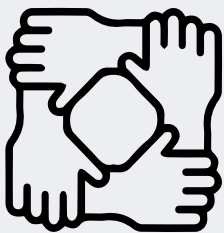


European Platform tackling undeclared work

Thematic review workshop: Effective penalty measures for tackling undeclared work, including through cost effective administrative actions
Athens, Greece and online, 7-8 June 2022

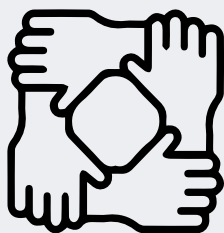
The Platform thematic review workshop enabled national authorities, including enforcement bodies, and social partners to share and deepen their understanding of effective penalty measures for tackling undeclared work, including through cost effective administrative actions in EU/EEA countries. This hybrid event brought together 34 Platform members and observers (23 attending physically and 11 attending remotely), representing various authorities from 22 different countries, including labour and social security inspectorates, ministries of labour, tax administrations, financial authorities, working environment authorities, as well as social partners. In addition, the event was attended by representatives of the European Labour Authority (ELA) and members of the Platform support team. Participants exchanged practices and reflected on (1) the range, type and effectiveness of penalty measures available for tackling undeclared work and (2) effective administrative actions for executing penalty measures.

Range, type and effectiveness of penalty measures



- ▶ **Penalty measures vary across Member States, yet they share common characteristics.** Typically, they target the employers as the most likely offenders (and only in very specific cases the employees). Typically, the size of the penalties increases with the repetition of the offense and decreases if there is a shift from undeclared to declared work or early compliance. It is common that penalties are differentiated according to the size of company, duration and severity of infringement and type of entity (legal or natural person), as well as company turnover in some cases.
- ▶ **Member States rely on a combination of fines and alternative sanction systems** (e.g. non-compliance and compliance lists, naming and shaming, excluding businesses from bidding for public procurement contracts and receiving licences and subsidies, criminal prosecution) to tackle undeclared work.
- ▶ **Penalties seek to achieve a change in behaviour.** For example, reduced fines are imposed, if the employers decide to declare workers rather than pay the initial higher fine. Sometimes the amount to be paid depends on the length of the declared contract. For instance, in Greece the law allows the fine to be reduced from EUR 10 500 to EUR 2 000 if the employee is hired for at least 12 months and the employer follows special provisions during this period. For seasonal enterprises it is reduced to EUR 5 000 if the employee is hired for at least three months. If the employer fails to follow the special provisions, then the initial fine is imposed.

Range, type and effectiveness of penalty measures – continued



- ▶ **Another type of penalty measure is applying penalties to citizens or businesses who obtain goods and services from the undeclared economy.** For example, in Finland a reporting obligation applies in the constructions sector. The main contractor of the project must report on issues such as working site, employer and employee information, type of employment relationship, etc.; and customers who buy construction work have to report on items like invoiced amounts, type of contract, working site. Failure to report can result in sanctions ranging from EUR 100 to EUR 15 000 depending on the nature of the violation.
- ▶ **There are also examples of fines imposed on undeclared workers.** In Belgium, a law amending the Criminal Labour Code from 21 April 2016 (re)introduced sanctions against workers (or the self-employed or civil servants) who perform undeclared work. In the Netherlands, employees can get a fine, if they do not comply with the regulations of the Working Conditions Act or the Foreign Nationals Employment Act. While sanctions imposed on undeclared workers as such are uncommon, enforcement authorities typically sanction undeclared workers claiming social security support linked to unemployment. Member States could further assess the effectiveness of such measures to tackle undeclared work.
- ▶ **Automated information systems have provided strong and cost-effective tools for targeting penalties to the riskiest offenders, and to evaluate penalties.** For instance, in 2021, Spain introduced automated administrative actions based on the use of new technologies and big data. This gives labour inspectors the possibility to generate infringement reports automatically through its information system without the direct intervention of an official. These automated infringement reports are notified to offenders within ten working days from the date of the report, and a written statement of allegations may be submitted within fifteen working days from the day following its notification, accompanied by any evidence deemed relevant, to the body responsible for the investigation.

Assessing the effectiveness of different types of penalty measure to tackle undeclared work



- ▶ Participants ranked as the most **effective types of penalty measures**, the **financial sanctions** to deter participation in undeclared work (e.g., fines), followed by non-financial sanctions to deter participation in undeclared work (e.g., business closure, withdrawal of operating licenses), and **excluding sanctioned businesses from bidding for public procurement** and/or receiving subsidies.
- ▶ Other types of penalty measures that participants consider effective, include, inter alia: banning the company from using temporary work agencies, banning the persons behind an infringement from having a business, and sanctioning managers or directors rather than the company.

Assessing the effectiveness of different types of penalty measure to tackle undeclared work - continued



- ▶ **Ensuring that sanctions are imposed on those that actually bear the responsibility** (most of the time the employers) can increase the effectiveness of penalty measures. It is important for enforcement authorities to consider the simplicity, objectivity, proportionality of sanctions and to ensure a fair penalty system.
- ▶ **Clear rules and procedures need to be established to avoid the risk of collision with other national authorities when imposing a fine.** In Slovakia for instance, both the labour inspectorates and the social security authorities may impose a fine to the same employer about the same infringement. The constitutional court ruled that this was unconstitutional and highlighted the importance to cooperate and establish clear responsibilities to avoid the risk of suspending one of the proceedings for the same case in the future.
- ▶ For penalty measures to be effectively implemented, **the processes in each stage need to be transparent, clear, coordinated and efficient.**

Cooperation procedures in the enforcement of penalties



- ▶ **Efforts to tackle undeclared work should be based on joint initiatives, among relevant national authorities, to enforce penalties.** For instance, in Portugal the labour inspectorate assesses the type of employment and whether an employment relationship (contract) has been established based on Article 12 of the Labour Code. If there is no employment relationship, the labour inspectorate notifies the employer to establish an employment contract. If the employer does not comply within 10 days, the labour inspectorate sends a notice to the public prosecutor. The public prosecutor evaluates the notice and has the authority to make the decision to establish an employment contract binding; otherwise, the penalty must be paid.
- ▶ **Common systems need to be developed to overcome challenges related to the exchange of data** due to data protection reasons. In Latvia, for example, enforcement authorities can access a common platform containing all relevant information about employers and infringements. This common approach allows the labour inspectorate and tax and social security authorities to monitor if a fine has been paid.
- ▶ An **important tool for tackling undeclared work is information sharing between enforcement authorities** from regional to national level. For example, in Italy labour inspectorates at regional level raise challenges about health and safety at the workplace directly with the authorities operating at national level who can then form recommendations to policy makers about the design of penalty measures.
- ▶ **One of the main challenges to establish cooperation procedures** in the enforcement of penalties is **a lack of capacity and other resources.** In addition, establishing effective cooperation is often a lengthy process and requires strategic and operational planning. Political support can strengthen collaboration via statutory forms of exchange or bodies and financial and capacity building support.

Cooperation procedures in the enforcement of penalties - continued



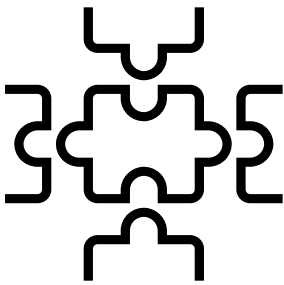
- ▶ **Establishing a managing board where all authorities are represented equally** and have an equal say can enhance cooperation and mutual learning and understanding. For example, in Belgium the heads of all enforcement authorities sit in a governing board and agree on the action plan against social fraud and tackling undeclared work, including the enforcement of penalties.

Follow-up of penalty measures



- ▶ Follow up activities, such as **monitoring and disseminating the results of penalties, are important** to provide feedback and warning, and to better target inspections.
- ▶ A common approach is for enforcement authorities to **carry out a second inspection of an employer who received a penalty**, to assess if the employer has complied with the law. For example, in Bulgaria, Cyprus, France, Greece and Spain, labour inspectorates carry out follow-up inspections based on their records, and/or the discretion of the labour inspectors. If further cases of undeclared work are identified, higher fines are imposed.
- ▶ One of the main **challenges in relation to follow-up activities**, is that in most cases there are **no procedures in place for the labour inspectorates to follow-up with the tax authorities** to check if the fine has been paid. The system for collecting fines also varies across countries, with tax authorities or other centralized agencies being used to collect debts or transfer cases to debt collector and judges. Having specific follow-up procedures and agreements, can help authorities track the effectiveness of the penalty measures.
- ▶ Furthermore, **a common database** showcasing the imposed fines and the status of the collection process, shared among the different authorities (labour inspectorate, tax authorities, financial police, etc.) **would allow for better monitoring and planning of future inspections and sanctions.** It would also be helpful to assess the impact towards the employer, and whether the system has led to changing behaviours and transform undeclared work into declared work.
- ▶ Participants also suggested that key performance indicators (KPIs) can be better used to assess the effectiveness of the penalty systems and to adapt these systems to the dynamic environment of evolving labour market.

Recommendations to improve the effectiveness of penalty measures for tackling undeclared work, including through cost effective administrative actions



- ▶ There is a **need to increase the perceived risk of employers being detected and sanctioned if engaging in undeclared work**. Member States could put a stronger focus on policy measure aimed at increasing the perceived and/or actual penalties to tackle undeclared work. The amount of the fines should be high enough to be dissuasive and increased regularly, if needed, but not so high that it would destroy the businesses (unless the severity of infringements requires business closure).
- ▶ While imposing penalties is widely believed to be the most important as well as most effective way of tackling undeclared work, there is a **need to use various types of penalty measures that can be complementary** (e.g., financial fines, non-compliance lists, excluding non-compliant businesses from access to subsidies and licences). The effectiveness of different penalty measures varies depending on the company violating the rules, therefore a right combination of sanctions may increase the effectiveness of the penalty system.
- ▶ **Collaboration procedures and agreements between relevant national authorities** (e.g., labour inspectorate, tax, and social security administrations) can go some way to addressing challenges in developing effective penalty systems. These can also lead to minimising the risk of collision between the different authorities and can also eliminate the risk of overlapping competences or administrative actions.
- ▶ **Information sharing between relevant national authorities**, through digital databases could **also help assess the impact of the penalty system**, in particular if this has changed the behaviour of employers and led to a transformation of undeclared work into declared work.
- ▶ At European level, participants suggested that **ELA could help, through data analysis**, enhance labour inspectorates' understanding of the links between the penalty systems and their outcomes in terms of reducing the size of undeclared work.
- ▶ Further work is needed to determine the most effective penalty systems, including through **better use of key performance indicators** for monitoring efficiency or identifying potential or existing gaps.

Further information: The thematic review workshop was an integral part of a larger mutual learning process among Platform members and observers and provided opportunities for exchange and collaboration. The information from the workshop will be fed into a Learning Resource Paper. The input documents and presentations from the workshop will be uploaded to the Platform's collaborative workspace.