

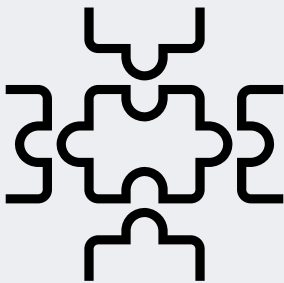
European Platform Tackling undeclared Work

Thematic review workshop: Cross-border sanctions in the area of undeclared work

Paris, France, 28 and 29 January 2020

The workshop aimed to explore possible good practices and solutions to enforce cross-border sanctions in the area of undeclared work. The event was hosted by the General Direction for Labour, France, and brought together participants from 17 countries, representing labour inspectorates, tax authorities and labour courts, as well as representatives of the European Trade Union Confederation, the European Federation of Building and Woodworkers and Eurofound.

State of play and challenges



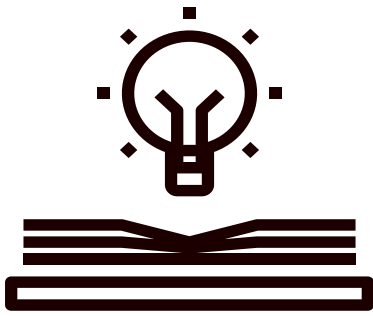
There are few examples of cross-border sanctions which are the result of national or cross-border inspections or other types of cross-border cooperation. Most enforcement bodies sanction across borders in cases of fraudulent posting. Sanctions for other types of infringements, like labour law violations, social security or tax evasion or non-compliance to register workers or economic activity are regulated primarily at national level. Therefore, the lack of a common legal basis raises challenges for cross-border cooperation to sanction those infringements, especially in the case of fraudulent schemes, like letterbox companies or subcontracting chains which operate across different countries (often with a non-EU based company involved).

At national level, sanctioning in the area of undeclared work includes several actors who have different responsibilities for initiating, deciding, notifying and collecting sanctions. Labour inspectorates, who are often involved at the beginning of the procedure, face challenges to follow-up sanction decisions in order to monitor if sanctions have been successful to reduce undeclared work. At EU-level, responsible enforcement bodies often do not know their respective foreign counterpart, and foreign partners are not able to proceed because of different rules and formal evidence requirements.

These issues pose capacity problems to enforcement bodies. The cross-border sanctions process can be lengthy, require translation or travel and the motivation and ability of professionals to work across borders. In addition, they need sufficient and approved evidence, especially in criminal proceedings. However, sanctions are an important deterrence measure to tackle undeclared work. Dynamic and complex schemes for the evasion of taxes and social security contributions operating across borders can only be addressed by cross-border cooperation.



Key messages



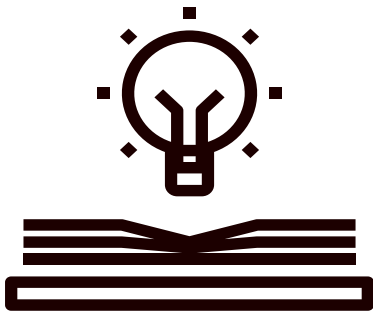
The workshop discussed the specifics of sanction procedures, evidence and execution procedures in selected EU and EEA countries, as well as possible national and EU level support. The following key messages were identified at the workshop:

Determining collaboration procedures

- ▶ Most cross-border sanctions are administrative fines. As a first step, enforcement bodies notify a foreign company directly, often requesting necessary details (such as address of the company) from foreign partners. In France, Belgium or the Netherlands around half of the fined companies pay voluntarily. As this is one of the least 'resource intensive' options, further discussion was held on how to 'nudge' foreign companies to comply at this first step, for instance by putting pressure on the main contractor by joint liability.
- ▶ Some Member States also use criminal procedures to sanction undeclared work, which determines the type of sanction and type of bilateral cooperation. Criminal procedures are used to a lesser extent than administrative fines. For example, in Belgium 25 % of the infringements on labour and social security law are prosecuted by the labour prosecutor and 75 % by administrative fines. Judicial sanctions like prison sentences or freezing assets apply for more severe infringements. Judicial authorities have more weight in tackling complex cross-border cases via cooperation with the police and a framework for mutual assistance in criminal matters, such as support via EUROJUST or EUROPOL. However, it often takes time to assess the enforceability of the sanctions in the judicial system.
- ▶ More intense cross-border collaboration is required in cases where voluntary payment of fines was offered but was unsuccessful, or if other types of sanctions – such as prison sentences, business closure or the seizure of goods – are decided in one Member State, but then enforced in another Member State, as this falls under the exclusive competence of the foreign authority.
- ▶ To start collaboration between different enforcement bodies within and between Member States, it is necessary to clarify the most effective sanction procedure possible in one or more Member States. This 'menu' of options could cover: the type of infringement and respective legislation in each concerned Member State, as well as each other's responsibilities and procedures, and the legal basis for cooperation, based on existing EU legislation or Bilateral Agreements and Memoranda of Understanding.
- ▶ When determining the most effective sanction procedure, other possible types of sanctions, next to administrative fines, in the concerned Member States should be considered, such as national black-lists, the withdrawal of operating licences, or the possibility of chain-liability (holding contractors jointly liable for violations committed by sub-contractors).



Key messages continued



Making a case: enforcement of cross-border sanctions

- ▶ Given the complexity to enforce sanctions in another country, enforcement bodies focus on national solutions for effective sanctioning. This includes national collaboration between different authorities and a commitment to short processing times, or involving and learning from other authorities, such as tax authorities, who are often more successful in collecting fines. They also coordinate joint actions with foreign partners, like concerted or joint inspections, followed up by national sanctions in both countries.
- ▶ If a fine cannot be collected via national channels, sanctions for some infringements can be handed over via the IMI module (depending on national legislation). However, this has some limitations: appeal timeframes can delay a prosecution of cross-border infringements, or the receiving Member State cannot base the sanction on the same or similar legislation. In some cases, professionals from organisations collecting the fines, like tax authorities or bailiff offices, do not know how to use the IMI module.
- ▶ There is a need to cooperate between national authorities initiating, notifying and collecting fines in order to monitor enforcement and to evaluate the efficiency of a sanction.

National or EU-level support

At national level, support with cross-border sanctions could consist of:

- ▶ the effective cooperation between several enforcement authorities which requires commitment at political, managerial and operational level;
- ▶ motivated, capable and sufficiently staffed professionals who work with national partners and better support the identification of the most effective way to take a cross-border sanction forward;
- ▶ a cross-border strategy, outlining resources, such as training of professionals or costs for travel or translation. Professionals in authorities responsible for the collection of fines need to be trained to work with IMI.

At EU level, support with cross-border sanctions could consist of:

- ▶ guidance on how existing legislation could be used for cross-border sanctioning;
- ▶ a knowledge platform informing users about the applicable legislation, type of sanction and competent authorities in each Member States combined with guidance on what evidence is accepted by the courts;
- ▶ a template for information exchange, a tool for legally secure information exchange and common identifiers (like company registers) which could help to clarify cross-border sanction procedures.

Further information: The workshop was the first stage in a larger mutual learning process among Platform members and observers and will lead to further opportunities for exchange and collaboration, which will be continued by a follow up visit to one of the participating countries (tbc). The information from the workshop will be fed into a Learning Resource Paper and a Practitioner's Toolkit. The input documents and presentations from the workshop will be uploaded to the Platform's collaborative workspace.

