Joint inspections are undertaken by the competent authority of one Member State on its territory, with participation of the competent authorities of one or more other Member State(s) concerned. Concerted inspections in the cross-border context are inspections undertaken by the competent authorities of two or more Member States simultaneously and related to the same case, with authorities in Member States operating in its own territory and with its own staff.

Alternatively, other interventions (e.g. information, incentives or nudging) might work better for unintended offenders. A combination of measures could be effective, for example, an 'Action Week' targeted at a specific sector which combines inspections alongside awareness-raising.

Political commitment and operational support are crucial to ensure a strategic approach to tackling cross-border undeclared work. For example, in Belgium, the planning stage of a joint inspection involves a representative from the Ministry of Labour. At the operational level, inspectors could be encouraged to cooperate with foreign colleagues, which in turn will establish mutual trust between enforcement bodies.

Setting up cross-border concerted and joint inspections

Planning cross-border inspections takes time. Aspects considered essential to the planning stage include a description of the identified undeclared work problem and a detailed agreement on the aims, tasks and implementation of a cross-border inspection. This also requires a thorough understanding about foreign regulations and competences of the respective partners.

For instance, the 'Roadbook' used in Benelux joint inspections of fraudulent temporary employment agencies sets out a detailed description of legal and operational aspects of each individual inspection. It starts with an agreement on target companies and their scope (amount of company sites, number of employees, names of management), based on risk analysis and data sharing, and identifies stakeholders (such as regional social partners). It also includes user-friendly information about relevant legislation in each country concerned and the competences of all parties involved. The operational component of the 'Roadbook' summarises the team leaders in each country, aims and detailed information on the coordination on the day of the inspection (teams and contact details, tasks, interpreters, logistical arrangements, questions to be asked). While the operational part of the Roadbook is updated with every inspection, the legal part can remain the same. As a result, this template helped to increase understanding about foreign regulations and to establish a procedure for well-prepared inspection activities.

There was general agreement among Platform members that joint inspections might be in many cases more efficient than concerted inspections. They benefit from a 'surprise effect' of the presence of foreign inspectors, as well as training and learning between enforcement bodies. However, more evidence is needed about the effectiveness of each type of inspection.

Working together and improving collaboration

The commitment, time and competencies of inspectors are essential for international cooperation. Possible measures to further enhance a working culture in public authorities that motivates inspectors to work across borders can be:

- recruitment approaches focused on soft skills and diversity;
- recruitment from other sectors with more international experience;
- more focus on language ability and intercultural skills in recruitment and training;
- more exchange programmes for inspectors; and
- dedicated training (e.g. 'on-the-job' or training modules, manuals on how to work across borders; e.g. how to use the Internal Market Information system or other data sharing platforms).

Enforcement bodies often share previous inspection reports (if available) and data about the inspected companies and workers (e.g. contracts, hours, accommodation). For efficient collaboration, it is important to know what type of information enforcement bodies in other Member States collect and are able to share. Here, there is also a difference between data which can be used legally to prosecute, and data that enforcement bodies can just share for information to build up a case. Furthermore, data already available at national and EU level, such as national company registers, should be considered.

For interviews with employers and workers during inspections it is important to agree on the questions that can be asked and later used as evidence. In order to address language issues, interpreters who know national legislative terms or multilingual questionnaires (legally accepted in both countries and standardised with typical questions) can be helpful. Tablets with simple apps or multi-language websites and multi-lingual hotlines are also already used by inspectors in some countries to inform workers or to obtain information on site.

Following up on the results from cross-border concerted and joint inspections

Measuring the impact on cross-border inspections, also in order to inform future activities, happens rarely. This is often linked to the fact that enforcement bodies focus on immediate results (e.g. the number of inspections), rather than potential impact.

However, there are approaches to share results internally and with national or international partners. Important aspects are communication and outreach strategies; for example, in the Netherlands, 'lessons learnt' are shared to inspire inspectors who work across borders. This, in turn, can reinforce a working culture that encourages international collaboration. Furthermore, inspection results are communicated to potential risk companies to prevent fraud.

Recommendations from the follow-up visit for further EU support

Based on the conclusions from the thematic review workshop, participants discussed how EU level support, including in the context of the European Labour Authority, can further support concerted and joint inspections. This can include:

- Conducting EU-wide data mining and risk analysis, sharing reports and alerts on undeclared economic activity in specific companies and sectors with national liaison officers;
- Ensuring national liaison officers have an overview of counterparts, competences, legal requirements (e.g. minimum wages, working time, mandatory documents) and data availability in all other countries. In terms of their tasks, they would need to coordinate and pass on information to respective inspection teams;
- Developing a step-by-step approach to cross-border inspections;
- Supporting capacity building by regular exchanges or secondment of staff;
- Developing uniform questionnaires for information sharing based on available information in each country (registers, databases or statistics);
- Maintaining a database with key findings and lessons learnt from all cross-border concerted and joint inspections, linked with the wider EU risk assessment system, as results of cross border inspections are (so far) insufficient to plan interventions.

Further information: *The information from the visit will be fed into a toolkit that will assist with the set-up, implementation and follow-up activities of cross-border concerted and joint inspections. The input documents and presentations from the workshop have been uploaded to the Platform's collaborative workspace.*