



Enhanced learning resource paper:
**Cross-border
sanctions in the area
of undeclared work**



European Platform
tackling undeclared work

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INTRODUCTION

Why invest in cross-border sanctions?

Labour mobility and declared work are conditions of well-functioning labour markets in Europe. However, as cross-border mobility within the EU and the EEA evolves and employment relations adjust due to economic, demographic and social change, concerns arise around non-compliance with labour, tax and social security regulations. These activities often cover dynamic and complex subcontracting chains or letterbox companies that operate across borders, sometimes spanning multiple countries.

Besides cross-border inspections, sanctions are an important deterrence measure for tackling undeclared work across Europe. While Member States' authorities impose and enforce sanctions at national level, the enforcement of sanctions is difficult where the worker or company resides in another country. There appear to be very few examples of successful sanctioning of undeclared work across borders, which can result from legal differences, limited practice and different procedures among participating enforcement bodies.¹ These difficulties mean that enforcement takes time, during which the sanctioned company could change address and/or declare insolvency.²

Cross-border undeclared work can be efficiently sanctioned if enforcement bodies enhance their cross-border collaboration.

What is the aim of the paper?

This paper presents guidance to intensify bilateral or multilateral cooperation on enforcing cross-border sanctions for undeclared work. It builds on the suggestions for national and EU-wide collaboration outlined in the Platform toolkit on joint and concerted inspections.³

Part 1 explains the key steps for deciding, notifying and enforcing cross-border sanctions. Part 2 outlines the preconditions for effective cross-border sanctions, advising national enforcement bodies on how to address EU-wide undeclared work strategically, focusing on capacity-

building and national and cross-border collaboration. This section also suggests EU support options, which could feed into the European Labour Authority's (ELA) task to 'upon request of one or more Member States, where relevant, facilitate and support cross-border enforcement procedures relating to penalties and fines'.⁴ Part 3 focuses on the follow-up, evaluation and procedural improvement of cross-border sanctions.

Who is the paper for?

The paper is primarily intended for inspectors and managers within relevant enforcement authorities who encounter cross-border undeclared work and subsequently enforce sanctions.

It also provides guidance for national policymakers as regards strategic support of cross-border sanctioning, and addresses EU support options, including in the context of the European Labour Authority.

What are cross-border sanctions and when are they needed?

What are cross-border sanctions?

Cross-border sanctions are required in particular where the nationality and/or country of residence of the worker or employer differs from the country where the infringement is detected and sanctioned.⁵ From the employer's side, this can cover:

- ▶ Companies registered in other EU/EEA Member States;
- ▶ Companies employing workers from other EU/EEA Member States;
- ▶ Subcontractors (or their local offices) registered in other EU/EEA Member States;
- ▶ CEO's / managers legally responsible for the above categories;

From the worker's side it can include:

- ▶ Unregistered mobile workers;
- ▶ Posted workers, including hired-out employees by

1 According to the 2019 Annual Platform Survey, sanctions requested in the past two years vary from 2 in Iceland to around 10 in Belgium and the Netherlands, and nearly 20 in Sweden. The number of requests received ranged from 4 in Germany and Portugal, to over 30 in Hungary and 36 in Poland.

2 European Platform tackling undeclared work, (2020). Learning resource paper from the thematic review workshop on cross-border sanctions in the area of undeclared work, 28 and 29 January 2020, Paris.

3 European Platform tackling undeclared work, (2020). Toolkit on cross-border concerted and joint inspections. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22252&langId=en>

4 Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (Text with relevance for the EEA and for Switzerland).

5 See also: European Platform tackling undeclared work, (2020). Learning resource paper from the thematic review workshop on cross-border sanctions in the area of undeclared work, 28 and 29 January 2020, Paris.

foreign temporary work agencies;

- ▶ Cross-border commuters;
- ▶ Foreign seasonal workers;
- ▶ Workers or self-employed working simultaneously in more than one Member State.

Cross-border sanctions are mostly imposed on legal entities - companies, and/or their legal natural person representatives - self-employed people and, less often, on workers.⁶

Cases of cross-border undeclared work are often detected after a national, joint or concerted inspection or after information exchange between enforcement authorities in two or more countries. The infringements and the subsequent sanctions depend on the legislation of the country where these infringements have taken place.⁷ Sanctions range from administrative fines, usually relating to posting issues, to more severe penal (criminal) charges, such as imprisonment. These could be complemented by permanent or temporary business closure, exclusion from public tendering, withdrawal of operating licences or freezing of assets.

When are cross-border sanctions required?

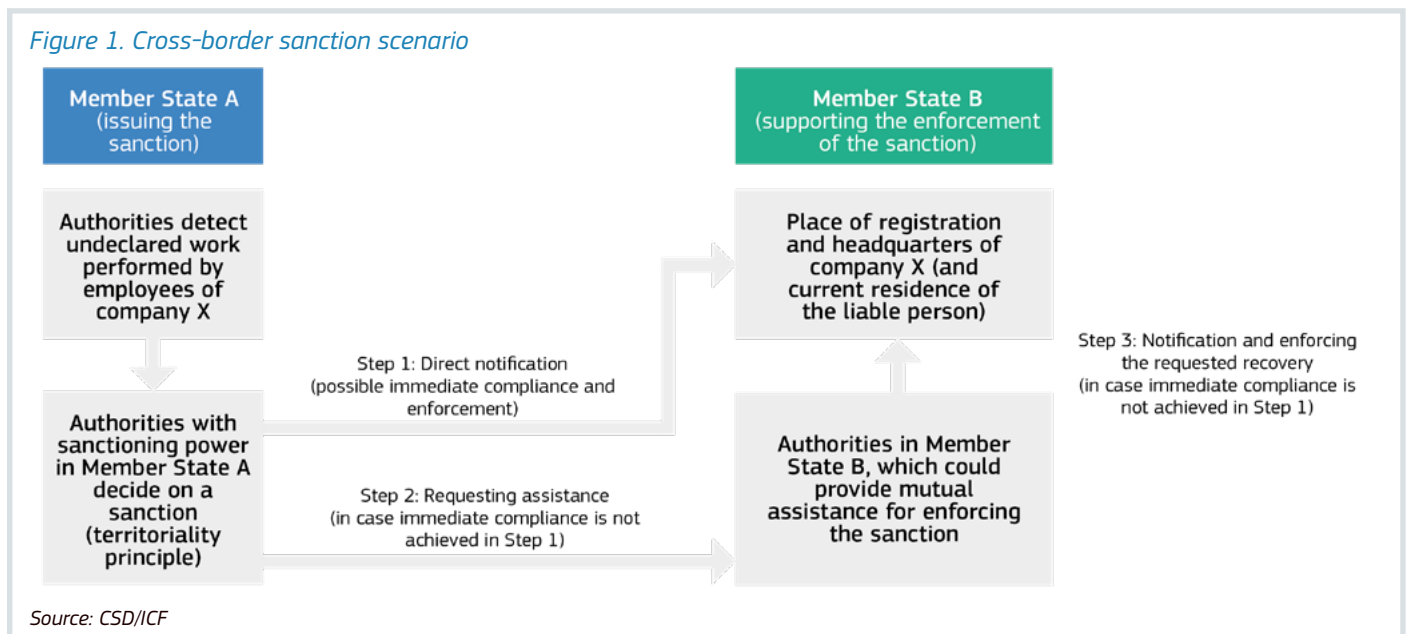
In the country where the infringement was detected, labour, social security and/or tax authorities have the power to initiate procedures, resulting in administrative

or criminal sanctions for offences in their national territory (territoriality principle). The recovery of taxes, social security contributions and re-payment of salaries is also part of the sanctioning process, although this is not a sanction per se.

Where the offender is not located in the national territory of the sanction-issuing Member State, the national authorities often need to collaborate with the authorities in the offender’s country of residence, in order to obtain information (e.g. current address) or request support for the notification and recovery of a penalty.

An example is shown in Figure 1 below: undeclared work is detected in Member State A in a company that is registered in Member State B. Authorities in Member State A cannot execute/enforce a sanction (fines, seizures, confiscations, imprisonment, etc.) in Member State B, where the company is based. Therefore, authorities in Member State A (the country issuing the sanction)⁸ rely on collaboration with their counterparts from Member State B (authorities enforcing or helping to execute the sanction).⁹ Yet, the authorities in Member State A usually first attempt to collect administrative fines or recover social and tax contributions by directly notifying the offenders located in Member State B, relying on their immediate compliance.

Figure 1. Cross-border sanction scenario



6 *ibid.*

7 The paper applies the broadest interpretation of undeclared work, including: under-declared employment, unregistered employment, undeclared self-employment, labour infringements through the use of umbrella companies, etc. related to labour, social security and tax laws and regulations. This focuses on sanctions for cross-border undeclared work within the EU, i.e. unregistered economic activities by employers or workers from two or more Member States/EEA Member States. While cross-border undeclared work may also involve third countries, these do not fall within the remit of this paper.

8 The paper uses ‘requesting country’ and ‘sanction-issuing country’ interchangeably.

9 The paper uses ‘requested Member State’ and ‘executing country’ interchangeably.

Examples of procedures for requesting cross-border sanctions are outlined below.

Cross-border sanction procedure from Sweden, the Netherlands and France

The Swedish Work Environment Authority uses the Internal Market Information System (IMI) to gather more information on cases of cross-border undeclared work. At a later stage, the Swedish Enforcement Agency uses the IMI posting module on penalties and fines for collecting fees.

The procedure applied by the Labour Inspectorate SZW in the Netherlands is similar: if cross-border fines are not paid immediately after direct notification by the inspectorate, applicable cases can be transferred to IMI (in posting cases) and request the collection of the fine abroad. For this procedure all appeal timeframes must have passed, otherwise the collection could be significantly delayed. If a case is only partly covered by IMI, a bailiff's office collects the fine not covered by the IMI.

In France, undeclared work is punishable by criminal sanctions and fraudulent posting is subject to administrative sanctions (most administrative fines notified to foreign companies are for non-compliance with the posting rules). The enforcement of criminal proceedings needs to be assessed by the judge who then notifies foreign courts. Here the competent judge also has to assess the enforceability of the sanctions and then support their execution.

Sources: European Platform tackling undeclared work, (2020). Discussion paper for the thematic review workshop on cross-border sanctions in the area of undeclared work, 28-29 January 2020, Paris. Presentation from the Netherlands at the thematic review workshop: Cross-border sanctions in the area of undeclared work, 28 – 29 January 2020, Paris, France.

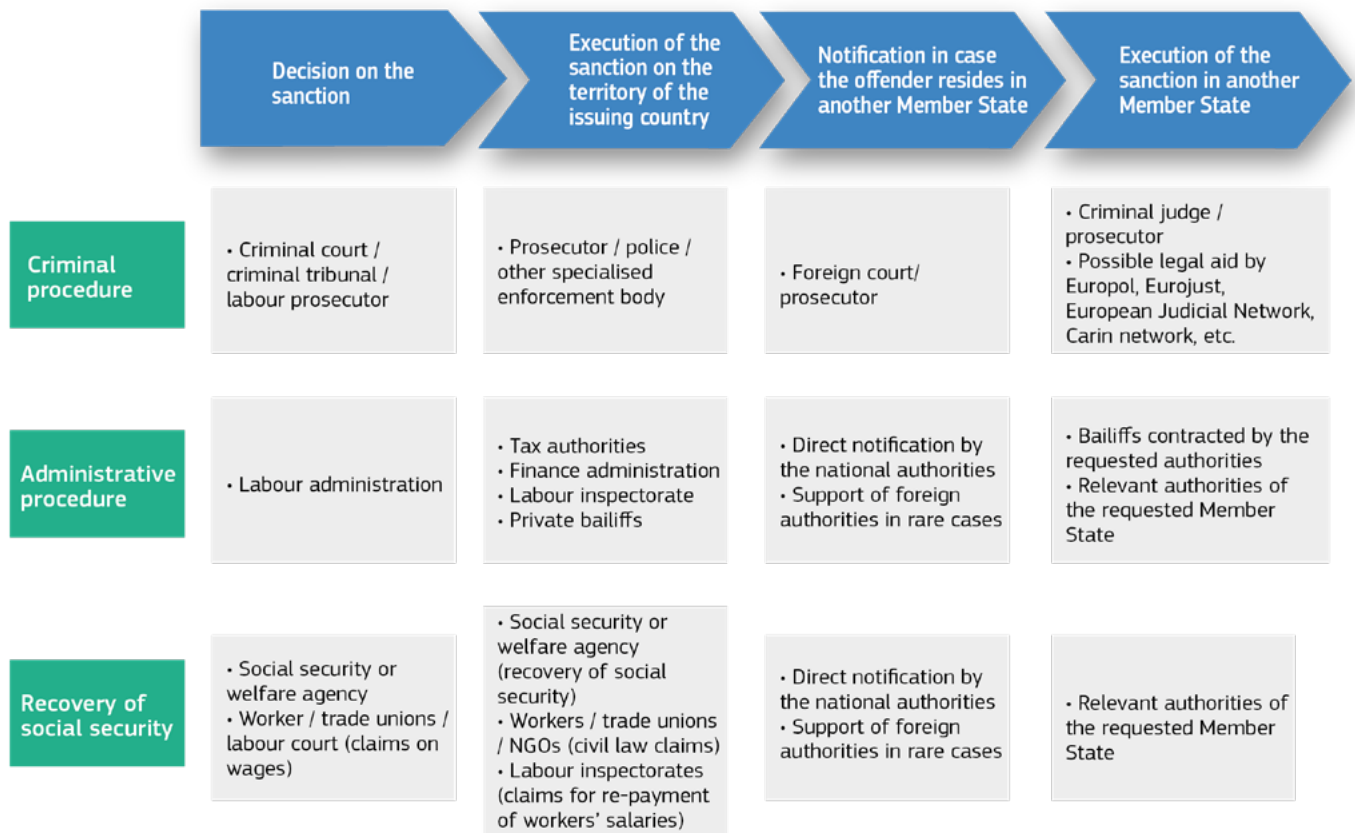
Who is involved in the sanctioning processes?

Detecting cases of cross-border undeclared work is often complex and can involve several authorities in different countries. The role of labour inspectorates is usually limited to the beginning of the sanctioning process, i.e. the detection of the violation and the preparation of a report on the infringements.

At national level, the sanction decision is taken by administrative, labour or penal courts, which determine the severity of the sanction, as well as the legal entity or natural person on whom the sanction will be imposed. Those authorities also provide the option to appeal the decision, according to the national legal base. The sanction's status as being "not subject to further appeal" is also a prerequisite for applying the principles of mutual assistance and recognition, according to Article 15 of the Enforcement Directive. Depending on the type of sanction, courts, prosecutors and/or the labour authority - sometimes supported by the police or bailiffs - are then responsible for notification and execution of the sanction.

If the sanction cannot be enforced because the offender does not reside in the national territory, and the direct notification fails, the authorities can request support from the relevant foreign authorities. The authorities usually responsible for deciding and executing sanctions are presented in Figure 2.

Figure 2. Authorities responsible for deciding and executing sanctions and the recovery of social security contributions



Source: CSD/ICF

The examples below describe the different authorities involved when issuing administrative sanctions in France and Belgium.

Administrative sanctions in Belgium and France

In Belgium, the Directorate of Administrative Fines at the Public Service of Employment, Labour and Social Dialogue can issue administrative fines for infringements of labour and social security law. Administrative fines are applied by a labour tribunal or a labour court and can vary from EUR 80 to EUR 24 000. This procedure is applied only if the infringements are not prosecuted by a labour prosecutor or the labour prosecutor has not reached a settlement with the accused. Notification and recovery of cross-border fines are implemented mainly in relation to non-compliance with Posting of Workers Directive 96/71/EC or Enforcement Directive 2014/67/EU.

In France, the Regional Directorate of the Labour Inspection (DIRECCTE) notifies administrative sanctions in national and cross-border cases of non-compliance with posting obligations, previous provisions for suspension of services or failure to pay previous

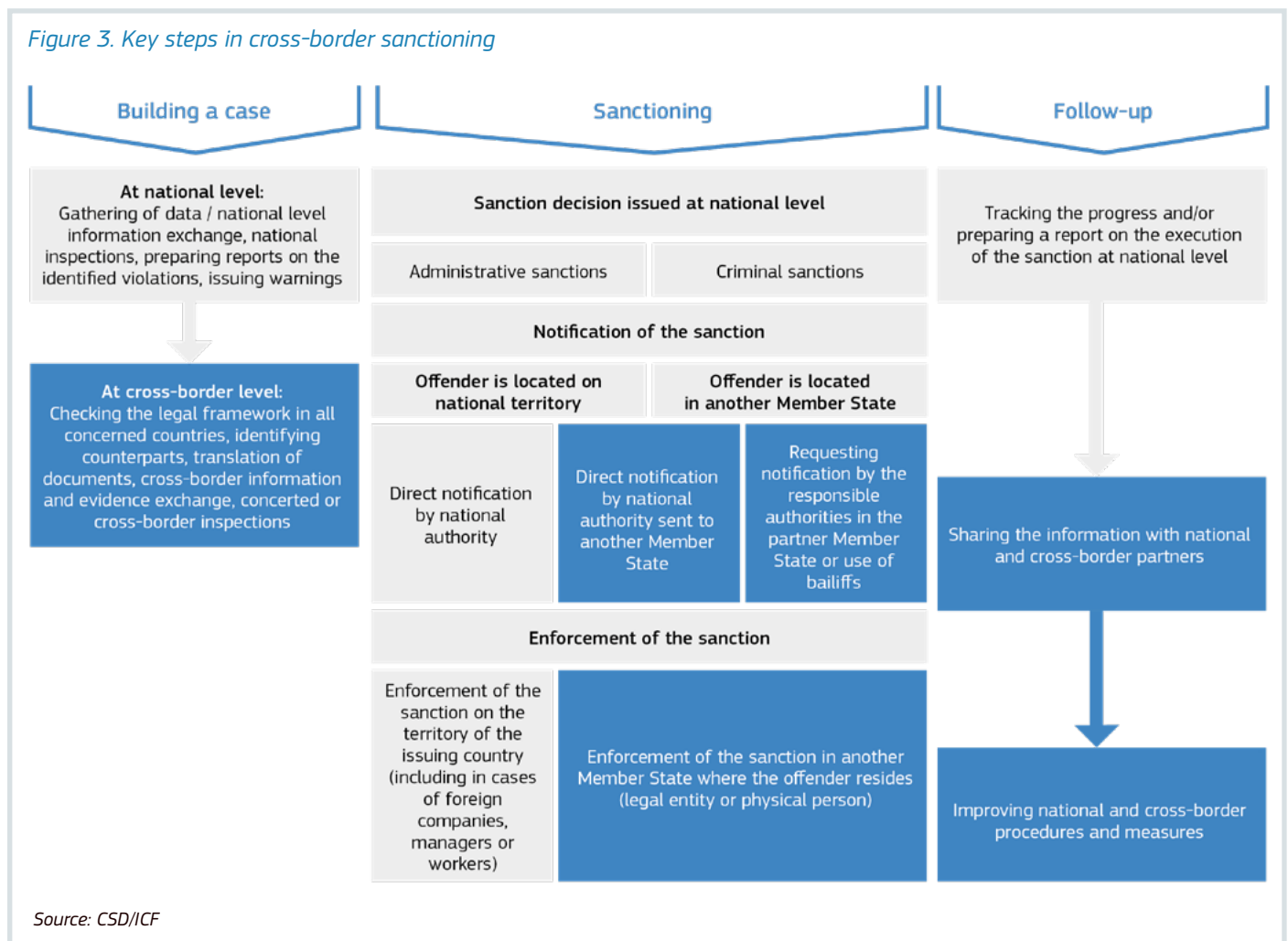
fines. The employer is then invited to respond in an adversarial procedure. DIRECCTE issues collection permits via the 'CHORUS' tool,¹⁰ shared by different government services, and the General Directorate of Public Finances is responsible for collecting the fines. Administrative seizures have however been very limited if the debtor is located outside the country. The decision of the Directorate can be challenged before an administrative judge, including fast-track proceedings. The amount of the fine imposed by the final decision can then reach up to EUR 4 000 per employee within a limit of EUR 500 000 in total. Breach of working conditions' standards may also result in the administrative suspension of international service provision for up to one month, while failure to pay previous fines results in the same sanction for up to two months. Undeclared work could also be sanctioned upon a decision by the prefect, through administrative closure for a period of up to three months. For a refusal to pay back unduly claimed public employment support (e.g. tax breaks for employing special risk groups of workers), the sanction of business closure can last up to five years.

Source: Presentations from France, Belgium and the Netherlands at the thematic review workshop: Cross-border sanctions in the area of undeclared work, 28 – 29 January 2020, Paris, France.

¹⁰ CHORUS is an inter-ministry tool launched in 2007 and fully introduced in the public authorities in 2011 in order to optimise public accounting. It allows fast recovery of fines and sets up a chain of sanctions and procedures. DIRECCTE is also obliged to impose financial sanctions through the platform. By linking data on fines and the posting declarations, the control agent is able to identify cases of unpaid sanctions by a foreign company.

1. CROSS-BORDER COOPERATION FOR ENFORCING SANCTIONS

The steps involved in cross-border sanctioning depend on the individual case. In general, however, they cover three stages: a) building a case (at national and/or cross-border level); b) deciding on a sanction, its notification and execution, and c) follow-up activities. These steps are presented in Figure 3, with cross-border elements highlighted in blue.



1.1. Step 1: Information exchange on the offence and the offender

As cross-border undeclared work and the related infringements are often complex, responsible authorities need to gather knowledge about the case. With sufficient information, the partner countries can then discuss possible common definitions, clarify their legislation and the most effective type of sanctions.

1.1.1. Information exchange at national level

At national level, relevant authorities such as labour and tax inspectorates, social security/welfare agencies, police and prosecution, as well as social partners (where permitted and appropriate), share details about a case (within conditions set by national law, thus preserving the legal validity of evidence obtained). This enables them to progress possible sanctions and the recovery of tax and social security contributions within their respective area.

For example, a case can prompt administrative fines imposed by labour inspectorates, the recovery of taxes by tax authorities and the request of unpaid contributions by social security bodies.

Each of the authorities involved needs to know the information that can be collected and shared and the type of information their collaborating partners need. Some legal provisions facilitating this collaboration are presented in the box below.

Cooperation and exchange of information at national level

The Labour Code of France obliges all control bodies in the field of undeclared work to communicate inspection reports to the competent social security authorities. No professional secrecy clauses can be invoked in this information exchange.¹¹ Thus, the labour inspectorate, the police, gendarmerie, tax, social security, unemployment insurance agencies, road, maritime, and air traffic authorities can exchange information freely, if it is necessary to determine a legal violation.

The Analytical Unit in the Belgian National Social Security Office (NSSO) regularly provides information on high-risk firms to the labour inspectorate.¹² The Spanish strategy on safety and health in the workplace (2007-2012) created special inspectors in each autonomous community responsible for monitoring labour violations. These inspectors collaborate directly with trade unions and the judiciary.¹³

1.1.2. Information exchange at cross-border level

Support from foreign cooperation partners is frequently required in order to gather additional details and evidence. For example, the requested information can be necessary to notify a fine (such as the name or address of an employer) or further details to verify posting arrangements. The IMI is the recommended tool for such an exchange in cases related to posting. National authorities are also encouraged to establish personal contacts with their foreign counterparts (e.g. short clarifications - not needed as evidence in court - could be provided over the telephone).

In cases where authorities require help from their counterparts in another Member State to identify a

breach, the information request needs to be as detailed as possible. It can cover:

- ▶ A detailed description of the case and the suspected offence. This includes the type of potential infringement, such as a labour law violation (e.g. related to minimum salary, working time, vacation days, overtime, health and safety conditions), social security evasion/fraud or income tax evasion/fraud. Another possible offence is non-genuine posting, detected according to the criteria set in Article 4 of the Enforcement Directive. This description should be backed up with other known details, such as remuneration and collective agreements, working hours, work accidents;
- ▶ Information about the employer implicated in the potential infringement. This could cover the name and address of the employer, subcontractors and branches across the EU, the nature of the service provided, past violations and/or inspection reports or information from past inspections. National authorities can check if the offender has assets in the country issuing the decision for the sanction,¹⁴ or in their country of residence;
- ▶ Information about the workers involved in the infringement. In other cases, the information could consist of: workers' job description, their income registered and other observations by the requesting Member State (such as problems to communicate with the inspectors, (lacking) knowledge of their rights and duties); and
- ▶ Description of public authorities' actions on the infringement to date, as well as further information sources and responsible authorities/contact person.

Member States need to be aware of the EU level legal provisions on administrative cooperation for information exchange as well as of cross-border enforcement of administrative penalties and fines. In addition, information sharing and any gathered evidence needs to also comply with the General Data Protection Regulation (GDPR).¹⁵

11 Presentation from France at the thematic review workshop: cross-border sanctions in the area of undeclared work, 28-29 January 2020, Paris, France.

12 European Platform tackling undeclared work, (2017). Learning resource paper from the thematic review workshop: 'National and bilateral agreements and memoranda of understanding to tackle undeclared work' Utrecht, the Netherlands, 11-12 April 2017. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18041&langId=en>

13 ILO, (2013). Labour inspection sanctions: law and practice of national labour inspection systems.

14 This approach is set out in Article 11 of Council Directive 2010/24/EU concerning the recovery of taxes, but could also be applied to other areas of sanctions (collection of substantial amounts of fines, social security).

15 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the

Tips to comply with the General Data Protection Regulation (GDPR)

- ▶ Use the Internal Market Information System (IMI) for exchanging information on posting-related issues;
- ▶ Consult the Platform’s paper on ‘Exchange of information and data protection in tackling undeclared work’ (2019);¹⁶
- ▶ Request legal aid and/or secure information (and evidence) exchange by Eurojust, Europol, the European Judicial Network or the SIENA tool; and
- ▶ Use the Electronic Exchange of Social Security Information (EESSI) for ensuring better tackling of social security infringements.¹⁷



module for undeclared work, is currently being considered. The standard questionnaire in IMI allows Member States’ authorities to request information about a case, followed by an analysis and recommendations for action sent to those authorities with powers to impose sanctions and/or recovery of social securities, wages and taxes:

- ▶ The labour administration itself (which typically has authority to impose administrative fines and is responsible for enforcing remuneration);
- ▶ The criminal courts or labour prosecutors (which launch criminal procedures and could later involve the police);
- ▶ Social security agencies (which oversee the payment of social security contributions and recovery of unduly paid benefits);
- ▶ Workers/trade unions, and labour courts (which could also enforce the recovery and payment of wages); and
- ▶ Tax authorities (responsible for the collection of fines or the recovery of taxes).

Enforcement authorities can use different ways to exchange information, mainly via the following methods: the IMI module on posting, bilateral agreements and memoranda of understanding (MoUs).

IMI module on posting

The IMI module on posting is frequently used for information exchange, mostly for cases of posted workers, their employers and working conditions as well as for notifying and recovering a financial administrative penalty or fine. As cross-border undeclared work relates to a number of violations, and not only to fraudulent posting of workers, the possibility of developing an IMI

Bilateral agreements and MoUs

Informal contacts improve initial cooperation on cross-border undeclared work cases. Bilateral agreements and MoUs could help to regulate the exchange of information between Member States, as well as outlining cross-border sanction procedures more clearly (see Table 1 below). It should be noted that bilateral agreements and MoUs are supplementary tools that cannot supersede the EU or national legal base.

processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

16 European Platform tackling undeclared work, (2019). Seventh plenary meeting of the European Platform tackling undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22541&langId=en>

17 EESSI is an IT system that helps social security authorities across the EU to exchange information related to applicable legislation, sickness, occupational disease and accidents at work, pension, unemployment and family benefits more rapidly and securely. It allows the authorities to handle individual cases more quickly and helps with the calculation and payment of benefits. The open source software used for electronic management and exchange of social security files is called Reference Implementation for a National Application (RINA). RINA could also be used as a model by Member States to develop their own national applications.

Table 1. Possible information exchange aspects in bilateral agreements or MoUs on cross-border sanctions

Information exchange aspects	Further details
Definition	<ul style="list-style-type: none"> ▶ Applicable definitions of undeclared work that could lead to cross-border sanctioning, together with relevant EU or national legislation
Responsible authorities	<ul style="list-style-type: none"> ▶ Contact points authorised to sanction legal or natural persons
Information sources	<ul style="list-style-type: none"> ▶ List of company registers ▶ Establish mutually accessible online registers¹⁸
Procedures	<p>For example:</p> <ul style="list-style-type: none"> ▶ Data sharing protocols ▶ Data protection rules ▶ Maximum response time ▶ Complaints and dispute resolution procedures
Scope of assistance between two Member States	<ul style="list-style-type: none"> ▶ Support with notification; handling or forwarding objections to the competent body of the applicant Member State in cases where the sanction and/or its execution is contested
Rules of treatment	<ul style="list-style-type: none"> ▶ Validity of the sanction decision, equal treatment of claims under both national and EU law preventing excessive or too low sanctioning, clarification of costs, possibility for the requested Member State to alter or reject the sanction
Rights and safeguards	<ul style="list-style-type: none"> ▶ Avoiding double sanctioning for the same offence, protecting the rights of individuals against unjustified sanctions

Source: CSD/ICF

18 For example, Estonia and Finland joined their data exchange systems (X-Road and Suomi.fi) at the end of 2016.

Bilateral agreements and MoUs can facilitate cooperation between the authorities of those Member States that receive/send the highest number of working-age movers.¹⁹ Norway uses bilateral agreements with six other countries to collect information on sanctioning.

Use of bilateral agreements for information exchange

The Norwegian Labour Inspectorate has established practical cooperation on sanctioning with Estonia, Lithuania,²⁰ Romania, Bulgaria, Poland and Latvia. The cooperation is based on bilateral agreements and is funded by Norway Grants, the Norwegian cooperation programme.

Within the agreements, the countries exchange information on irregularities discovered, wages, working conditions and labour law infringements and initiate joint and concerted inspections. The countries have also designated national representatives and contact points. This has enabled more effective sanctions in Norway and Lithuania.

Source: Presentation by Norway at the Platform follow-up virtual workshop: cross-border sanctions in the area of undeclared work, 11 June 2020.

Inspection report

National and cross-border sanctions often follow a national, joint or concerted inspection, making the inspection report a valuable information source. Immediately after the inspection, a debriefing (held that day or shortly after) clarifies how to proceed on the basis of the inspection outcomes. There can be unexpected findings or issues about which other public authorities, such as health and safety bodies, should be informed.

An inspection report (see Annex 2 for suggested template) allows for the sharing of information on confirmed and suspected infringements, including recommendations for further action (issuing of warning or sanctioning). Here, inspection authorities may want to provide more context about the individual case to inform further action. Possible elements of an inspection report that could lead to sanctioning are presented in Table 2 below.

¹⁹ European Platform tackling undeclared work, (2019). Cross-border actions tackling undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21877&langId=en>

²⁰ European Platform tackling undeclared work, (2019). Good practice fiche: Norway – bilateral cooperation agreement with Lithuania to tackle undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21460&langId=en>

Table 2. Possible key elements of an inspection report

Inspection report	Analysis of the violation	Actions recommended
<ul style="list-style-type: none"> ▶ General information on the enterprise (name, legal status, subsidiaries, address, CEO/ manager, contact person, number of employees, etc.) ▶ Working conditions (minimum wages and allowances paid, weekly rest periods and holidays, etc.) ▶ Inspection details (nature of the inspection - routine, special, follow-up, investigation; uncovered violations) 	<ul style="list-style-type: none"> ▶ Detailed information on the detected violation(s) - its seriousness and nature (labour law infringement; social security evasion/fraud; income tax evasion/fraud; non-genuine posting; bogus self-employment (BSE), etc.) ▶ Information on the duty-holder's compliance record 	<ul style="list-style-type: none"> ▶ Define responsible authority to execute the sanction ▶ Recommendations for preventive (corrective) action and/or sanctioning, based on the national enforcement priorities, the existing legal base, and the likelihood of achieving results. The penalties and recoveries could include: <ul style="list-style-type: none"> ○ Penalties (administrative, civil and/or criminal); ○ Tax/social contribution recoveries and back payments (administrative, civil and/or criminal); ○ Payment of outstanding remuneration; ○ Administrative advices, warnings or ordinances etc. issued to companies. ▶ Informing other relevant authorities, e.g. tax and social security ▶ Guarantee of the right of defence and a fair trial

Source: CSD/ICF, based on ILO, (2006). *A toolkit for labour inspectors and European Labour Authority (2020). Report by the Working Group on Inspections*²¹.

21 The table provides an extended list of possible key elements of an inspection report. It should be noted that the ELA Post-inspection report, included in the Guidelines for cross-border concerted and joint inspections focuses in particular on: a) Number of penalties from cases (administrative, civil and/or criminal); b) Number of tax/social contribution recoveries and back payments from cases (administrative, civil and/or criminal); and c) Number of administrative advices, warnings or ordinances issued to companies.

1.2. Step 2: Deciding on a sanction and procedure for appeals

The type of sanction depends on the legislation of the Member State where the undeclared work was detected, meaning that sanctions vary across Member States. For example, the Netherlands sanctions unfair competition, which covers illegal employment and human trafficking, and in France it is punishable not to wear identification cards at construction sites.²² Member States use administrative or criminal procedures²³ to sanction undeclared work, which determines the type of sanction and the following national or bilateral cooperation routes:

- ▶ Administrative sanctions most often refer to monetary fines. Often (but not always) they go hand-in-hand with increased/recovered tax and social security contributions and repayment of salaries. However, these could be complemented by secondary measures such as exclusion from

public tendering and withdrawal of operation licences. In addition, sanctions can be made public to encourage future compliance ('naming and shaming');

- ▶ Criminal sanctions usually refer to prison sentences (sometimes suspended sentences or punishment with deferral) or to criminal monetary fines. These could also be applied in parallel with secondary measures such as freezing of assets, confiscation, deprivation of the right to be employed in a certain job or to hold a certain position, labour law-related sentences or business closure. They are usually connected to more severe cases (organised crime, higher numbers of workers involved, in conjunction with other crimes against basic human rights).

Table 3 compares the sanctions imposed in some Member States.

Table 3. Types of sanction procedure used by labour inspectorates

	AT	BE	DE	ES	FR	HU	IT	MT	PT
Criminal Sanctions	X (30 %)				X		X	X	
Administrative sanctions (Court handling appeals)	X (Administrative courts)	X (70 %) (Labour courts)	X (Penal courts)	X (Administrative courts)	X (Administrative courts, including emergency procedure)	X (Labour courts)	X (Administrative courts)	X (few cases)	X (Labour courts)

Source: Updated by CSD/ICF. Project CIBELES. Final Report (2011). Convergence of inspectorates building a European-level enforcement system. A Project for setting-up EUROSH (a European network for enforcement).

Table 4 presents the considerations for authorities when deciding on the type and severity of the sanction, applicable within the respective national legal base.

22 European Platform tackling undeclared work, (2020). Learning resource paper from the thematic review workshop on cross-border sanctions in the area of undeclared work, 28-29 January 2020, Paris.

23 In general, administrative procedures are based on administrative law and criminal procedures on criminal law. However, there is also a formal (not necessarily legal) criterion to distinguish between the two: administrative procedures are applied by an administrative authority that imposes sanctions. In some cases, the general basic principles of ordinary criminal law are applied in this administrative procedure. In the case of criminal proceedings, the penalty is imposed by a judge competent in criminal cases, after prosecution by the public prosecutor.

Table 4. Considerations when deciding on a cross-border sanctions

Consideration	Further details
<p>Priorities of the government, judicial authorities and /or labour inspectorate</p>	<p>The government, social partners, general prosecutors and the labour inspectorates have action plans against undeclared work and social fraud. These plans set priorities for sanctions, depending on the gravity of the fraud encountered. The plans usually also foresee a combination of ‘random’ inspections (which aim to prevent the feeling of impunity) with targeted inspections based on risk assessments. In a cross-border context, those can be explained to counterparts.</p>
<p>Wider impact on society and public finance</p>	<p>Depending on the seriousness of the offence, inspectors are allowed to take more stringent action and opt for stricter penalties, within the sanctions’ minimum and maximum threshold values set in the national legal base.</p>
<p>Size and economic circumstances of the enterprise</p>	<p>Inspectors could apply discretion, if foreseen within the legal framework, towards small enterprises, in particular regarding deadlines for compliance with minor violations. Labour inspectors ideally consult with social partners.²⁴</p>
<p>Combination of sanctions</p>	<p>For risk sectors, repeated offenders or more severe cases, cross-border cooperation partners could consider combining administrative and/or criminal sanctions (if the legal base allows it and if in accordance with the European Court of Justice’s case law) with:</p> <ul style="list-style-type: none"> ▶ Withdrawal of operating licences; ▶ Introducing joint liability of contractors and subcontractors; ▶ ‘Naming and shaming’ non-compliant companies; ▶ Introducing progressive sanctioning or lectures for companies on the correct application of the employment act (e.g. instead of paying a fine); ▶ Exempt the company from increased social contributions if they start declaring workers (such as in Belgium); ▶ Making the use of IDs and photos at construction sites mandatory; and ▶ Making procedural improvements for faster processing of registration of special groups of workers (e.g. migrants).²⁵ <p>Each time a sanction is imposed, the offence needs to be clearly communicated, together with instructions for future compliance.</p>

Source: CSD/ICF

24 ILO, (2006). A toolkit for labour inspectors.

25 OECD, (2014). Regulatory enforcement and inspections. OECD best practice principles for regulatory policy, Paris.

1.2.1. Process of appeals

Requests to execute a sanction in another Member State require the final decision by the respective administrative, labour or penal court that passed all appeal procedures in the issuing country.²⁶ However, the national authorities in the sanction-issuing country are advised to consider the following:

- ▶ In case of a conviction or fine imposed ‘in absentia’ (where the offender has not intervened in the proceedings), it is more likely that the offender will be heard in an appeal against the decision brought in their home country. This can result in longer resolution times and lower success rates;
- ▶ The decision on the cross-border recovery of taxes could be contested with the competent body of the applicant Member State (which has issued the sanction and has made the request for assistance). Where there is such an objection, the sanctioning procedure should be suspended until a decision is taken by the competent body of the applicant Member State, unless the latter requests otherwise (Recital 12 of Council Directive 2010/24/EU); and
- ▶ The defendant may take the case to the European Court of Human Rights (ECtHR) if the right to defence, fair trial or ‘reasonable time limit’ was neglected (Article 6 of the European Convention on Human Rights (ECHR)).²⁷

Tips: what to consider during appeal procedures

- ▶ Confirm with cross-border counterparts if the infringement is based on the legislation in both Member States. This is important in cases where double criminality is required as a condition for mutual recognition, e.g. Article 5 of Council Framework Decision 2005/214;²⁸
- ▶ Ensure the specifics of Article 6 ECHR, the Salduz case (right of a lawyer during questioning),²⁹ as well as any other relevant ECHR case-law;
- ▶ Facilitate quick procedures between cooperation partners; and



- ▶ Ensure that all evidence that led to the sanction is sound and comprehensible (see below).

1.3. Step 3: Ensuring that the information is recognised as evidence

Information collected in Steps 1 and 2 is crucial evidence for a sanction decision, especially if this is taken to court. It needs to present the facts clearly and precisely and follow the format requirements of the country enforcing the sanction. During cross-border inspections, partners are strongly advised to collect documentation that is sufficient and in the right format to sanction in the relevant country.³⁰

A 2019 Eurofound report³¹ notes that in 14 Member States the information gathered during cross-border inspections can be used as evidence,³² while 18 Member States accept this evidence only in administrative proceedings. Legal provisions for evidence gathered abroad do not exist in several Member States (Cyprus, Germany, Denmark, Greece, Hungary, Malta, Portugal and Slovakia). Here, legislative changes might be a solution to recognise the evidence obtained from joint inspections. Another possibility is bilateral agreements that cover the form of evidence accepted in both countries (if this is in line with the national law).

Some legal considerations related to the gathering of evidence in relation to (cross-border) sanctions are presented below.

26 As noted in Framework Decision 2005/214, Article 1, and Enforcement Directive 2014/67, Chapter 6, Article 15(2) and Article 16(2)(b).

27 ECtHR; Council of Europe, (1950). European Convention on Human Rights.

28 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties does not encompass all undeclared work-related financial sanctions. However it is still relevant to the undeclared work area, since: a) some offences mentioned in the list of offences not requiring verification of double criminality could be related to an undeclared work case, e.g. participation in a criminal organisation, swindling, or forgery of documents, and b) sanctions on offences not mentioned in this list could still be executed at cross-border level, as long as there is reciprocity of the infringements in both Member States (double criminality) and the offence is accepted as such by the requested Member State.

29 ECtHR, Salduz v. Turkey, (27 November 2008). Available at: <https://hudoc.echr.coe.int/eng-press#%22itemid%22:%22003-2565368-2783>

30 See also European Platform tackling undeclared work, (2020). Toolkit on cross-border concerted and joint inspections. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22252&langId=en>

31 Eurofound, (2019). Industrial relations. Joint cross-border labour inspections and evidence gathered in their course.

32 This includes Sweden; according to the Swedish Platform member, evidence from other countries or gathered in cross-border inspections can also be used as evidence in Sweden.

Table 5. Legal considerations when gathering evidence

Consideration	Further details
<p>What documents are needed?</p>	<p>The most common documents checked by labour inspectors are work contracts, staff registries, internal company regulations, registries of working hours and overtime,³³ payslips and timesheets, payments of social security contributions, portable documents A1, permits and licences (e.g. of temporary work agencies). In addition, any other (paper or digital) information may also prove useful, such as emails, texts, personal notes (e.g. to prove cases of envelope wages).</p> <p>Fiscal documents and commercial contracts are also collected to compare, for example, the declared workforce with the size of deliveries to clients, or to identify the owner and subcontractors and any possible bogus self-employment.³⁴</p>
<p>What format?</p>	<p>The format of the documents relating to imposed sanctions must comply with the legislation in the Member State where the sanction is issued and ideally in the Member State where it is ultimately enforced.</p> <p>Some examples of potential differences in acceptable evidence format include: paper or electronic signatures, stamps (including timestamp), record number, date of extract, certificate of authenticity or conformity, print-out of the response to an IMI request, an official report to the prosecutor or authority competent for sanctions, a receipt of the notification to the offender.</p>
<p>What other forms of evidence are needed?</p>	<p>Additional evidence should clarify the facts of the case: what, who, when, where, how, how long, since when, etc.</p> <p>Circumstances uncovered during on-site visits should also be verified (e.g. observations by inspectors, photos, video, audio, surveillance recordings, signatures of inspectors/witnesses/ employees/managers, physical objects seized, official documents in legally accepted formats). These could relate to:</p> <ul style="list-style-type: none"> ▶ Existence/status of labour relationship (hierarchical elements, proven authority of the employer); ▶ Proof of activity, established personally by the inspectors, and not only on paper (see also CJEU case C55/18); ▶ Verified place where the infringement was committed and place where it was established; and ▶ Time and period within which the infringement was committed.
<p>Are witnesses required?</p>	<p>Witnesses could also be asked to provide statements/testimonials/interviews - either by the labour inspectorate (if it has such authority) or through cooperation by relevant law enforcement bodies at national level or abroad. Interviews on the spot with employers and employees confirm the labour inspector's own findings and make a stronger case.</p> <p>The possibility to bring the employer and employees as witnesses needs to be clarified at an early stage at national and cross-border level.³⁵</p>

Source: CSD/ICF, based on CJEU cases C 692/19; C55/18; C-610/18; C29/10 and C29/10.

33 CJEU case C55/18: requirement to set up a system enabling the duration of time worked each day by each worker to be measured.

34 ILO, (2013). Labour inspection and undeclared work in the EU.

35 *ibid.*

1.4. Step 4: Clear agreements on responsibilities, costs and recovered funds

1.4.1. Clarifying roles

Once the evidence and types of sanction are confirmed, a clear role distribution between all authorities involved at national and cross-border level helps to enforce the sanction efficiently.

Joint responsibilities can be also clarified in the 'Sanction Report' template presented in Annex 2. Depending on the case, it can also be helpful to think about other relevant stakeholders. For example, social partners could:

- ▶ support the process and follow-up activities by filing civil suits in cases of labour law violations;³⁶
- ▶ act as witnesses in court;
- ▶ offer support in respect to collective agreements, leading to better compliance;
- ▶ provide alerts to authorities about (possible)

undeclared work practices;

- ▶ provide support for workers during inspections and interviews of witnesses;
- ▶ provide contacts, advice, and logistical support for cross-border collaboration (in particular for umbrella organisations and EU level trade unions federations).

1.4.2. Clarifying costs and recovered funds

When deciding on tasks and responsibilities, cooperation partners need to clarify how costs will be covered. These can include translation and authentication of documents or staff time needed to gather certain types of information or evidence.

Furthermore, partners establish how the amounts are recovered. Figure 4 sets out the basic rules which should ideally provide further details on the procedures applicable to all cases and types of sanctions, as well as recovery of taxes, social security and compensation.

36 CSD/ICF, based on ILO, (2013). Labour inspection sanctions: law and practice of national labour inspection systems.

Figure 4. Procedures for the recovery of funds

Recovered fines	Amounts recovered with respect to penalties and/or fines should accrue to the requested authority, if the case falls under the scope of Enforcement Directive 2014/67/EU.
Recovered taxes	The requested authority should remit to the applicant authority the amounts recovered in case of recovery of taxes according to Council Directive 2010/24/EU.
Costs for the execution of the sanction (general rule)	Member States shall renounce all claims on each other for the reimbursement of costs arising from any mutual assistance (Enforcement Directive 2014/67/EU, Council Directive 2010/24/EU and Council Framework Decision 2005/214/JHA).
Costs for the execution of the sanction (in relations to taxes, duties and other measures)	<p>However, where recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question. In addition, the applicant Member State will remain liable to the requested Member State for any costs and any losses incurred as a result of actions held to be unfounded (according to Council Directive 2010/24/EU).</p> <p>The requested authority shall seek to recover from the person concerned and retain the costs linked to the recovery that it incurred, in accordance with the laws and regulations of the requested Member State (according to Council Directive 2010/24/EU).</p>
Compensation of victims	<p>Funds obtained from the enforcement of Council Framework Decision 2005/214/JHA should accrue to the executing State unless otherwise agreed. This applies in particular to cases where there is need to pay compensation to victims.</p> <p>Apart from the infringement and the penalty, labour inspectors also try to recover outstanding wages and allowances without delay, by giving injunctions. Injured workers and, where appropriate, trade unions may be informed of the procedure. They may be able to undertake action themselves (e.g. through a civil law suit) if the inspectorate is unsuccessful.</p>

Source: CSD/ICF, based on Enforcement Directive 2014/67/EU, Council Directive 2010/24/EU, and Council Framework Decision 2005/214/JHA.

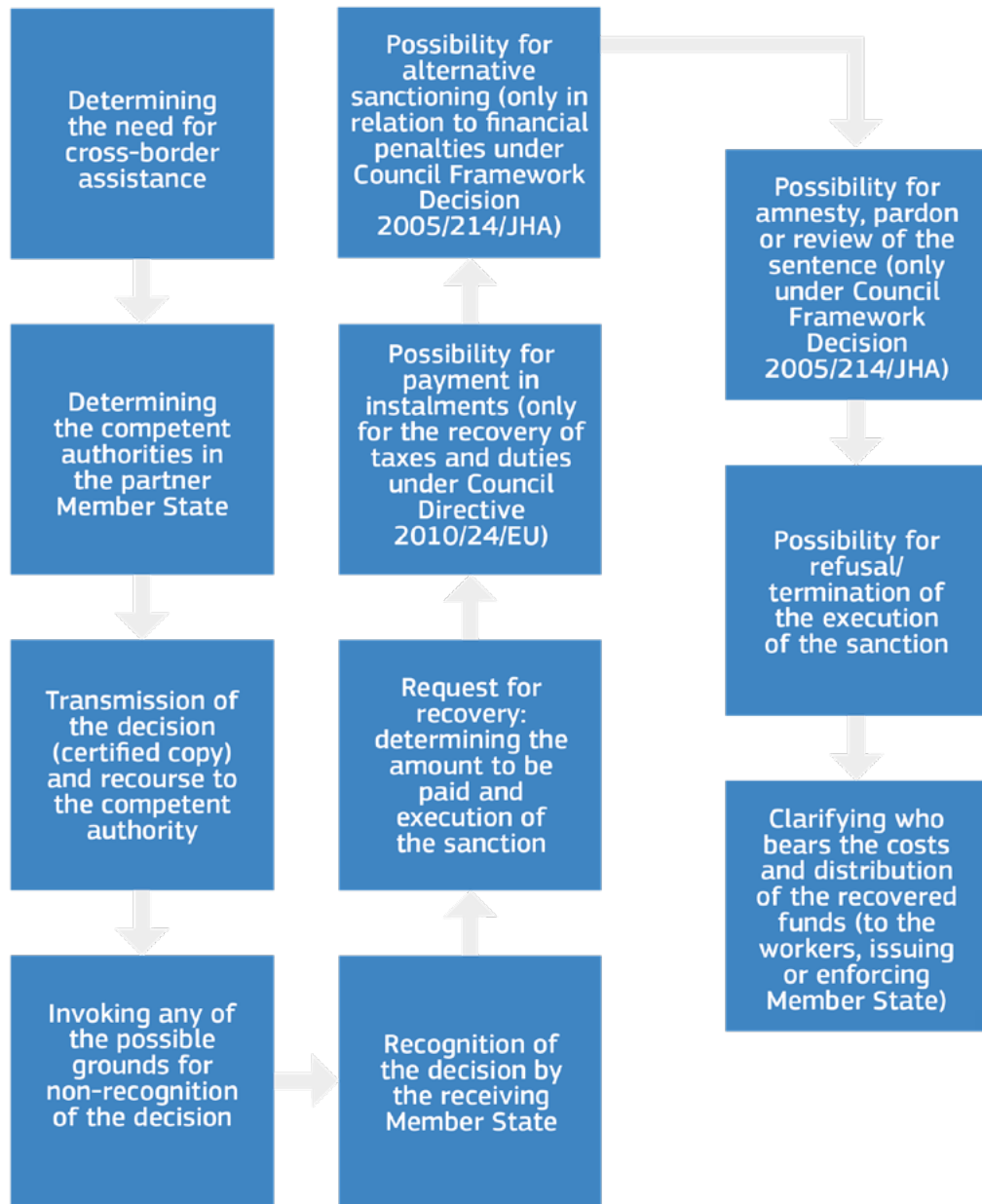
1.5. Step 5: Enforcing cross-border sanctions

There are two main types of sanctions – administrative and criminal. The administrative route is presented in greater detail, given its more widespread use in deterring undeclared work.

Many of the general steps described in the administrative route (e.g. tips on using IMI or completing a request for

recovery) are equally valid for the criminal route, with the exception of the different legal base, the authorities involved and the types of sanctions imposed. The specifics of the recovery of social security contributions, repayment of salaries and recovery of taxes, are also included as subsections of the administrative route. Figure 5 presents the possible steps to enforce cross-border sanctions.

Figure 5. Key steps in the recovery of fines, taxes and other financial penalties (applicable to both administrative and criminal fines)



Source: CSD/ICF, based on Council Framework Decision 2005/214/JHA; Council Directive 2010/24/EU, and Enforcement Directive 2014/67/EU.

1.5.1. Administrative route

Enforcement authorities generally cooperate in order to notify or recover an administrative fine. In rare cases, this involves more severe sanctions, such as de-registering a business. An example of the execution of an administrative fine across two countries is presented below.

Cross-border collection of an administrative fine

During an inspection of a hotel building site, the Dutch Inspectorate detected that a Czech company did not pay appropriate remuneration to five employees. This was established as an infringement against Article 18c(1) of the Minimum Wage and Minimum Holiday Allowance Act. The case resulted in a fine of EUR 17 700 and a bailiff was tasked with its collection. Whilst the Czech company did not appeal the decision, the bailiff was told that the company refused to pay. After four years, the Dutch authorities requested assistance from the State Labour Inspection Office in Czechia through IMI.

In Czechia, the proper procedure to implement the IMI regulation was agreed with the responsible minister and the translated documents were sent to the Customs Office (the responsible authority). After they notified the offender, the company paid the fine and the charges for the procedure. The Czech authorities informed the Dutch Inspectorate SZV of the result.

The practitioners involved in the case note that its success hinged largely on the fact that the sanction notification was delivered by the relevant native country authority (the Customs Office) and the documents it supplied were in the Czech language.

Source: Presentation by the Netherlands at follow-up virtual workshop: cross-border sanctions in the area of undeclared work, 11 June 2020.

Direct notification as an efficient way to collect cross-border fines

As a first step, enforcement authorities of the Member State where the infringement occurred notify the offender to pay a fine. A quick direct notification can lead to instant compliance, saving resources for the authorities of both Member States.³⁷

The content and form of the notification letters can have a substantial effect on the efficiency of sanction procedures.³⁸

Tips: possible wording of notification letters

A notification letter targeting a foreign company is usually sent by registered post or with electronic verification that the letter was delivered.³⁹ Platform members recommend the following as likely to result in the instant payment of fines:

- ▶ Legal reminders about the obligations of the employer with respect to paying taxes and social security for employees;
- ▶ Normative information about compliance and the risks of non-compliance;
- ▶ Tips to improve compliance, e.g. simple ways to declare workers;
- ▶ Offering options to pay the fine in instalments;
- ▶ Translated notification letters that refer to the enforcement authorities where the offender resides; and
- ▶ The possibility of a visit/audit in the foreseeable future or a follow-up visit shortly after the compliance deadline.⁴⁰



It is good practice to inform other relevant enforcement authorities (tax, social security, etc.) of the sanctions imposed, as they may also need to undertake parallel actions.

Requests for mutual assistance and recognition if fines are not paid instantly

If a fine is not paid after the direct notification, or another administrative fine needs to be enforced on another Member State's territory, enforcement bodies ask their foreign counterparts for mutual assistance or recognition. This depends on the respective legal base, as well as the nature and severity of the sanction.

The Enforcement Directive states that the principles of mutual assistance and mutual recognition shall apply to the cross-border enforcement of financial administrative penalties and/or fines imposed on a service provider established in a Member State. While mutual assistance covers information exchange, mutual assistance and recognition can cover both requests for notification and recovery. Mutual recognition is often the automatic enforcement in another Member State, without a judicial decision concerning the recognition and no possibilities for adjustment under national law.

³⁷ According to Article 8 Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures: 'The applicant authority shall make a request for notification only when it is unable to notify in accordance with the rules governing the notification of the document concerned in the applicant Member State, or when such notification would give rise to disproportionate difficulties.'

³⁸ There is anecdotal evidence from Platform members in France, Belgium and the Netherlands that around half of foreign companies pay instantly, without the need for further procedural steps.

³⁹ Wolters Kluwer France, (2012). Observation de l'inspecteur et mise en demeure.

⁴⁰ European Platform tackling undeclared work, (2018). Practitioner toolkit: information tools and approaches to reach out to workers and companies in the fight against undeclared work. Available at: <https://op.europa.eu/en/publication-detail/-/publication/97fa5fc6-4c55-11e9-a8ed-01aa75ed71a1>

Notifying a cross-border sanction or request for recovery for a foreign partner

In order to request a foreign partner to notify a sanction, the sanction-issuing country transmits the sanction decision (with a certified copy). This requires the following key information (outlined in the EU legal base and in the IMI templates):

a) Notification of sanction decision or related documents

- ▶ **EU-level legal base:** Article 16 of the Enforcement Directive 2014/67/EU on the posting of workers and Article 8 of the Council Directive 2010/24/EU on the collection and recovery of taxes⁴¹ provide the minimum set of key elements that each request for notification should include (contact details of the offender, purpose of the notification and period to be effected, nature and amount of the claim concerned, the office where further information can be obtained concerning the notified document);
- ▶ **IMI Uniform Instrument Request** for the notification or the recovery of administrative penalties and fines: this allows competent authorities to request to notify a decision, applicable for posting violations, on the IMI website.⁴² This template includes further information such as the period in which the notification must be done, infringement facts and circumstances, explanation of the national rules and the final decision imposing the sanction provided as an attachment.

b) Request to recover a fine or enforce another financial penalty

- ▶ **EU level legal base:** Article 16 of the Enforcement Directive 2014/67/EU lists the main elements that every request for recovery should include. In addition, the Annex to Council Framework Decision 2005/214/JHA provides a template for a certificate transmitting a decision and requesting mutual recognition of financial penalties (applicable to the 'criminal route');
- ▶ **IMI template:** The IMI website features a template for a request to recover a penalty or a fine in the case of posting of workers.⁴³

Using the IMI system

The IMI Uniform Instrument Requests within the posting of workers module provides for secure data transfer and clear procedures, roles and responsibilities. Article 21 of the Enforcement Directive states that administrative mutual assistance between competent authorities of the Member States shall be implemented through the IMI. Some tips for using the IMI module related to cross-border penalties are presented in the box below.

Tips for using the IMI sanctions option

- ▶ Describe the full case comprehensively (including if offenders already had the possibility to defend themselves or if the right of defence will be invoked during the notification in the requested Member State);
- ▶ Verify the legality and finality (no chance of appeal) of the sanction, as well as the evidence provided;
- ▶ Ask your foreign counterpart to forward the request to the appropriate competent authorities (e.g. the tax authorities) in cases where the requested authority has no legal powers to execute the sanction;
- ▶ Establish efficient IMI cooperation between the authorities sending the requests, those collecting evidence and those notifying the sanction; and
- ▶ Where tax agencies or other authorities outside the labour inspectorate are competent for sending requests, they also need extensive knowledge and training on the use of the IMI sanction module;
- ▶ Implement the national legislation transposing Chapter VI of the Enforcement Directive, on mutual assistance, recovery and notification of sanctions (or alternatively, change the national legislation to provide more clarity on the procedures);
- ▶ Detect legislative differences between the issuing and requested Member States and personal liability of managers of dissolved and bankrupt companies; and
- ▶ Clarify objections or further appeals in the requested country and how these should be forwarded to the issuing country.



41 It remains unconfirmed if Directive 2010/24/EC is applicable to sanctions related to undeclared work.

42 The template can only be used by the authorised authorities in the IMI. For more information, please see: IMI, (2017). IMI, (2017). Request to notify a decision. Available at: https://ec.europa.eu/internal_market/imi-net/_docs/data_protection/pw/4-1-sample-request-decision_en.pdf.

43 The template can only be used by the authorised authorities in the IMI. For more information, please see: IMI, (2017). IMI, (2017). Request to recover a penalty and/or fine. Available at: https://ec.europa.eu/internal_market/imi-net/_docs/data_protection/pw/5-1-sample-request-recovery_en.pdf and https://ec.europa.eu/internal_market/imi-net/_docs/data_protection/pw/5-3-sample-uniform-recovery_en.pdf

Outside of the scope of posting, bilateral agreements can be a way to set-up procedures for support with notifying and recovering administrative fines.

Use of bilateral agreements for notification procedures

The labour inspectorates of Spain and Portugal notify cross-border administrative fines based on a bilateral agreement. The agreement provides for several areas of cooperation, including identification and sanction proceedings against registered companies. Information is exchanged between the Portuguese and Spanish Labour Inspectorates on a daily basis via different channels, including email and telephone. A detailed technical handbook supports the Spanish Labour Inspectorate with relevant legal provisions and regulations with which Portuguese companies must comply.

Source: European Platform tackling undeclared work, (2017). Good practice fiche: Portugal and Spain: agreement for exchange of information and cooperation between the Portuguese Labour Inspectorate (ACT) and the Spanish Labour and Social Security Inspectorate (ITSS).

Possible outcomes of enforcing an administrative sanction

To enforce administrative fines, the requested authority refers to procedures provided under national laws for the same or similar violations (as stipulated in Enforcement Directive 2014/67/EU concerning the posting of workers and Council Directive 2010/24/EU on the recovery of taxes). Where the executing authority that receives the decision has no jurisdiction for its execution, it transmits the decision, *ex officio*, to the competent authority. Based on any of the provisions listed in Annex 3, a requested authority may also refuse to execute a cross-border sanction.

As a basic rule, a financial penalty imposed on a legal person should be enforced, even if the executing Member State does not recognise the principle of criminal liability of legal persons (according to Council Framework Decision 2005/214/JHA). However, the modalities of notification and enforcement of the decision are governed by the law of the requested Member State.

There is also the possibility that the full amount of the fine is not immediately collected. EU legislation provides for four scenarios, not specifically related to undeclared work, which could serve as a basis for clarifications in national legislation or bilateral agreements:

1) The offender pays in instalments (this option is foreseen only for the recovery of taxes and duties under Council Directive 2010/24/EU).

2) Alternative (including custodial) sanctions may be considered if the EU and national laws provide for this (this option is foreseen only in relation to the mutual recognition to financial penalties under Council Framework Decision 2005/214/JHA).

3) Both Member States grant amnesty and pardon. Only the issuing State may determine an application for review of the decision (this option is foreseen only under Council Framework Decision 2005/214/JHA).

4) Both Member States may terminate the enforcement, informing the other side (as foreseen in Council Framework Decision 2005/214/JHA). Article 17 of Enforcement Directive 2014/67/EU further clarifies the grounds for refusal.

Recovery of social security contributions

The recovery of unpaid social security contributions enhances the deterrence effect of sanctions and remedies unfair advantages. This procedure has its own specifics, as it usually involves national social security offices and relies heavily on EU legislation and bilateral agreements. In addition, labour inspectors have the authority to ensure that all outstanding wages and allowances are paid out, without delay, by giving injunctions.

Regulation (EC) No 987/2009⁴⁴ and Regulation (EC) No 883/2004⁴⁵ provide for the cross-border rules applicable to the recovery of social security contributions. Regulation (EC) No 987/2009 in particular provides for procedures for cross-border cooperation in relation to notification and recovery of social security contributions and benefits.

For example, requests for recovery in another Member State can only be issued if (a) the claim and/or the instrument permitting its enforcement are not contested in its own Member State; (b) the national authority has, in its own Member State, applied appropriate recovery procedures and the measures taken will not result in the payment in full of the claim; and (c) the period of limitation according to its own legislation has not expired (Article 78). The same regulation:

- ▶ Provides that when an employer is registered outside the competent Member State⁴⁶ it shall fulfil the obligation to pay contributions, as if it had had its registered office or place of business in the competent Member State;

⁴⁴ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland).

⁴⁵ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland) (currently revised under Regulation (EU) 2019/1149).

⁴⁶ The one whose legislation applies or which is liable for the payment of certain benefits.

- ▶ Clarifies the priority order for determining the applicable legislation: a) the legislation of the Member State where the person actually pursues their employment or self-employment, if the employment or self-employment is pursued in only one Member State; b) the legislation of the Member State of residence where the person concerned performs part of his activity/activities or where the person is not employed or self-employed; and c) the legislation of the Member State the application of which was first requested where the person pursues an activity or activities in two or more Member States;
- ▶ Clarifies that for the determination of the correct amount of contributions and benefits, the periods of insurance, employment, self-employment or residence completed in several Member States should be added, provided that these periods do not overlap;
- ▶ Provides that in case there is a doubt about the validity of a document or the accuracy of facts, the institution of the Member State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document (this scenario includes, but is not limited to, the withdrawal of A1 forms in cases of fraudulent posting) (Article 5);
- ▶ Lists the existing bilateral agreements facilitating the recovery of social security contributions.

The Belgian procedure for recovering social security payments is described in the box below.

Recovery of social security payments in Belgium and Spain

In Belgium, requests for recovery from social security institutions in other countries are dealt with in accordance with the EU regulations or bilateral agreements. Social benefit recipients are informed of the request and the amounts to be withheld. They are advised to contact the foreign institution issuing the request if they wish to challenge its decision. If the benefit recipient proposes an adjustment to the percentage or amount to be withheld, that proposal is sent to the applicant authority (in the other Member State) and the position adopted by that Member State determines the recovery action taken. The benefit recipient and the foreign institution are informed once the recovery debt has been paid off. The rate of recovery can range from 10 % to 100 %,

depending on whether or not the undue amount stems from an error made by the debtor (infringing party).

In Spain, the labour inspectorate is responsible for initiating social security infringement and recovery proceedings against the employer, regardless of where the companies are established. The inspectorate is also responsible for infringements regarding the non-payment of salaries or discrimination on the grounds of workers' origin or nationality. In cases of fraudulent posting, the inspectorate asks the competent social security authority to request the withdrawal of A1 forms by the respective authority in the other Member State (according to Article 5 of Regulation 987/2009). At the same time, a resolution by the inspectorate is approved to stand by the proceeding until the withdrawal request is arranged or until the requested cooperation has been rejected. If salaries are not paid back, the labour authorities can initiate a judicial lawsuit.

Source: Presentation from Belgium and Spain at the thematic review workshop: Cross-border sanctions in the area of undeclared work, 28 – 29 January 2020, Paris, France.

1.5.2. Criminal route

Criminal sanctions, such as criminal fines (under Council Framework Decision 2005/214/JHA), prison sentences, freezing of assets, confiscation, or business closure, are less frequent in cross-border undeclared work cases. For example, in Belgium, 25 % of the infringements are prosecuted by labour prosecutors (criminal proceedings) and 75 % result in administrative sanctions.⁴⁷ If the uncovered violations are criminal in nature, the labour enforcement authorities transfer the case to the police, directly to the prosecutor (specialised or general), and/or the courts. These authorities then become responsible for notification and execution of the sanction.

Criminal procedures operate under uniform rules and benefit from more legal possibilities for cross-border mutual assistance, for example:

- ▶ Use of the European arrest warrant according to Council Framework Decision 2002/584/JHA;⁴⁸
- ▶ Freezing of assets order under Council Framework Decision 2003/577/JHA;⁴⁹
- ▶ Mutual recognition of the confiscation order under Council Framework Decision 2006/783/JHA;⁵⁰ and
- ▶ Using Council Act 2000/C 197/01⁵¹ as a basis for

47 Presentation by Belgium at the thematic review workshop on cross-border sanctions in the area of undeclared work, 28-29 January 2020, Paris.

48 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. Statements made by certain Member States on the adoption of the Framework Decision.

49 Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

50 Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders are aimed at facilitating the recovery of assets in cross-border cases.

51 Council Act 2000/C 197/01 of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual

establishing national level procedures for mutual assistance in criminal matters.

Enforcement authorities can request legal aid from EU-level bodies, such as Europol (in relation to large organised crime cases), Eurojust, the European Judicial Network, and the Carin network (for asset recovery, seizure and confiscation).

If a sanction is based on legislation not relevant in the territory of the issuing country (e.g. infringements of labour regulations using international payment systems, which are not registered on its territory), the requested

country could decide to reduce the amount of the fine imposed by criminal courts according to the national rules for acts of the same kind (Article 8 Council Framework Decision 2005/214/JHA52).

1.5.3. Possible solutions for executing cross-border sanctions

Possible solutions to the challenges that may emerge during the execution of sanctions are presented in Table 6 below.

Table 6. Possible solutions for executing cross-border sanctions

Issue	Possible solution
<p>The sanctioned company or legally responsible natural person refuses to pay the fine, even after all legal channels have been explored (including IMI requests)</p>	<ul style="list-style-type: none"> ▶ Suspend the company or legally responsible natural person from performing their economic activity in the Member State (after informing the company or legally responsible natural person and providing the possibility for the decision to be challenged in court);⁵³
<p>The sanctioned company or legally responsible natural person is bankrupt and/or has no assets on the national territory</p>	<ul style="list-style-type: none"> ▶ Check if the company or legally responsible natural person has assets in other Member States; ▶ Confirm if the national law in the country where the company or legally responsible natural person is located allows for alternative sanctions, including custodial sanctions (e.g. under Council Framework Decision 2005/214/JHA). The prosecution could perform custody seizure at an earlier (pre-trial) stage (goods, equipment, installations, vehicles, bank accounts, debt claims which the offender owns in the country where the infringement was committed, etc.).
<p>The company or legally responsible natural person has changed address</p>	<ul style="list-style-type: none"> ▶ Try to notify the sanction (e.g. registered letter) as quickly as possible; ▶ Request the local authorities to find out the correct address and make the notification, increasing the likelihood of the fine being paid spontaneously.
<p>In some countries, only legal persons can be sanctioned in case of companies, and in others only natural persons⁵⁴</p>	<ul style="list-style-type: none"> ▶ Establish with foreign partners whether legal or natural persons can be sanctioned in their country; ▶ Establish what the relevant assets are for a fine (such as the assets of a legal person, or private assets owned by the CEO or responsible manager).
<p>Only national companies or legally responsible natural person (registered / residing in the issuing Member State) can be sanctioned</p>	<ul style="list-style-type: none"> ▶ Establish/use judicial cooperation channels with judicial/enforcement bodies in other Member States; ▶ Sign bilateral agreements, including provisions for cross-border sanctioning procedures.

Source: CSD/ICF

Assistance in Criminal Matters between the Member States of the European Union.

52 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

53 Based on the presentation by France at the thematic review workshop on cross-border sanctions in the area of undeclared work, 28-29 January 2020, Paris.

54 This also includes self-employed people.

2. RECOMMENDATIONS TO ENHANCE CROSS-BORDER SANCTIONS

Cross-border undeclared work needs to be addressed strategically at national and EU-level.⁵⁵ Successful enforcement of cross-border sanctions requires political support, streamlined legislation, stocktake of existing risks and practice, and certainty that professionals in enforcement bodies have the right competences and sufficient resources.

Cross-border sanctions are one measure of enforcement that require national and EU-wide cooperation between labour, tax and social security authorities, involving social partners and other stakeholders. This means:

- ▶ Embedding cross-border sanctions in the full range of direct (e.g. amnesties, voluntary disclosure) and indirect policy measures (e.g. establishing trust in the formal institutions);⁵⁶
- ▶ Learning from other existing practices, such as those applied in the areas of tax and occupational safety and health sanctioning; and
- ▶ Monitoring and evaluating all steps in the sanctioning of cross-border undeclared work, and improving the future procedures based on past experience.

Cross-border sanctioning is a time-intensive process that requires good international cooperation and the frequent ‘trying and testing’ of different approaches. In order to ensure efficient cross-border sanctioning, staff in enforcement authorities need competences and resources to work across borders,⁵⁷ legislative knowledge, and awareness of inter-agency collaboration.

2.1. Capacity building at national level

2.1.1. Knowledge of relevant EU and national legislation

Expertise in national and EU legislation, as well as knowledge of the most relevant laws and responsible authorities in partner countries, help to determine the most efficient sanctioning procedure. An initial check of the respective national and EU legislation could help to clarify information needs, possible sanctions and cooperation procedures. If correctly transposed into national law, EU directives can:

- ▶ Set the basis for harmonised regulations and possible infringement definitions across Member States (e.g. fraudulent posting of workers, abuses of social security coordination systems, tax obligations and working conditions).⁵⁸ Other EU directives also provide a basis for setting unified national definitions of a number of labour-related violations, such as: employers’ obligations,⁵⁹ occupational safety and health,⁶⁰ breaches of the labour conditions in temporary work agencies,⁶¹ and human trafficking.⁶² and
- ▶ Clarify applicable procedures, e.g. information exchange, mutual assistance and recognition of sanctions.

The relevant EU-level legal base for cross-border sanctioning is presented in Annex 1.

55 See also: European Platform tackling undeclared work, (2020). Toolkit on cross-border concerted and joint inspections. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22252&langId=en>

56 European Platform tackling undeclared work, (2018). Glossary. Available at: <https://ec.europa.eu/social/main.jsp?catId=1323&langId=en>; Williams, C.C. (2016), Developing a holistic approach for tackling undeclared work: background paper. European Commission, Brussels.

57 See also European Platform tackling undeclared work, (2020). Toolkit on competence profiles of labour inspectorates and inspectors in tackling undeclared work. Available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8287&furtherPubs=yes>

58 Some national provisions defining infringements are already closely connected with EU-based rules, e.g. the Belgian LIMOSA register and the Danish RUT register, both of which apply to posted workers and refer to Directive 96/71/EC.

59 Council Directive 91/533/EEC of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship.

60 Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC).

61 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

62 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

Legal departments and/or experts within inspectorates help to identify infringements and the relevant sanctions. For instance, lawyers at the Dutch Labour Inspectorate analyse inspection reports and establish the type and severity of the violation. Training staff⁶³ on EU legislation and regulations in partner countries could also cover mutual assistance and recognition of sanctions, as well as supplementary activities such as the recovery of administrative fines and social securities, joint liability arrangements, the right to defence, appeal rules, corporate law provisions related to reallocating a company, insolvency and bankruptcy, or case-law of the Court of Justice of the European Union (CJEU) and its impact on national law and practice.

Initial knowledge can be increased by mapping peers' powers to impose and execute sanctions in an EU-level 'who's who' directory, as proposed in the Annex 1 of the Platform's toolkit on cross-border concerted and joint inspections.⁶⁴

2.1.2. Inter-agency cooperation

National and cross-border sanctions for undeclared work require the cooperation of different national authorities, which are responsible for different enforcement tasks. Cooperation between labour inspectorates, social security and tax authorities, and the judiciary can enhance learning in respect of effective enforcement. Learning and co-working between authorities can entail:

- ▶ Interlinking existing databases at national and possibly cross-border level, allowing faster checks of workers' and companies' status, real-time updates on the progress of a sanction and information on national and cross-border labour law jurisprudence;
- ▶ Jointly suggest and advocate for legislative changes and procedural improvements that could facilitate cross-border sanctioning; and
- ▶ Applying innovative approaches to sanctioning undeclared work, similar to those used by occupational safety and health or tax authorities (e.g. progressive fines for repeat offenders, withdrawal of the enterprise's eligibility to participate in public tenders, withdrawal of subsidies, substituting fines with training for managers and staff, reduced penalties for early payment of fines, awarding non-violator companies with reduced professional indemnity insurance premiums, reducing fines if the detected undeclared worker is subsequently employed by the employer on a declared basis, etc.⁶⁵).

2.2. EU-level assistance

The following EU-level assistance, guidance and resources could help to implement cross-border undeclared work sanctions.

63 See also: European Platform tackling undeclared work, (2020). Toolkit on competence profiles of labour inspectorates and inspectors in tackling undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22554&langId=en>

64 See also: European Platform tackling undeclared work, (2020). Toolkit on cross-border concerted and joint inspections. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22252&langId=en>

65 International Labour Organization (ILO), (2013). Labour inspection sanctions: law and practice of national labour inspection systems.

Table 7. Potential EU-level assistance to enforce cross-border sanctions

Suggested next steps	Possible longer-term goals
Legal guidance	
<p>Developing common templates and manuals on the implementation of EU legislation and national legislation on sanctioning of undeclared work and social fraud, which can be used at operational level, including examples of good practice.</p>	<p>Provide legal advice on the enforcement of cross-border sanctions, covering the possible types of sanctions based on EU and national legislation, evidence requirements in the different Member States, and connection to Eurojust or Europol.</p>
Enhancing cross-border cooperation	
<p>Providing an overview of the different authorities involved in administrative, criminal sanctioning processes, as well as for the recovery of social security contributions. This can entail authorities deciding on the sanction, agencies responsible for notifying sanction decisions and organisations responsible for executing the sanction (considering also what type of evidence is required in each Member State to enforce a sanction).</p>	<p>The overview of involved authorities can be complemented by mutual learning, training and secondment programmes. Training can cover the EU and national legislation to enforce cross-border sanctions, while piloting the implementation of cross-border sanctions in secondment programmes increases good practice in the enforcement process of cross-border sanctions.</p>
<p>Support cross-border enforcement procedures relating to sanctions in bilateral agreements and MoUs, adding follow-up procedures in national and cross-border agreements for concerted and joint inspections and national and cross-border post-inspection reports.</p>	<p>Coordinate the handling of cross-border undeclared work cases by the national liaison officers (NLOs) via:</p> <ul style="list-style-type: none"> ▶ An alert mechanism to ELA and counterparts in other countries used by enforcement authorities or recognised and competent social partners who suspect cross-border undeclared work (e.g. discovered through inspections); ▶ Mediation-on-demand in cases of conflict (of interpretation) on executing issues; and ▶ Following-up on the enforcement of sanctions in another Member State.
Information-sharing	
<p>Encourage information-sharing on suspected cross-border undeclared work cases by providing guidance materials. This could include instructions on how to use the IMI posting module on penalties and fines. It could also refer to the gathering and provision of information on cross-border cases, the legislation infringed, actions already taken and possible next steps.</p>	<p>Information sharing could be taken forward within proposals on the creation of an undeclared work module within the IMI system.</p>
Communicating with offenders	
<p>Reimbursement of translation costs of notification letters</p>	<p>Setting-up a good practice exchange on ‘what works’ when communicating with offenders, such as wording in letters, reference to enforcement authorities in the country where the offender resides, use of bailiffs, etc.</p>
Use of evidence	
<p>Support national bodies in coherent evidence collection</p>	<p>Facilitating an agreement between the national authorities (followed by national legislation update), which would ensure that they could use as evidence any information, documents, findings, statements, certified copies or intelligence communicated, on the same basis as similar documents obtained in their own Member State.</p>
<p>Reimbursement of translation costs for documents as evidence to enforce a sanction</p>	<p>EU-level support could be beneficial to promoting the embedding in national legislation of legal acceptance of various types of evidence between Member States, for example via the signature of bilateral agreements and MoUs.</p>
Strengthening the follow-up and monitoring of cross-border sanctions	
<p>Build-in updates in the IMI on the notification or collection in another country, allowing partners to follow up.</p>	<p>Systematic analysis of the outcomes of enforced cross-border sanctions, including challenges and success factors that supported the enforcement and the impact on detected cases of undeclared work.</p>

3. MONITORING AND FOLLOW-UP

Monitoring and evaluation of cross-border sanctions helps to identify how to improve their impact in the future. IT systems and databases can usefully monitor and evaluate the effect of sanctions, as in the Dutch example below.

Monitoring the collection of administrative fines at national and EU level in the Netherlands

The Labour Inspectorate in the Netherlands monitors the status of national and cross-border fines in an online database that allows monthly and yearly progress to be tracked. It also provides information on the amounts of irrecoverable fines. The data show that in the last 10 years, around 75 % of all fines were collected successfully. Nearly 60 % of cross-border fines were collected from foreign companies, who paid immediately upon notification by the Dutch inspectorate.

In cases related to occupational safety and health violations, about 97 % of fines are collected, falling to only 29 % of fines for minimum wage and holiday allowance violations. This is partly related to the nature of the businesses, which are often volatile enterprises with few assets.

Source: Presentation by the Netherlands at the thematic review workshop: cross-border sanctions in the area of undeclared work, 28-29 January 2020, Paris, France.

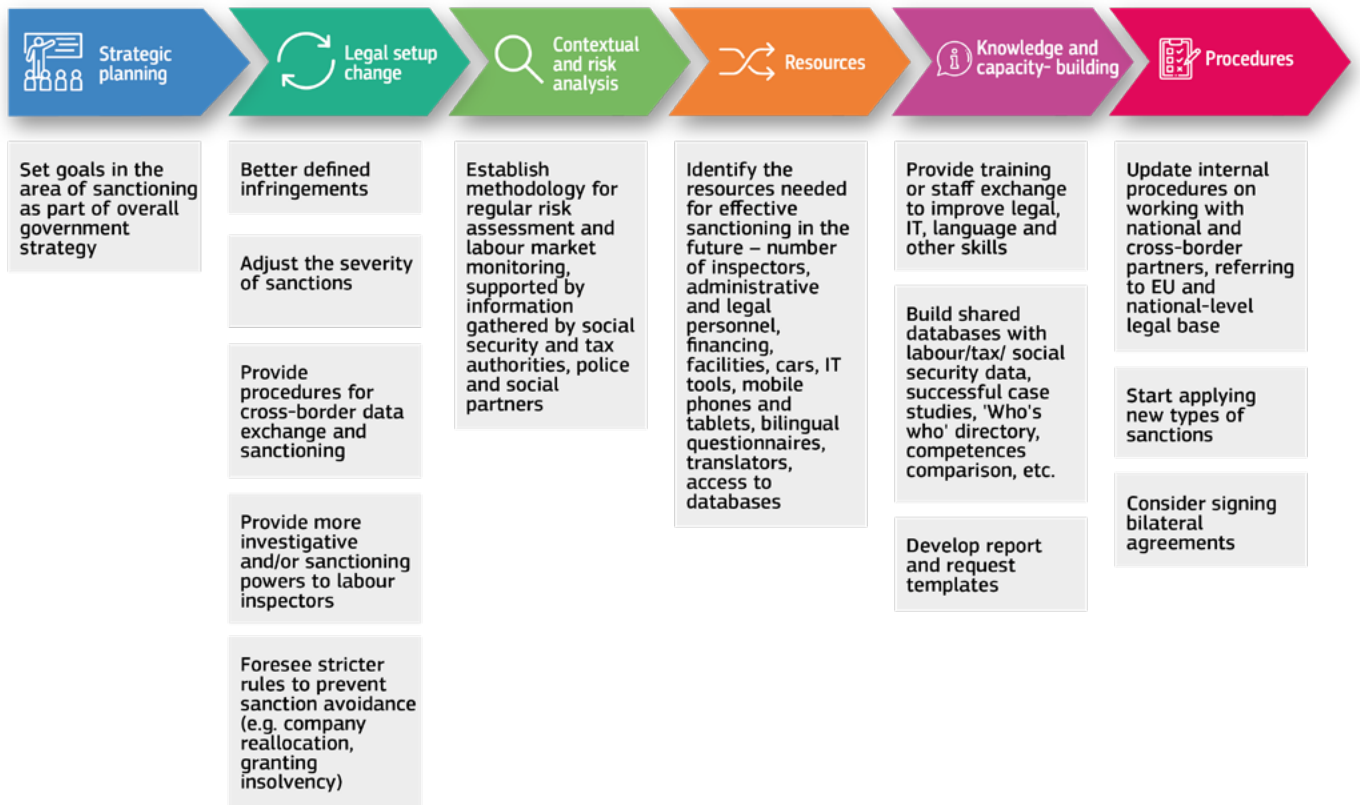
Labour inspectorates are usually involved at the beginning of procedures to sanction cross-border undeclared work.

Information on the execution and results of cross-border sanctions would allow inspectorates to monitor the effects of their deterrence measures and to identify challenges and lessons more comprehensively. Possible approaches to improve the follow-up of cross-border sanctions are:

- ▶ Develop and use IT tools to allocate, track and collect cross-border sanctions (e.g. CHORUS tool in France);
- ▶ Establish procedures for writing annual reports and evaluations of the cross-border sanctions applied and share key conclusions nationally and across borders;
- ▶ Collaborate with social partners to identify key risk sectors, monitor labour market trends, establish contact with a specific company, and implement awareness and behavioural change measures;
- ▶ Provide possibilities for correction before sanctioning (e.g. through warning letters) and undeclared work prevention (e.g. photo ID and a tax number in the construction sector in Finland); and
- ▶ Pilot, test and evaluate the efficacy of new types of sanctions (e.g. withdrawal of operating licences, and/or joint liability of contractors and subcontractors).

Follow-up steps could strengthen the strategic approach described in Part 2. In particular, authorities may recognise the need for more innovative approaches to sanctioning. Some examples of possible improvements are presented in Figure 6 below.

Figure 6. Possible improvements based on regular monitoring and evaluation



Source: CSD/ICF, based on European Platform tackling undeclared work, (2019). A practitioner toolkit on risk assessments for more efficient inspections as a means to tackle undeclared work; Springer Science+Business Media, (2019). Labour inspectorates' efficiency and effectiveness assessment as a learning path to improve work-related accident prevention.

4. CONCLUSION

Cross-border sanctions are often the result of other forms of cross-border collaboration. Ultimately, their efficient enforcement demonstrates that complex cross-border fraud is being tackled. However, enforcement bodies need to step-up their collaboration efforts by bringing together the expertise, information and resources of multiple partners. In turn, the effective enforcement of sanctions for cross-border undeclared work can help offenders to comply with labour, social security and tax regulations, and provide guidance for future risks.

This paper outlines model steps to build up a case, to enforce a sanction decision and follow-up cross-border sanctions. It proposes the desired EU support at each of these stages, particularly relevant following the activities of ELA. It also provides guidance on a more strategic approach to cross-border sanctioning that could result in sustained improvement of enforcement bodies' capacities, with an associated increase in efficient collaboration, ultimately supporting fair and well-functioning labour markets.

ANNEX 1

RELEVANT LEGISLATION FOR CROSS-BORDER SANCTIONS

Type of cross-border cooperation	Infringements covered	Scope	EU-level legal base
<p>Exchange of information (replying to reasoned requests for information and carrying out checks)</p> <p>Mutual assistance and recognition to notify a decision and to recover administrative penalties/fines</p> <p>Preference for proceeding via IMI (e.g. inter alia: Chapter 6 for posting of workers)</p> <p>Bilateral agreements/MoUs are possible (without affecting the rights and obligations of the workers and undertakings concerned, guaranteed by EU law)⁶⁶</p>	<p>Infringements on national provisions of directive 96/71 as amended by Directive (EU) 2018/957 and Directive 2014/67:</p> <ul style="list-style-type: none"> - Non-compliance with Article 3 'Terms and conditions of employment' - Non-compliance with administrative requirements - Transnational cases of undeclared work/bogus self-employment related to posting 	<p>Administrative financial penalties or fines⁶⁷</p>	<p>Enforcement Directive 2014/67/EU</p> <p>Directive 96/71/EC as amended by Directive (EU) 2018/957</p> <p>ELA Regulation 2019/1149, article 7, 1(d)</p>
<p>Exchange of information</p> <p>Mutual recognition and execution</p>	<p>All criminal law offences under the condition of 'double incrimination'⁶⁸, such as non-compliance with an obligation to declare workers in a personnel register or official public authority database</p> <p>Lists 39 offences without verification of double incrimination, such as participation in a criminal organisation, swindling, forgery of documents (may also apply to fictitious letterbox companies)</p>	<p>Financial penalties in criminal matters issued by a criminal court/tribunal or other administrative authority, that could be appealed before a court 'competent in criminal matters'</p>	<p>Council Framework Decision 2005/214/JHA</p>

66 BAs and MoUs may not impose more stringent obligations and administrative burden than is allowed by EU-law (e.g. freedom of services). Similarly, rights of workers guaranteed by EU law may not be limited/devaluated (e.g. article 3 of the Posting of Workers Directive). BAs and MoUs however may organise more precise details, modalities, efficiency and flexibility in the way such cross-border cooperation is set up.

67 Other administrative sanctions (penalties) with direct or indirect financial impact (such as exclusion for markets, withdrawal of license, etc.) are not excluded as such.

68 Preventing a person from being tried again for the same crime.

Type of cross-border cooperation	Infringements covered	Scope	EU-level legal base
	<p>Offences related to the PWD are excluded</p> <p>CJEU case C 60/12 from 2013 ruled that the ‘court having jurisdiction in particular in ‘criminal matters’ must be interpreted as covering any court, tribunal or authority of the issuing State other than a court, which applies a procedure that satisfies the essential characteristics of criminal procedure. Such a court/authority must have full jurisdiction to examine the case as regards both the legal assessment and factual circumstances. This implies that a fine imposed by an administrative authority could fall under the scope of the framework decision if these conditions of the CJEU are met.</p>		
<p>Exchange of information (replying to reasoned requests for information and carrying out checks)</p> <p>Mutual assistance (but not mutual recognition) for recovery</p>	<p>Tax-related offences</p> <p>It is not confirmed if Directive 2010/24/EC is applicable to sanctions related to undeclared work (wage envelopes, non-registering of employees in personnel registers or social security database) nor whether tax administrations are competent authorities to recover undeclared work-related fines</p>	<p>Administrative penalties, fines, fees and surcharges relating to those taxes, excluding compulsory social security contributions and criminal penalties</p>	<p>Directive 2010/24/EC</p>
<p>Mutual assistance</p> <p>Judicial assistance (e.g. sending and service of procedural documents; transmission of requests for mutual assistance, etc.)</p>	<p>Criminal matters (e.g. tax and posting of workers infringements, or evading the payment of social security contributions is a criminal offence)</p> <p>Offences needing (inter)action between public prosecutors, judicial authorities</p>	<p>Criminal sanctions</p>	<p>Council Act 2000/C 197/01 Convention 2000 (Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union)</p>

Type of cross-border cooperation	Infringements covered	Scope	EU-level legal base
Mutual assistance (use of the European arrest warrant)	Forgery of administrative documents and trafficking thereof, forgery of means of payment, participation in a criminal organisation, trafficking in human beings, fraud, including that affecting the financial interests of the European Communities, etc.	Arrest	Council Framework Decision 2002/584/JHA
Mutual assistance (use of freezing of assets order)	As per Council Framework Decision 2002/584/JHA	Freezing of property or evidence	Council Framework Decision 2003/577/JHA
Mutual recognition of the confiscation order	As per Council Framework Decision 2002/584/JHA	Confiscation	Council Framework Decision 2006/783/JHA
Mutual assistance (cross-border recovery of social security contributions)	Social security-related infringements	Administrative sanctions, collection of contributions and recovery of benefits, requests for withdrawal of documents (such as A1 forms)	Regulation (EC) No 883/2004 (currently revised under Regulation (EU) 2019/1149) Regulation (EC) No 987/2009 (laying down the procedure for implementing Regulation (EC) No 883/2004)
Information exchange Recovery of administrative penalties/fines/taxes	Offences covered by the bilateral agreements and MoUs possible under the Enforcement Directive Possible under Council Framework Decision 2005/214/JHA (Article 18)	Administrative and/or financial sanctions	Bilateral agreements and MoUs

Source: CSD/ICF

ANNEX 2

INFRINGEMENT AND SANCTION REPORT TEMPLATE

A) Infringement

Evidence	
Information about the case	<i>Please list the responsible authorities who provide information</i>
How were these documents collected?	<i>Please list the source of the documents, and how these were collected, e.g. via information exchange with another Member State, as a result of a national, concerted or joint inspection</i>
Collection of the supporting documents/evidence	<i>Please list the documents/evidence collected</i>
Identified infringements	
Is it an infringement relating to posting of workers?	<i>Please describe any infringements, such as minimum wage violations, working time, cost reimbursements, missing mandatory posting declaration, serious occupational safety and health offences, lodging/housing, etc.</i>
Is the infringement outside the scope of posting?	<i>Please describe in as much detail as possible any infringements, such as undeclared commuters, mobile workers/international transport lorry drivers, platform workers working simultaneously in different Member States.</i>
Legislation	<i>Please list the legislation of each Member State that the infringement violates</i>
Is a similar offence/legislation (double criminality) in both countries?	
Check and identify relevant legislation in concerned countries	<i>List responsible authorities to provide this information</i>
Illegal employment of third-country nationals?	<i>Please describe in as much detail as possible whether the inspection discovered illegally residing third-country or illegally working third-country nationals</i>
Possible follow-up	<i>What measures should be taken regarding a) residing in the country (asylum procedure, victim protection, detention); b) outstanding salaries?</i>

<p>Trafficking in human beings</p> <p>Possible follow-up</p> <p>Was a public prosecutor informed?</p> <p>Were the police informed?</p>	<p><i>Please describe in as much detail as possible whether the inspection discovered trafficking in human beings</i></p> <p><i>What measures should be taken in respect of victim protection? Was a public prosecutor informed? Were the police informed?</i></p>
<p>Required evidence</p>	
<p>What type and format of evidence is needed to proceed with administrative/criminal sanctions?</p>	<p><i>Please refer to type and format of evidence needed to proceed with administrative/criminal sanctions (such as documents, photographs, testimonies or statements during inspections).</i></p>
<p>If needed, can testimonies and statements during inspections be used as evidence in court?</p>	<p><i>Please refer which types of evidence can be used in court according to the legislation of each Member State.</i></p>
<p>Does the evidence comply with data protection rules?</p>	<p><i>Please list the applicable legislation in each Member State related to data protection rules and how evidence complies.</i></p>
<p>Translation</p>	<p><i>Please list the documents requiring translation and into which languages. List the responsible authorities to provide these.</i></p>
<p>If needed, which EU-level bodies can assist with data gathering and secure data transfer (EUROPOL, EUROJUST, etc.)?</p>	

B) Sanction

Offender	<i>Please provide the name, identification number (if applicable), address, place of infringement and contact details of the offender</i>	
Sanction decision	<i>After a careful review of the existing evidence and legislation, please indicate the type and amount sanction (if applicable)</i>	
	Member State A	Member State B
Criminal prosecution	<input type="checkbox"/>	<input type="checkbox"/>
Administrative fine	<input type="checkbox"/>	<input type="checkbox"/>
Recovery of social contributions	<input type="checkbox"/>	<input type="checkbox"/>
Payment of wages	<input type="checkbox"/>	<input type="checkbox"/>
Recovery of undue social benefits	<input type="checkbox"/>	<input type="checkbox"/>
Tax contributions	<input type="checkbox"/>	<input type="checkbox"/>
Licence withdrawal	<input type="checkbox"/>	<input type="checkbox"/>
Withdrawal from public procurement	<input type="checkbox"/>	<input type="checkbox"/>
Other		
If administrative, a) based on Enforcement Directive 2014/67, PWD amended by Directive 2018/957	<i>Yes/No</i> If yes, list responsible authorities to notify the sanction	
b) outside the scope of posted workers:	<i>Yes/No</i> If yes, list responsible authorities	
b1) based on Article 5 of Council Framework Decision 2005/214	<i>Yes/No</i> If yes, list responsible authorities	
Has the execution of the penalty been accepted by the requested authorities (automatic mutual recognition)?	<i>Yes/No</i> If yes, list responsible authorities	
b2) Outside the scope of Article 5: double incrimination is required		
Has this been discussed between the counterparts?	<i>Yes/No</i>	

<p>If criminal prosecution, when the penalty/ criminal fine has been pronounced by a court (after prosecution by the prosecutor)</p>	<p><i>List the judicial authorities (or the tax agency for their account) that execute the cross-border execution (e.g. via the usual channels for judicial assistance, eventual requests in Council Framework Decision 2005/214, etc.)</i></p>	
<p>Execution of sanctions by other authorities</p>	<p><i>Please list the name and contact details of each organisation involved</i></p>	
	<p>Member State A</p>	<p>Member State B</p>
<p>Social security office</p> <p>Tax Office</p> <p>Police</p> <p>Health and safety authorities</p> <p>Authorities competent for public tenders</p>		
<p>Opportunity for defence</p>	<p><i>List how the right of defence has been respected, e.g. appeals considered, right to access evidence, assistance from a lawyer</i></p>	
<p>Sanction execution of administrative sanctions</p>		
<p>'Certified copy of the decision' sent by the Member State requesting the sanction?</p> <p>If no payment is made, is assistance required?</p> <ul style="list-style-type: none"> ▶ For posting-related cases, IMI request (in the sanction module) ▶ Notification of the decision via the official request forms provided for in Council Framework Decision 2005/214 ▶ Mutual assistance requests on the basis of bilateral agreements or MoUs 	<p><i>Please list the name and responsible authorities to notify a fine.</i></p> <p><i>State when the request to notify was sent via IMI, by which authority and to which authority</i></p> <p><i>State when the request to notify was sent, by which authority and to which authority</i></p> <p><i>State when the request for mutual assistance was sent, by which authority and to which authority</i></p> <p><i>If fine has been paid, state when</i></p>	

Description of sanction execution	<i>Name other authorities asked to execute the fine, e.g. tax</i>
<p>Follow-up on the sanction</p> <ul style="list-style-type: none"> ▶ Partners agree to notify each other about the case every _ month <input type="checkbox"/> ▶ Partners agree to inform each other about the successful execution/collection of a fine <input type="checkbox"/> ▶ Partners to agree follow-up on case after _ months <input type="checkbox"/> 	<p><i>Please tick all that apply and fill in</i></p>
Recommendations	<i>List person/authority to take further action</i>

ANNEX 3

FOUNDATIONS FOR NON-RECOGNITION OF A SANCTION DECISION

**Council Directive 2010/24/EU
on the mutual assistance for
the recovery of taxes**

If the decision is not final (is still in the process of being contested)

If there are assets for recovery in the applicant Member State

If the request does not contain the information required and if it is incomplete or manifestly does not correspond to the underlying decision

**Enforcement Directive
2014/67/EU**

If it is obvious that the envisaged costs or resources required to recover the administrative penalty and/or fine are disproportionate in relation to the amount to be recovered or would give rise to significant difficulties

If the overall financial penalty and/or fine is below EUR 350 or the equivalent to that amount

Fundamental rights and freedoms of defendants and legal principles that apply to them as laid down in the Constitution of the requested Member State are not respected

**Council Framework
Decision 2005/214/JHA
and Enforcement Directive
2014/67/EU**

If a certificate is not produced, is incomplete or manifestly does not correspond to the decision

If the financial fine is under a certain threshold (EUR 70 for penalties under Council Framework Decision 2005/214/JHA and EUR 350 under Enforcement Directive 2014/67/EU)

**Council Framework
Decision 2005/214/JHA
on mutual recognition to
financial penalties**

If the same decision has already been delivered and/or executed

If the decision relates to acts that do not constitute an offence in the executing State (except for offences mentioned in Article 5(1) in the list of 39 infringements)

If the violation has been committed in whole or in part in the territory of the executing State

If the person concerned is underage or cannot be held liable for another legal reason

FURTHER SOURCES OF INFORMATION

EU-level legal base and court cases

Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union - Council Declaration on Article 10(9) - Declaration by the United Kingdom on Article 20. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0712\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:42000A0712(01)&from=EN)

Council Act 2000/C 197/01 of 29 May 2000 establishing, in accordance with Article 34 of the Treaty on European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000F0712%2802%29>

Council and Resolution 2003/C 260/01 on transforming undeclared work into regular employment. Available at: https://eur-lex.europa.eu/legal-content/BG/TXT/?uri=uriserv%3A0J.C_2003.260.01.0001.01.ENG&toc=O-J%3AC%3A2003%3A260%3ATOC

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