

Audit of the implementation of the accompanying measures for the free movement of persons

State Secretariat for Economic Affairs

Key facts

Following the opening of the Swiss labour market to persons benefiting from the Agreement on the Free Movement of Persons with the European Union, Switzerland introduced so-called accompanying measures (known as FlaM) in 2004. These measures aim to protect workers against the risks of undercutting in terms of wages (wage dumping) and working conditions. They are also intended to ensure a level playing field for Swiss and foreign companies. In 2019, the cantons and the joint committees examined more than 41,000 Swiss and foreign companies. The Confederation plays a supervisory role in this area and contributed CHF 15.3 million to the costs of these checks.

The Swiss Federal Audit Office (SFAO) audited the efficiency and effectiveness of the checks carried out by the FlaM implementing bodies. This included a survey of a sample of Swiss and foreign companies that had been subject to such checks. In the SFAO's view, the FlaM system serves a preventive function and the checks are effective in the sectors with minimum wage requirements. In the other sectors, the results of the checks were more mixed, as it is not possible to sanction employers who engage in abusive wage dumping. Efficiency can be improved by reducing the number of checks on foreign companies and by better selecting which of these companies to check based on previous checks (risk-based approach).

The proportion of checks on foreign companies is too high

A large number of checks on companies are carried out each year due to the FlaM. The implementing bodies believe that these checks are necessary and undeniably provide a preventive effect in the fight against wage dumping.

The Tripartite Federal Commission recommends checking between 30% and 50% of seconded foreign workers and foreign self-employed persons who register for work in Switzerland. This level of control raises the issue of efficiency, as it is too high in relation to the risk that foreign companies represent for the labour market. Furthermore, a review of the control data for foreign companies for the 4th quarter of 2019 showed that the amounts of corrected wages were significantly lower than the costs of the checks themselves, and that 8% of these companies underwent multiple checks by different implementing bodies for no apparent reason. In part, these multiple checks were due to insufficient sharing of control data and results between the various implementing bodies, which prevents a risk-based approach.

Abusive wage dumping not sanctioned

The sanction system includes conventional and administrative sanctions. The deterrent effect of these sanctions varies, as each implementing body can define its own sanction tariffs for the various infringements, to the extent possible under the law. In terms of administra-

tive sanctions, SECO has issued recommendations, which most cantons follow. Conventional sanctions are the most heterogeneous and the law does not allow the Confederation to issue rules in this area.

For businesses that operate in sectors without a collective employment agreement or standard employment contract, no individual sanctions are possible if it is found that there is abusive undercutting in relation to the wages customary in the region. A business can therefore refuse the Tripartite Federal Commission's proposal to adjust wages without being penalised. Only if there is repeated wage dumping in a region is it possible to propose the extension of a collective employment agreement or to draw up a standard employment contract that sets a minimum wage for the sector or profession.

Blind spots in the labour market monitoring strategy

The Tripartite Federal Commission's enhanced labour market monitoring focuses on low-wage sectors, the majority of which already have minimum wage conditions. In the SFAO's view, the commission should examine whether taking other factors into account, such as professions with a large number of skilled immigrants, would not lead to a different result in the risk analysis.

The leeway provided by the legal framework leads to different practices among the cantonal tripartite commissions. The differences in practice are particularly evident in the measures for monitoring the labour market and in the methods for calculating abusive wage dumping. This heterogeneity severely restricts the Tripartite Federal Commission's access to comparable information for its labour market monitoring tasks.

There is a lack of transparency in the monitoring of Swiss businesses in sectors with a binding collective employment agreement. SECO has no statutory supervisory tasks in this area.

Highly decentralised organisation and insufficient information flow

The complexity of the FlaM is a result of their development over time. Tasks are divided among many players and the supervisory activity is highly decentralised. It is not easy for foreign companies to understand how the FlaM are organised and how the remuneration system works in Switzerland, despite SECO's efforts to provide information.

The FlaM implementing bodies are dependent on the quality of the information available to organise their work. However, the system for registering seconded workers is not efficient enough, and registrations arrive too late or at the wrong body. Projects have been launched to improve the situation; it is important that they be completed as soon as possible.

Training and opportunities for exchanges between the staff of the implementing bodies could be further developed in order to improve consistency and the quality of work.

Original text in French