

## Measures accompanying the free movement of persons Audit of SECO's supervision

### Key facts

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Following the entry into force of the Agreement on the Free Movement of Persons between the European Union (EU) and the Swiss Confederation, the latter introduced accompanying measures in 2004 to protect Swiss and seconded employees in Switzerland from the undercutting of wages and working conditions (FlaM).<sup>3</sup> In 2013, the implementing bodies tasked with auditing the FlaM performed 40,000 company audits and received compensation of CHF 11.4 million from the Confederation.

Due to the risks associated with the fragmented organisation of FlaM implementation, the Swiss Federal Audit Office (SFAO) examined the supervision concept of the State Secretariat for Economic Affairs (SECO) and how the implementing bodies were supervised.

### **SECO's supervision is adapted, but there is a need for synergy in the fight against undeclared employment**

The bodies implementing the FlaM are joint commissions, which represent employers and trade unions in sectors with an extended collective employment agreement (CEA), and tripartite commissions, which bring together public bodies, employers and unions in sectors without such an agreement. Individually or grouped together as associations, the joint commissions audit companies subject to their supervision. The sectors not covered by extended CEAs are subject to audits performed by the cantonal administrations (generally the Cantonal Employment Office).

The organisation, resources and tools made available to SECO have been adapted as the FlaM have developed. Despite the rapidly changing legal framework for the FlaM, SECO's supervision concept is comprehensive and coherent. However, with a view to lowering the risks of poor financial management, coordination of the supervision of the joint commissions needs to be improved. The supervision concept also needs to evolve in order to take account of the consequences associated with the Swiss electorate's acceptance of the popular initiative against large-scale immigration on 9 February 2014.

Initiated in 2012, SECO's audits of the implementing bodies constitute an important pillar of the supervision concept. Well received by the implementing bodies, they provide quality information and allow the management of the FlaM to be improved. There is room for improvement in the organisation and formalisation of the auditing.

The legislation on labour market supervision focuses more on the FlaM than undeclared employment. Three times as many resources are allocated to the FlaM even though undeclared employment appears to have a greater impact on the labour market and government financing. Better coordination of the audits between the two areas would improve their effectiveness.

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<sup>3</sup> The abbreviation "FlaM" is derived from the German term "flankierende Massnahmen".

### **SECO must re-examine the principles on the funding of the implementing bodies**

In order to harmonise the implementing bodies' organisation and practices, SECO has taken a number of measures for training the labour inspectors and setting the goals and instruments for the observation of the labour market. The SFAO believes that an incentive should be created for joint commissions that do not have the resources and skills for ensuring effective audits to join forces in order to reach the critical size needed.

SECO sets the number of audits to be performed on Swiss companies and seconded employees in revenue or grant agreements concluded with the implementing bodies. The latter are free to select the entities to be audited. However, not all of them follow a methodical, risk-analysis approach in selecting the companies for auditing. We recommend that SECO adjust this.

While SECO compensates joint commissions based on a flat-rate payment per audit, cantonal labour inspection offices are paid half of their inspectors' wage costs. For reasons that include current discrepancies between the costs per company audit according to the cantons, the SFAO wonders if it would be appropriate to also apply flat-rate payments for cantonal implementing bodies. With regard to joint commissions, SECO should assess if the flat-rate payment allocated for their audits is adequate based on objective criteria.

### **Use of the ZEMIS database is not optimal**

Foreign companies are obliged to declare any activities planned in Switzerland (seconded employees or self-employed persons) in the Central Migration Information System (ZEMIS). Joint commissions do not have direct access to this database. The declarations are forwarded to them by the cantons, which sometimes have difficulty in sending these to the correct industry body. Furthermore, the details contained in the companies' declarations are not validated in any way, which means that a company can submit declarations using different names in order to circumvent possible penalties. Therefore, the SFAO would stress that there is room for improvement in the use of ZEMIS.

### **The rate of fine collection varies considerably**

The penalties imposed on companies at fault by the cantonal authority range from the suspension of work to a fine of up to CHF 5,000. This limit should be increased to CHF 30,000 based on a bill to amend the applicable legislation. The effectiveness of these penalties in the form of fines differs greatly from canton to canton, with a collection rate that varied between 20% and 100% in 2013. However, if a company fails to pay an administrative penalty that has taken legal effect, it can be banned from offering its services in Switzerland for a maximum period of five years.

### **Original text in French**