



Follow-up online workshop: Cross-border sanctions in the area of undeclared work

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Summary

The aim of the online workshop was to inform capacity-building in enforcement authorities on how to improve cross-border sanctioning in the area of undeclared work. It built on discussions from the thematic review workshop (TRW): Cross-border sanctions in the area of undeclared work in Paris that took place in January 2020.

The event brought together 29 Platform members and observers from Belgium, Czechia, Finland, Greece, Italy, Portugal, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Romania, Spain, Slovakia, Sweden as well as representatives of the European Trade Union Confederation and Eurofound and the European Commission.

As already outlined during the TRW, there are few successful cases of cross-border sanctions and most relate to fraudulent posting of workers. Violations that require cross-border sanctioning include cross-border undeclared or under-declared work (incl. non-registration of social security), fraudulent temporary work agencies, non-compliance with legislation regulating the registration of workers or economic activity, labour contracts, minimum wages, working time and leave. Those types of infringements are more difficult to tackle across borders because they fall under different national legislation. As such, they require enhanced cross-border cooperation and adequate time to enforce.

Cross-border undeclared work is likely to change with the increasing prevalence of flexible forms of work on the labour market and the impacts of the COVID-19 crisis. It is therefore necessary that the detection of cross-border undeclared work is followed by a collaborative approach to joint enforcement of sanctions as a deterrent to undeclared work.

The follow-up online workshop firstly explored specific examples of successful and unsuccessful cases of cross-border sanctions in the Netherlands and in Norway. Then, participants explored solutions to plan, coordinate and enforce cross-border sanctions.

Review of cases of cross-border sanctions

Unsuccessful cases of sanctioning cross-border undeclared work showcased the following key barriers: slow processing times, missing evidence or requirements for data that are not available for the partner or information requests that are unclear. In addition, the use of available bilateral agreements or of the Internal Market Information (IMI) system could be improved.

The Netherlands presented a successful case of fining a Czech company active in the Netherlands for non-compliance with minimum wage and leave allowances. After Dutch authorities tried to collect the fine for two years unsuccessfully, the case was transferred through IMI to the Czech labour authority. The Czech authority sent the translated versions of the documents to the customs office to collect the fine, which was then paid by the offender.

In Norway, a bilateral agreement was used to involve all relevant authorities from Norway and Lithuania to identify and sanction temporary work agencies from Lithuania and Russia which violated minimum wage, working time and tax regulations in Norway where they employed workers from Lithuania. The joint cooperation allowed the partners to collect sufficient evidence, to perform joint inspections, finally uncovering the Lithuanian agency



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behind the hiring scheme. As a result, the companies were obliged to change the way they registered working hours and to pay minimum wages. The case is still ongoing, and the authorities are considering additional fines. In Lithuania, investigations were taken up by the tax authorities and are still ongoing.

Key messages from the discussion:

- Collaboration procedures outlined in national and bilateral agreements can go some way to addressing challenges in cooperation between enforcement authorities. Often these agreements relate to wider aspects of labour mobility as well as posting.
- As cross-border infringements related to undeclared work involve the recovery of wages, taxes and social security contributions, a multi-agency approach is needed. This may include authorities that are not typically involved in sanctioning undeclared work, but which may discover it, for example, food regulatory bodies. It is therefore necessary that bilateral and national agreements need to go beyond information sharing and include details on what to do in cases of cross-border sanctioning, such as arrangements for notifying or collecting fines, cost sharing, etc.
- A climate of trust and cooperation between enforcement authorities, developing over time through collaboration activities, is helping to address complex cases of cross-border undeclared work more quickly. This collaboration further enhances the knowledge and understanding of key aspects such as the respective legislation, responsibilities and methods to exchange information between the various partners.
- When communicating with offenders, Platform members highlighted the importance of accompanying a penalty notification with incentives for quick resolution and information for future compliance. In addition, it was noted that the notification of a sanction may be more effective if issued by the authority of the country of origin (rather than the country of operation) and written in the native language of the offender. To prevent cross-border undeclared work, successful cases of joint enforcement of sanctions need to be further promoted at national and EU level.
- Further work is needed to determine the most effective sanction procedure. Alternative options including 'naming and shaming' or bans for the provision of services, as well as fines, or a combination of these factors could be explored. In addition, other authorities that have a mandate to process a case quicker, such as tax authorities or the police, could be involved.
- Information requests within the IMI system need to be formulated as clearly as possible in order to obtain relevant responses from other national authorities. For better cross-border-collaboration, it was suggested to build in updates on the notification or collection in another country, allowing partners to follow up.

Further information: The Platform will publish a learning resource paper and a toolkit from the workshop, which discusses the issues outlined above in greater detail.