



**European Platform Undeclared Work**

# **Cross-border concerted and joint inspections in the fight against undeclared work**

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Learning resource paper  
from the thematic review workshop on cross-border  
concerted and joint inspections  
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## 1 INTRODUCTION

The European Platform tackling undeclared work organised a thematic review workshop in Portugal on 'Cross-border concerted and joint inspections' between 28 February and 1 March 2019 (see Executive Summary [here](#)). It was hosted by the Authority for Working Conditions (*Autoridade para as Condições do Trabalho* [ACT]). The aim was to share knowledge and experience among Platform members around a specific component of cross-border activities: concerted and joint inspections. Participants from 22 countries attended, including national ministries, labour inspectorates, regional administrative agencies and tax authorities. The workshop was the initial stage in a larger, mutual learning process and will generate further opportunities for exchange and collaboration, notably through the development of a toolkit and follow-up visit.

This learning resource paper presents the findings generated during the workshop, along with key highlights from the Platform survey on Cross-Border Concerted and Joint Actions (February 2019), complemented by additional desktop research.

## 2 NEED FOR CONCERTED AND JOINT INSPECTIONS

The right of free movement is one of the most important achievements of the EU and allows countries to balance their supply and demand of workers wanting to live abroad to improve their standard of living. However, growing intra-EU labour mobility and ongoing economic and social disparity contributes to the increase in cross-border undeclared work across the EU. This in turn increases the need for concerted and joint inspections, particularly in areas of growing European and national concern, such as bogus self-employment, bogus temporary work agencies, seasonal undeclared work<sup>1</sup>, abuse of posting of workers and fraudulent letterbox companies.<sup>2</sup>

Labour inspectorates have limited authority and capacity to tackle cross-border undeclared work since their powers are bound to national jurisdictions. EU and cross-border measures currently available also mainly focus on bilateral issues (e.g. bilateral agreements (BAs) and memoranda of understanding (MoUs)) and information exchange. However, the increasing complexity of cross-border undeclared work demands better risk assessment and coordination of inspections across more countries and/or the EU as a whole. For example, fraudulent letterbox companies often operate in several Member States other than their country of registration. They have limited lifespan(s), vary in size, and regularly change their corporate names and place of registration. They are also quick to adapt to avoid inspection. All these factors undermine the collection, comparison and verification of documents and company records needed to build a compelling undeclared work case.

Concerted and joint inspections empower labour inspectorates because they can call on the expertise and resources of the partners involved. This cross-border cooperation improves the scale of inspections, combining resources, staff and knowledge. Cooperating inspectorates can develop their inception work and risk assessment based on each other's findings. Concerted and joint inspections mainly occur between national labour inspectorates, but can also involve other enforcement bodies, such as tax authorities, the police, and social partners. For example, the Spanish Labour and Social Security Inspectorate has been carrying out joint undeclared work investigations with the Spanish and the Romanian police since 2016. Table 1 below lists the different types of cross-border inspections, classified according to the need for collaboration they address.

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<sup>1</sup> For more information see: European Platform Tackling Undeclared Work. (2019). A learning resource from the seminar: Tackling undeclared work in the agricultural sector, with a focus upon seasonal workers and horticulture. Available at: <https://ec.europa.eu/social/BlobServlet?docId=20885&langId=en>

<sup>2</sup> For more information see: European Platform Tackling Undeclared Work. (2018). A learning resource from the seminar: How to identify and tackle fraudulent letterbox companies. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18961&langId=en>

**Table 1. Types of cross-border inspections**

Type of inspections	Definition and inspection needs
Concerted inspections	<p>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<sup>3</sup>.</p> <p>For example, this enables comparison of compliance of different sites in the same company in different countries or to compare evidence, documents and testimonies.</p>
Joint inspections	
- at one location in one country	<p>Inspections 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<sup>4</sup>.</p> <p>For instance, joint inspections at one location in one country can generate in-depth knowledge or clarify specific case information that cannot be clarified by information exchange alone.</p> <p>For example, highlighting abusive posting of workers by communicating with them in their native language to determine if they were actually posted.</p>
- at multiple locations in one country	<p>As above, but with wider scope: covering a single company with several offices or branches or several companies in the same sector.</p>
- at one or multiple locations in two or more Member States	<p>Joint inspections in several Member States are conducted to address more complex and/or evolving cross-border undeclared work cases, such as temporary work agencies or networks operating in more than one Member State. For example, this could involve rapidly changing legal entities, or multiple sub-contractors.</p>

Source: *Expanding on the Platform glossary.*

Joint inspections allow visiting inspectors to develop a clearer understanding of the actual conditions in which their fellow citizens work. The presence of representatives from their home country reassures the workers under inspection since the visiting inspectors speak their language and understand their cultural nuances. Visiting inspectors can also better identify and gather evidence on any violations of the home-country legislation and report back on possible corrective measures. More complex joint inspections in two or more Member States allow the investigation of cases along the entire supply chain, including the operations of several companies/sub-contractors located in different countries.

<sup>3</sup> Williams C. (2018). European Platform Tackling Undeclared Work: Glossary of Terms. Available at: [https://www.researchgate.net/publication/328810069\\_European\\_Platform\\_Tackling\\_Undeclared\\_Work\\_Glossary\\_of\\_Terms/download](https://www.researchgate.net/publication/328810069_European_Platform_Tackling_Undeclared_Work_Glossary_of_Terms/download)

<sup>4</sup> Ibid.

In less complex undeclared work cases, concerted inspections tend to offer a more effective and less resource intensive method to gather sufficient information to tackle such cases, as illustrated in the example below:

### **Box 1. Cross-border cooperation to gather evidence**

#### **Example from: France and Bulgaria**

In 2017, 4 % of posted workers in France were Bulgarian (20 513), mainly working in agriculture (67 %). Half of the Bulgarian temporary work agencies posting workers abroad posted to France. Authorities in both countries detected various violations of workers' rights and potential social dumping associated with these postings.

In one specific case, Bulgarian workers sent to work in France via a letterbox company raised concerns with the General Labour Inspectorate in Bulgaria about outstanding wages and social security contributions. Bulgarian authorities requested information about the case from their French colleagues over the Internal Market Information (IMI) system and over the telephone. They then conducted concerted inspections in the sending company registered in Bulgaria and in France. As a result, the French authority collected evidence to begin penal proceedings. They were able to prove that there was no sending company formally registered in Bulgaria and that the receiving French company was fraudulent. This allowed authorities to fully inform the workers about their rights and the French and Bulgarian inspectors increased their understanding of the administrative processes and required documents to pursue a more efficient case in each country.

*Source: Presentation at the thematic review workshop held in Portugal on 28 February 2019 – 1 March 2019*

## **3 STATE OF PLAY OF CROSS-BORDER INSPECTIONS**

Cross-border concerted and joint inspections are essential for national labour authorities to tackle cross-border undeclared work. The increasing complexity of cross-border undeclared work has prompted national authorities to diversify their cooperation on EU level. The platform survey on 'Cross-Border Concerted and Joint Actions' (February 2019)<sup>5</sup> has shown that national labour authorities have increasingly recognised the importance of cross-border joint and concerted actions. It has also revealed that currently more labour authorities implement a combination of concerted and joint actions.

Increased cross-border cooperation is visible in the conduct of more concerted inspections. For example, in 2018, the Bulgarian and French Labour Inspectorates conducted concerted inspections on a cross-border undeclared work case, which allowed for the prosecuting of a fraudulent temporary work agency in Bulgaria and of a fraudulent company in France (see Box 1 above). Despite the significant improvement in cross-border cooperation through joint and concerted inspections, labour authorities still face challenges, such as the need for multilateral cooperation beyond existing BAs and MoUs and the necessity for more comprehensive exchange of data for better risk assessment.

There are also more joint inspections which are complemented by other activities such as joint training, knowledge and information exchange and the organisation of awareness-raising campaigns. For example, through the support of a cooperation agreement, the Labour Inspectorate of Estonia and the Division of Occupational Health and Safety of the Regional State Administrative Agency for Southern Finland organise joint inspections oriented towards the exchange of experience between the labour authorities (see Box 8 below).

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<sup>5</sup> Responses were received from 22 Member States (Belgium, Czechia, Denmark, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, Netherlands, Austria, Poland, Portugal, Slovakia, Finland, Sweden, United Kingdom) and one EFTA country – Norway.

### 3.1 Cross-border inspections are typically infrequent and ad hoc

Most concerted and joint actions are currently performed on an ad hoc basis, typically within the framework of existing BAs or MoUs. The overall assessment from the survey suggests that they remain limited in number and insufficient in type and scope.

According to the results of the survey, labour inspectorates rarely engage in concerted and joint inspections (1-2 times annually). Seven Member States have not conducted any joint inspections, while only four (Denmark, Sweden, Portugal and France) performed more than 10 joint inspections in 2018. Participants at the workshop confirmed that cross-border concerted and joint inspections are generally implemented either by neighbouring states or between countries with large migration flows. Such practice tends to disregard or misrepresent the large and increasing flows of working-age movers between countries without a common border. Hence, it is likely that the overall number of concerted and joint inspections only partly cover the risks of cross-border undeclared work in the EU. Examples of the geographical clustering of cooperating countries are presented in Annex 1.

Comparing the statistical data on cross-border labour migration<sup>6</sup>, the share of undeclared work among foreign workers and the survey results of the existing cross-border cooperation patterns show that numerous cooperation opportunities remain underutilised, despite the need for them. Authorities report many related capacity constraints, such as limited human and financial resources, inadequate skills and knowledge, insufficient IT and databases.

### 3.2 The legal role of inspectors needs clarification

Generally, under existing national and EU regulations, inspectors seconded to another EU/EEA country can only act as observers. They can assist passively by offering advice, guidance and translation support to local labour inspectors and by identifying the right questions to ask during interviews.

But legislation across Member States varies in terms of allowing labour inspectors from another Member State to participate in inspections. There are also differences in how far evidence collected from another country can be used at home.

For example, Polish legislation<sup>7</sup> allows the presence of foreign authorities during inspections, but they do not have the right to issue legal remedies or to apply sanctions. Most representatives at the workshop confirmed similar arrangements in their countries. In Denmark, foreign official parties are not allowed to enter private premises and foreign inspectors cannot be present during inspections. In contrast, the Belgian social criminal code<sup>8</sup> allows information sharing among labour inspectors in the country and abroad. It also permits foreign inspectors and authorities to “gather all information which can be useful for the exercise of the supervision which the latter are in charge of”. There are, however, limitations. Foreign inspectors do not have the power to take the lead in interviews or to participate in searches. They are free to take the gathered evidence and use it in their own countries, if their national legislation permits. There was a recognition that where such national legislation curtails the effectiveness of cross-border inspection activity, it will need to be addressed.

### 3.3 Data are difficult to access and share

Access to relevant data presents another major barrier to assessing the risk and investigating cross-border undeclared work at national and EU level. This issue has several dimensions:

- **Concerns around GDPR/data protection rules:** some Member States tend to avoid the internal and external exchange of information because of limited

<sup>6</sup> COM. (2018). 2018 Annual report on intra-EU Labour Mobility. Final Report December 2018. Brussels. Available at: <https://ec.europa.eu/social/BlobServlet?docId=20685&langId=ro>

<sup>7</sup> Art. 22 par. 3 of the Act of 13 April 2007 of the National Labour Inspectorate.

<sup>8</sup> Art. 56 and 57

understanding of or capacity to implement the applicable GDPR/data protection rules. Another obstacle is the lack of precise descriptions in national legislation of the scope of data collection of personal and company information. This precludes authorities in other Member States from using the collected data for a 'similar purpose'.

- **Legal, procedural or institutional barriers** to the exchange of information in and outside the country. In many countries, certain data are considered confidential, such as names of company owners, turnover, taxes paid, etc. Tax authorities often cite 'confidentiality' or 'professional' and 'company' secrecy rules to not share data with the labour inspectorates. However, certain good practices for data sharing do exist. For example, public institutions in Spain have developed cooperation allowing them to combine and use datasets from different public bodies<sup>9</sup>.
- **Data availability:** certain data or key documents needed to tackle cases of undeclared work may not be available or may not be regularly collected or stored. Obtaining these documents is vital to compare agreed remuneration levels and labour conditions with those established during an inspection.
- **Technical hurdles:** even when data are available, it can be unusable due to lack of interoperability of existing databases.

To improve the quality of concerted and joint inspections, secure methods of data transfer and coherent document templates and evidence requirements need to be further developed. This would also facilitate other forms of collaboration such as data exchange, joint training and staff exchange, joint procedures and awareness raising.

## 4 PREPARING CROSS-BORDER CONCERTED AND JOINT INSPECTIONS

To fully utilise cross-border inspections as a tool to address undeclared work, participants discussed the important step of planning concerted and joint inspections. Typically, joint inspections demand more financing and input to achieve the desired results than concerted inspections. Both, however, depend on a strategic approach to develop and implement them.

### 4.1 Political and operational buy-in is vital to securing resources

Strong political and operational desire for cooperation is one of the most important prerequisites for setting up cross-border inspections. Workshop discussions and the results of the Platform survey on 'Cross-Border Concerted and Joint Actions' (February 2019) confirm this conclusion. They also noted that the strategic planning of the labour inspectorates must include professional development, motivation, and capacity building of inspectors to perform cross-border work.

#### **Garnering support from decision-makers and practitioners**

The rationale behind cross-border cooperation needs to be clearly communicated to decision-makers for labour inspectorates to receive the necessary level of personnel, IT, logistical and financial resources. For example, labour inspectors could 'educate and convince' policymakers by demonstrating the size and scope of cross-border undeclared work and how it affects labour and human rights. Both types of inspections could be included in the labour inspectorates' overall organisational strategy. This would enable the development of new internal procedures and the allocation of more time for inspectors to concentrate on cross-border work. For example, in Belgium, there are specialised inspection teams who work primarily on cross-border cases.

#### **Motivation of labour inspectors**

Analysis of the current state of play demonstrates that most labour inspectorates are overburdened by investigating national cases of undeclared work. Any cross-border action

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<sup>9</sup> For more information, see the practice example on Spain's national anti-fraud office [here](#).

is thus seen as unwanted additional work. In this regard, the long-term benefits of cross-border mutual assistance needs to be made clear. Inspectors could be motivated and challenged to take the first step. The few inspectors who take part in joint cross-border actions could share their experience with colleagues to inspire and encourage them.

The inspectorates that are already experienced in international work, and therefore better prepared to tackle cross-border undeclared work,<sup>10</sup> can be used as role-models. The cooperation of Nordic countries could be inspirational here. By giving greater prominence to tackling cross-border undeclared work in the strategic objectives of enforcement authorities and using key performance indicators to measure the achievement of this objective, this might start to change the mindset of many inspectors that it is somehow less important than tackling national-level undeclared work.

### **Capacity building**

The demands on inspectors' skills and capacity are higher in cross-border inspection cases. They need soft skills such as inter-cultural awareness and networking to conduct visits on undeclared work in foreign countries. They often deal with non-cooperative employers, poorly informed workers and foreign working habits. They need specific language skills and must understand the legal workings of legal labour law and social security requirements across Europe. They will likely also need IT and database skills to perform risk assessments and on-site checks.

There are several ways to increase the professional capabilities of cross-border inspectors. These include skills training, staff exchange and joint visits with other authorities, online courses and training manuals, etc. The Benelux countries offer an example in terms of developing inspection guidebooks and organising capacity-building training.

## **4.2 Clarifying relevant procedures prior to inspection**

It is worth identifying the breadth and scope of a suspected case of undeclared work. Boxes 2 and 3 below demonstrate practical examples of how authorities identify the need for cross-border inspections and subsequently develop partnership arrangements to address them.

### **Box 2. Working together to identify necessary cross-border inspections between Belgium and the Netherlands**

Since 2014, Belgium and the Netherlands have collaborated within the framework of the joint Benelux declaration on cooperation in the fight against social dumping. Over the years, both countries' inspectorates developed consultation and operational working relationships focusing on temporary work agencies. This collaboration also addresses legal differences, such as temporary work agencies in Belgium needing to obtain an operating licence but only being obliged to register in the Netherlands.

Specific cases of undeclared work have emphasised the importance of cooperation. These include recognised examples of false invoices, underpayment and working hours violations, unfair competition, organised social fraud, housing issues, the abuse of borders to avoid inspections, fake constructions, etc.

*Source: Presentation at the thematic review workshop held in Portugal on 28 February 2019–1 March 2019*

### **Box 3. Working in partnership to develop cross-border activities between Portugal and Spain**

The increased numbers of cross-border workers in the region around Galicia (Spain) and Braga (Portugal) created a specific need for cooperation:

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<sup>10</sup> For more information see the analysis of the survey results from the Small-scale study "Concerted and Joint Actions", 2019.

- Portuguese courts needed to collect information from Spanish authorities on labour-related accidents to allocate compensation to workers;
- The Portuguese Authority for Working Conditions needed to request verification from the Spanish authorities of workers' complaints on housing conditions;
- The Portuguese authorities were unfamiliar with the minimum wage for posted workers in Spain.

As a result, Spain and Portugal developed a range of joint activities including inspections and information exchange, with input from various stakeholders.

In addition, in Portugal tax authorities offered advice on how to detect tax violations beyond labour law infringements; trade unions, business associations, municipalities, professional schools and universities provided practical insight into business practices, working conditions and problems arising in the sectors concerned.

*Source: Presentation at the thematic review workshop held in Portugal on 28 February 2019–1 March 2019*

In addition, all relevant steps, roles and procedures need to be clarified before the start of any joint inspection. This could take the form of a 'roadmap', 'cooperation agreement' or 'common strategy'. This document would clarify:

- The aim and scope (overall purpose/impact) of the action;
- The competencies and the role distribution (who does what and when; who takes the lead);
- A risk mitigation plan (what to do if labour inspectors discover certain situations);
- The parties involved, their points of contacts and communication channels;
- The requirements set by all concerned national legislations (e.g. format and content of documents to be collected as evidence, minimum wage rules, existing collective agreements, minimum working hours, etc.);
- The investigative methods to be used;
- A plan for follow-up activities.

Box 4 provides further guideline questions for developing cooperation agreements.

#### **Box 4. Key questions to be asked before a joint inspection**

- Should a penal or civil approach be used?
- What are the rights of the defendant(s)?
- What are the competences of the parties involved in the inspection?
- How are infringements identified in each legislation?
- Who are the administrative and logistic support officers?
- Do the information systems work across borders?
- Is there a roadmap in place (including contacts, legislation safety procedures), etc.?

*Source: Presentation and discussions at the thematic review workshop (TRW) held in Portugal on 28 February 2019–1 March 2019, and European Platform Undeclared Work. (2018). Good practice fiche - Belgium: Cross-border co-operation between Belgian and Dutch enforcement authorities in the fight against fraudulent or illegally operating Temporary Work Agencies.*

## 5 IMPLEMENTING CROSS-BORDER CONCERTED AND JOINT INSPECTIONS

### 5.1 Cooperation with other national authorities and social partners

Other national authorities as well as social partners can help the labour inspectorates to conduct cross-border inspections in several ways. They can provide economic analyses, legal advice, data and other forms of technical support (logistical arrangements, translations, IT and software tools, potential travel costs support). Yet, the practice of cooperation at national level varies across Member States. Box 5 below provides examples of these differences:

#### **Box 5. Differences in approach to involving other national authorities or social partners in concerted and joint inspections**

##### **Examples from: Spain, Lithuania, the Netherlands, Norway, Poland, Romania**

The Netherlands puts significant effort into determining whether to involve other national parties. They assess whether information systems work at cross-border level and whether additional sources of information might be needed. They then establish appropriate contact with other partners and services in all the relevant regions of a country if additional data and advice is needed. They also liaise with the media in advance to report the results of the concerted and joint inspections.

Norway has established guidelines for cooperation between national authorities. It has also implemented seven established joint centres for cooperation between the labour inspectorate, tax, social security and welfare authorities and the police.

In March 2018, the Norwegian Labour Inspection Authority and the Lithuanian Labour Inspectorate performed a joint inspection to tackle unregistered activities in the construction sector in Vilnius. The action involved a various institutions: labour inspectors, police officers, tax inspectors and migration authorities. As a result, both countries improved collaboration through personal contact, understanding of each other's legislation and simple and proactive communication via IMI, email, Skype and over the phone. They were also able to reflect on and improve the efficiency of their inspection practices.

*Source: February 2019 Survey among Platform members. Presentation at the thematic review workshop held in Portugal on 28 February 2019–1 March 2019.*

### 5.2 Working with existing EU agencies to support data collection and collaborative actions

There is the potential for EU support to cross-border concerted and joint inspections beyond the domain of labour and social security. Inspectorates can ask for advice from the national desks of Eurojust on any legal issues arising during inspections, such as: correct methods of finding information; the admissibility of evidence; the comparative powers of national authorities; the application of investigative techniques; securing prosecution. Eurojust can also provide data on individuals (owners of companies) if they have been convicted in the past.

Europol can participate in and support on-site inspections within the scope of its competences. In particular, it can facilitate access to the office(s) of inspected companies or the site of undeclared work. Europol can also share EU-wide company data and ensure real-time and secure exchange of data. Further details of the scope of support from Eurojust and Europol in cross-border inspections are provided in Box 6 below.

#### **Box 6. Potential support from Eurojust and Europol**

##### **EUROJUST**

Eurojust is the EU's judicial cooperation unit. Its remit covers the major forms of organised crime, serious crime and terrorism. In particular, Eurojust, acting via its national desks or as a 'college', can ask 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 as well as police cooperation enables various forms of joint investigations, i.e. investigations where officials from one Member State participate in investigations on another Member State's territory. Officers can help identify criminal activities, provide crucial information and gather evidence, circumnavigating the need for formal requests for mutual legal assistance. They can also help improve the digital, intercultural and language skills of national labour inspectors as well as 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 common interest covered by Union policy.

Europol can help in cases of excessive social security benefits or failure to pay social security contributions. It can provide a European investigation order, a joint investigation team or even cross-border enforcement via a European Arrest Warrant (EAW) and the mutual recognition of financial penalties.

*Source: EUROJUST and EUROPOL websites.*

### **5.3 Utilising tools and technology to support inspections**

Upon agreement of the type of information and the questions legally permitted and admissible as evidence in both countries, cooperation partners can develop standardised tools for concerted and joint inspections. These can include: bilingual or multilingual questionnaires, standard information documents, templates for agreements and post-inspection reports, comparison of powers and underlying national legislation, etc. These tools can be re-used and fine-tuned, if necessary, during future inspections. For example, France and Belgium have developed an information sharing agreement.<sup>11</sup>

Tablets/phones, including translation software, can be used on-site to access, for example, the latest company and employee data and reduce the cost of inspections by allowing foreign workers to speak to inspectors in their native language without the need for travel.

### **5.4 Use of collected data as evidence**

Data gathered during an inspection cannot always be used in evidence or as proof of violation. 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. The availability of secure channels for information exchange are a critical prerequisite for gathered data to be accepted in evidence. The best options currently available in the EU for secure exchange of data are provided by IMI<sup>12</sup>, Eurojust, Europol, and/or the use of secure laptops.

According to data protection legislation,<sup>13</sup> foreign inspectors taking part in a joint inspection can only use information gathered in their own countries for the purpose for which it was initially collected. They also need clear specifications about the type of information to be collected to ensure it is legally permissible as evidence in their own country. For example, Bulgarian and French inspectors discovered that there are different evidence requirements within their national legislations. Bulgarian law requires that documents provided by the

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<sup>11</sup> European Platform Undeclared Work. (2017). Practice fiche: Administrative cooperation agreement between Belgium and France. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18510&langId=en>

<sup>12</sup> The TRW participants shared that all information received through IMI has been accepted as evidence.

<sup>13</sup> Article 5 (b) of the General Data Protection Regulation (GDPR) provides that 'personal data shall be: ... (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes'. The principle of purpose limitation is regarded as 'a cornerstone of data protection'. Thus, EU and national legal base could be expanded to include the instances when combating undeclared work would be considered legitimate reason for personal data processing and transfer, defining the purpose of data gathering in specific and concrete terms.

French team be stamped and time sheets signed by a company representative. French law on the other hand would accept a simple print-out.

### 5.5. Verifying data can potentially expand the scope of the case

The verification of all data collected during an inspection can reveal if the initial assumption of undeclared work is valid. It can also highlight additional infringements or inconsistencies, such as tax evasion, health and safety violations and money laundering. These findings can be shared with the financial police, customs, prosecution or occupational safety and health authorities, which can then conduct their own checks and investigations or decide whether to join the labour inspection. Data gathered during a single site visit can prove insufficient and result in the inspection being extended, requests for additional information or even checks in a third country (e.g. if the case involves letterbox companies registered at multiple locations).

## 6 FOLLOW-UP TO CROSS-BORDER CONCERTED AND JOINT INSPECTIONS

Following up on cross-border cooperation and concerted inspections is critical to achieving two important objectives:

- Increased capacity of inspectors and other relevant authorities to assess and address the risks of new and complex cases of undeclared work; and
- Altered behaviour of employers and employees (e.g. increases in formally declared workers in the inspected company or sector).

### 6.1 Vital follow-up activities are limited by capacity constraints

Follow-up activities of cross-border inspections are rarely implemented or standardised which, in turn, reflects the ad hoc nature of those inspections across Europe. Information about imposed fines and penalties or whether the illegal practice has ceased following the inspection generally rely on the personal interest of the inspector on the case. Follow-up activities are not part of a mandatory mechanism, often because each national party regards the issue as outside its jurisdiction or domain of concern. This is exacerbated by constraints on the capacity to evaluate these efforts at national level.

One solution is to enable more EU involvement, particularly through more formal and systematised channels of the European Labour Authority. The EU could focus more systematically on post-inspection actions, such as preparing follow-up reports, assessing past inspections, sharing key lessons learnt, etc.

### 6.2 Monitoring the impact of the concerted and joint inspections

At the conclusion of an on-site inspection, various legal (administrative or criminal) proceedings follow. Where appropriate, authorities set a trial venue and hold pre-trial proceedings. During this process, additional information requests may arise. The immediate (short-term) impact of concerted and joint inspections could include: financial penalties, reimbursement of tax and social security contributions, withdrawal of public tenders or procurement, business or other licenses, recovery of financial penalties and unpaid wages, withdrawal of unwarranted social benefits, etc. Labour inspectors have also enforced temporary or even permanent business closures as a penalty for the use of insolvency to evade social security and tax obligations. Other alternatives might include confiscating goods and property, freezing bank accounts, or involving a prosecutor or a judge in the final stages of the inspection.

Inspections and any related deterrence measures do not automatically guarantee changes in behaviour. However, they can help identify (and possibly prevent) repeated offences if the identified cases of undeclared work are properly followed-up and disseminated. For example, a company's conviction may be voided if the company is deliberately bankrupted before the sentence is enforced. Meanwhile, the company owners may have already set up

new legal entities under new names and addresses and continue to fund undeclared work. It is therefore vital to disseminate information and findings on such schemes to all the appropriate officers and public institutions and to establish who will follow-up the 'new' companies. This information could also be shared with partners across borders as these 'new' companies may well be established elsewhere in the EU.

### 6.3 Additional follow-up activities can have wider benefits

Further efforts can be made to monitor results and progress of inspections and to increase their impact. A brief summary of each inspection case, the problems encountered and key lessons learnt would be highly beneficial for:

- Evaluating the efficiency of the concerted and joint inspections. Such evaluation would help improve target setting beyond the number of inspections and the potential size and volume of the violations uncovered.
- Communicating the results to inspire further action by the labour inspectorate or other national or foreign authorities. This step can be part of the overall labour inspectorate strategy, directed towards EU-wide cooperation.
- Communicating results to other Member States, enabling further expansion of the case and the benefits of its findings.
- Improving future inspections and preventive measures at national and cross-border level. Other Member States can learn from the undeclared work schemes observed during the inspection and adopt counter-measures in their own countries.

The information collected can be shared with external parties through various means, including press releases, internal workshops for sharing experiences, common learning online platforms, forums, as well as the potential creation of an EU-wide database containing inspection case summaries. Examples of the methods used by labour authorities for sharing results and learning from past inspections to improve their future work are presented in Box 7, below.

#### **Box 7. Examples of follow-up activities**

##### **Information sharing:**

Greek and Belgian authorities ensure that the findings from joint inspections are disseminated to various stakeholders, including the administrations of the labour inspectorate and the cooperating institutions, business associations and trade unions.

Within the Benelux framework, the Netherlands and Belgium have developed strong inter-personal connections, leading to regular sharing of results, including for the purpose of prevention and risk assessment. They also share results of inspections in press-releases to prevent future undeclared work.

**Use of debriefing and liaison sheets:** In France, a debriefing is organised following each joint inspection, through exchange of information and liaison sheets.

**Preparing post-inspection reports:** In Estonia, if the police, labour inspectorate and tax inspectorate conduct a national joint inspection, all the gathered data is consolidated and reported after the action. Similarly, in Poland, if joint inspections are conducted between the labour inspectorate and the Border Guard, each institution produces its own post-inspection report.

**Logging the inspection data into an online system:** In Spain information on the joint action is registered in the INTEGRA system (the Labour and Social Security Inspectorate database) by the inspectors involved. Findings are disseminated to the labour inspectorates.

**Learning from past inspections:** The Portuguese inspectors performed checks in their own country based on information about violations uncovered in France during a joint SLIC campaign in 2018<sup>14</sup>.

*Source: Survey among Platform members, February 2019. Presentation at the thematic review workshop held in Portugal on 28 February 2019–1 March 2019*

## 7 TOWARDS A MORE STRATEGIC APPROACH TO CONCERTED AND JOINT INSPECTIONS

As outlined above, cross-border inspections are mainly ad hoc and reactive. However, more complex undeclared work cases highlight the need for information and resource sharing and more strategic cross-border inspections. National strategies that emphasise the need for joint inspections and guarantee necessary resources and EU level support can help to facilitate the appropriate tools and resources from Member States to solve cross-border cases more effectively.

### 7.1. Developing strategies for tackling cross-border undeclared work

Current practices around cross-border cooperation on inspections are typically based on limited EU resources (such as IMI) or on BAs and MoUs. However, current cross-border activities have limitations, such as the status of the visiting inspector, as illustrated in the example below.

#### **Box 8. Joint inspections or exchange of staff provisions in bilateral agreements**

##### **Example from: Estonia-Finland**

The Estonia-Finland agreement from 2014 aims to ensure transfer of information and exchange of experience on issues of common interest during biannual meetings. The agreement enables joint inspections by Estonian and Finnish labour inspectors of companies employing Estonian posted workers in Southern Finland. The inspections focus on labour law and occupational health and safety issues. The Estonian labour inspectors purely act as observers and only Finnish labour inspectors have official authority during the on-site visits. The timeframe and the financial costs of the joint inspections are agreed on an ad hoc basis.

*Sources: Cross border agreements<sup>15</sup>*

While BAs and MoUs have helped to develop good practice around cooperation, they cannot be expected to support the extensive cross-border cooperation needed to tackle complex undeclared work cases. In particular, BAs and MoUs are geographically limited and too dependent on current political priorities to address emerging and rapidly evolving cross-border undeclared work schemes.

In addition, few enforcement authorities<sup>16</sup> have adopted a national strategy for tackling cross-border undeclared work. Such a strategic approach can either be a prominent part of existing national strategies for tackling undeclared work or can be developed as an independent strategic document. Besides inspections, national strategies on tackling cross-border undeclared work may also include other cross-border cooperation activities, such as data mining, sharing and analysis and the development of a more risk-based strategic approach. In addition, a national strategy could involve wider-EU support, for instance EU

<sup>14</sup> The Senior Labour Inspectors Committee (SLIC) launched an information and enforcement campaign to promote occupational safety and health of temporary agency workers and cross-border workers, entitled "Safe and healthy work for temporary jobs", which ran from October 2017 to May 2019.

<sup>15</sup> Labour Inspectorate of Estonia and the Division of Occupational Health and Safety of the Regional State Administrative Agency of Southern Finland. (2014). Agreement on Cooperation for Transfer of Information. State Gazette of Republic of Bulgaria. (2014, June 14). Agreement for Administrative Cooperation between Bulgaria and France in the Fight against Undeclared Work.

<sup>16</sup> In France, Belgium and the Netherlands, cross-border inspections are already included within strategic objectives and annual inspection plans.

or nationally funded projects targeted at identified cross-border undeclared work risks<sup>17</sup>, Senior Labour Inspectors Committee (SLIC) campaigns and EU financed study visits. It can also address the need for continuous improvement in the competencies of inspectors to engage in cross-border inspections through training and capacity building. In the long-run, such a strategic approach would better clarify the legal role of visiting inspectors, including the identification and implementation of any legislation changes to facilitate more effective cross-border inspections and cooperation.

In order to move away from an ad hoc approach, cross-border undeclared work requires joint priorities between two or more countries to be identified. The need for cooperation can arise from various labour force trends, new or persisting forms of undeclared work and social security fraud schemes. Economic developments and other factors can generate incentives for social security and tax avoidance and increased cross-border workflow. For example, an economic crisis or the start of a large infrastructure project can encourage labour force movement from one country towards another. Thus, better EU-wide and coordinated risk assessment of all relevant trends is key to developing a more strategic approach to cross-border undeclared work. This could be supported by all stakeholders, including social partners. This would also encourage labour authorities to improve other forms of national and cross-border cooperation, such as data mining.<sup>18</sup>

Furthermore, a strategic approach to addressing undeclared work can also feature in the planning of cross-border inspections and related actions. This could consider combining deterrence measures through inspections targeting labour law and social security issues with follow-up measures to strengthen prevention. For example, some countries, including the Netherlands, Belgium, and Ireland, have used press releases to publicise results of inspections. Others, such as Estonia and Finland, have been conducting awareness raising campaigns.

## 7.2. EU-level support needed to address capacity and data availability challenges

As discussed above, the European Union already adds important value to encouraging cooperation between Member States and to address current limitations in cross-border inspections. Workshop participants underlined the need for more EU-level support to address existing capacity and data availability challenges in concerted and joint inspections. They recommended that the EU (for example, the future European Labour Authority) could best provide such support through the following services and/or functions:

- A database that lists and compares expertise and investigative powers of relevant authorities and the legal basis of norms and requirements across the EU (e.g. minimum wages, existing collective agreements, minimum working time, legal documents mandatory for each company in each Member State).
- Uniform questionnaires for information sharing based on the available information in each country (registers, databases, statistics etc.)
- An EU-wide list of experts (including interpreters or labour law specialists), which Member States can access for a specific cross-border joint action.
- A knowledge database that publishes key findings and lessons learnt from all cross-border concerted and joint inspections. This will help facilitate the follow-up of cases by other relevant authorities and encourage and offer guidance for future collaboration.
- A 'red alert' list of fraudulent employers/networks to inform the strategic cross-border work of labour inspectorates.

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<sup>17</sup> For example, such funded under the EURES and EURODETACHMENT programmes, the European Social Fund, EaSI, EEA Norway grants, etc.

<sup>18</sup>European Platform Tackling Undeclared Work. Stefanov, R., Mineva, D., & Karaboev, S. (2018). Risk Assessments for More Efficient Inspections. Available at: <https://ec.europa.eu/social/BlobServlet?docId=19924&langId=en>

- Logistical support to develop universal templates, checklists and questionnaires that are legally recognised by all relevant countries. These documents are currently gathered as evidence during inspections and vary in form and content across countries, which undermines their relevance and usefulness.
- A framework for cross-border cooperation upgrading the existing cooperation agreements.
- Information-sharing and availability of a secure information channel that can be used for handling sensitive cases and documents (including areas beyond the current 14 IMI modules on posting of workers, professional qualifications, services, cross-border transport of Euro-cash, patients' rights, GDPR, etc.).
- Cooperation with Europol and Eurojust to investigate and prosecute of cases, where necessary.
- Financial assistance to fund operational meetings, briefings and participation of seconded members to inspections abroad that generate additional costs.

## 8 RECOMMENDATIONS

The complexity of cross-border cases of undeclared work requires strategic commitment from Member States to perform concerted and joint inspections. A strategic approach for tackling cross-border undeclared work needs to be developed which considers operational capacity and staff resources for cross-border inspections and actions. National inspectorates should increase the use of risk assessment tools and the results of inspections in other countries to better target and pre-empt cross-border undeclared work.

In addition, practical support for cooperation could be offered at EU level with a focus on the development of more standardised tools for cooperation, practical support and disseminating results and successful practice from joint inspections. The EU could also help to develop more multilateral approaches to address the rising number of complex cases of undeclared work by informing and involving several concerned Member States. The following recommendations arose from the discussions at the Thematic review workshop, which contribute to enhance the impact of concerted and joint inspections:

- Contacts via the IMI, various forms of official agreements and personal relations between inspectors should be stepped up to establish better cross-border inspections. The EU can help expand these contacts by ensuring regular exchanges of staff, mutual understanding of inspectorates' competences and more channels for exchange of information and feedback.
- Member States and the EU should seek to formalise further cooperation between labour inspectorates by drawing up agreements on common objectives and tasks, a 'who's-who' list of responsible authorities, their competences and legal requirements, etc.
- The implementation of inspections could be improved through more national and cross-border information exchange. At national level, it is useful to combine information from different authorities (tax, police, prosecution, etc.) and social partners. At EU level agencies such as Europol and Eurojust can provide EU-wide data, legal advice or logistical support. It is advisable that authorities clarify upfront which data and information can be used as evidence in each country.
- In this regard, upgrading the skills and competencies of inspectors is crucial for improving implementation of cross-border inspections. Concerted and joint inspections should be promoted as a systematic or regular activity of the labour inspectorates and other enforcement authorities tackling undeclared work.
- The use of several tools could be standardised during cross-border inspections on undeclared work:

- Multilingual questionnaires, with questions requesting information legally accepted in both countries;
  - Tablets or phones for translation;
  - Access to the latest company data in social security/tax/business registers; and
  - Handbooks that outline the relevant legislation and the targets for inspections.
- Participants advised the creation of an EU level list of language experts, which can be requested according to the individual needs of each investigation in cases of translation difficulties.
  - Results from inspections should be used to scale-up inspection efforts. Promoting results from the inspections within organisations can inspire colleagues, increase capacity building, develop further preventative measures or fine-tune risk-assessments.
  - At EU level, key findings and lessons learnt from all cross-border concerted and joint inspections can be shared. Inspection results can showcase efforts outside the organisation (for example, to the public through a joint press release), inform other authorities or even support legal amendments.

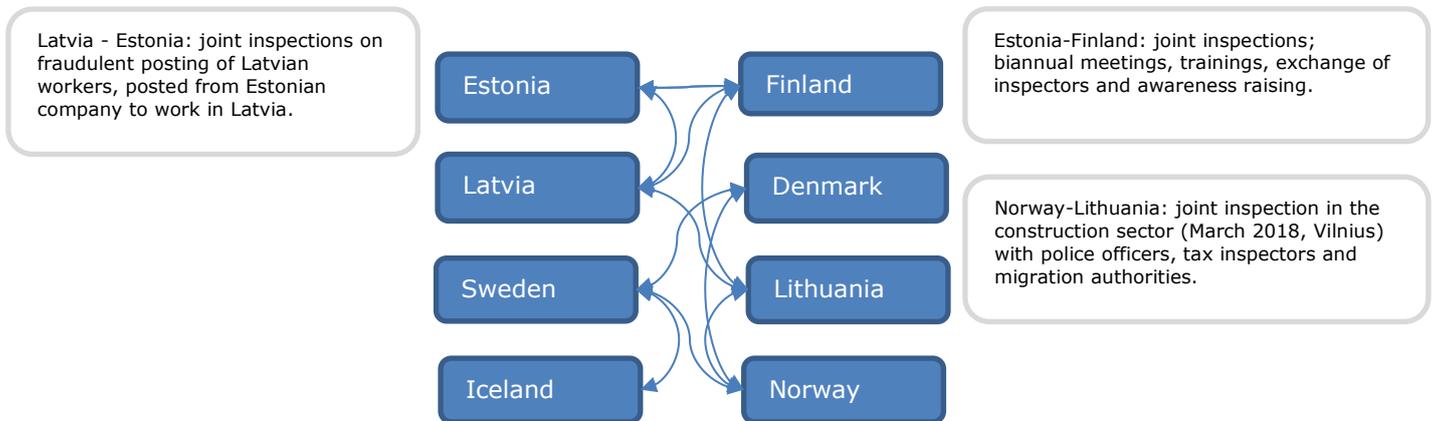
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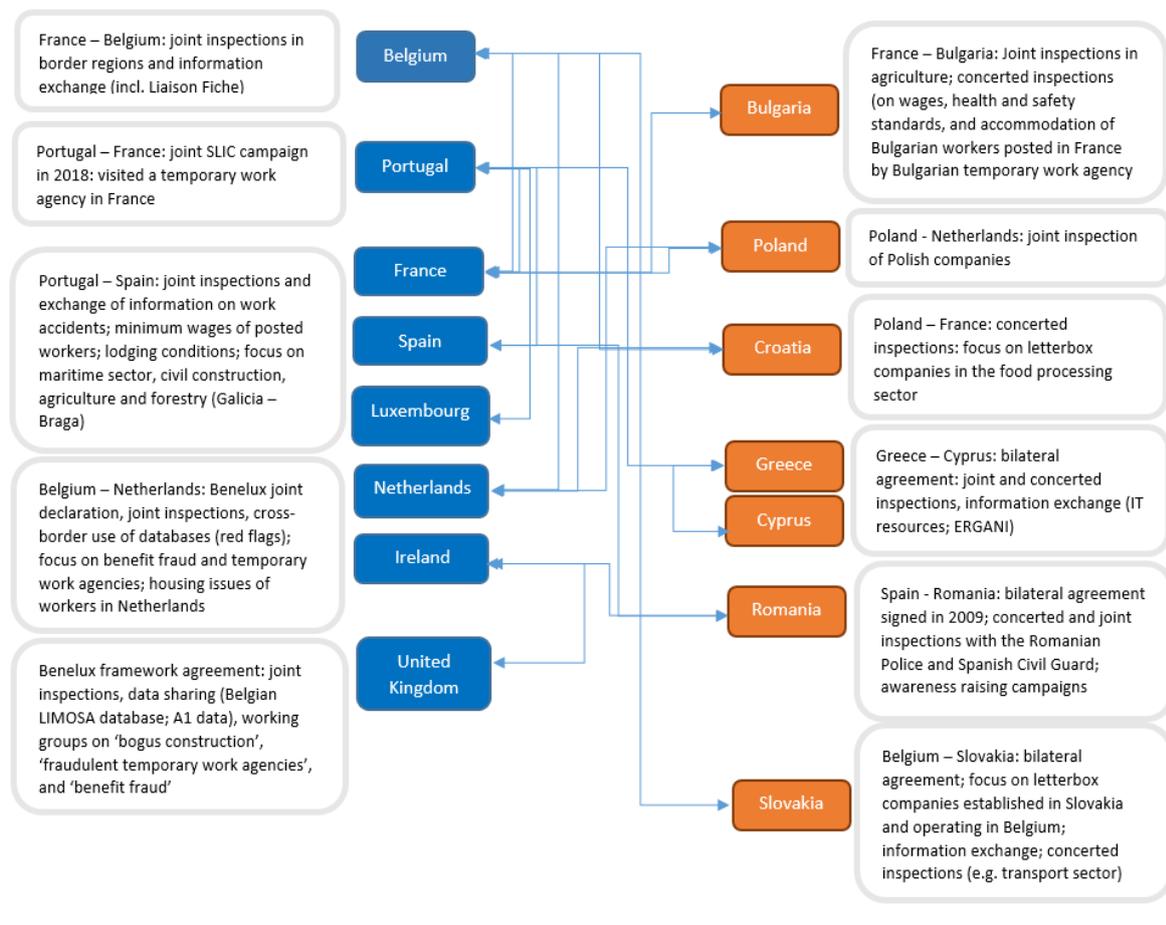
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## Annex 1 Examples of cross-border concerted and joint inspections

### Group 1: North Europe / Scandinavian countries



### Group 2: Western, Central and Eastern Europe



Source: CSD/ICF, based the February 2019 survey, the Thematic review workshop in Lisbon on 28 February - 1 March 2019, and on various good practice fiches and reports by the European Platform Tackling Undeclared Work.