



European Platform Undeclared Work

Tackling undeclared work in the agricultural sector: a learning resource

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the European Platform Undeclared Work

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EXECUTIVE SUMMARY

On 24 January 2019, the European Platform Tackling Undeclared Work organised a seminar in Brussels on *Tackling undeclared work in the agricultural sector*, with a focus upon seasonal workers and horticulture. The seminar brought together Platform members or designated representatives from EU Member States (MS) representing labour inspectorates and social security, tax and customs authorities, and national and European social partner representatives from the agricultural sector. The intention was to provide participants with an opportunity to engage in mutual learning and exchange knowledge on how to tackle undeclared work in the agricultural sector and transform undeclared into declared work. Participants reflected on the pros and cons of different national and bilateral efforts to tackle undeclared work in agriculture more effectively, especially in relation to seasonal workers and horticulture. They also assessed transnational initiatives.

This learning resource paper describes the outcomes of the seminar, which builds upon an earlier Platform report on tackling undeclared work in the agricultural sector (Williams and Horodnic 2018) as well as the background paper prepared before the seminar (Williams 2018a). The first section briefly reviews the views of participants on the extent and drivers of undeclared work in the agricultural sector. This is followed by a review of various policy measures for tackling undeclared work in the agricultural sector reported at the seminar, particularly in relation to undeclared seasonal workers and horticulture, along with the resultant discussions and learning outcomes.

Key findings:

- There was agreement that undeclared work is more prevalent in the agricultural sector than in the EU economy in general, but also agreement that its magnitude is difficult to measure. Third country migrants or EU mobile workers were also considered to constitute a larger proportion of the workforce in agriculture than in the EU economy in general, and undeclared work was considered particularly prevalent among third country migrants and EU movers involved in seasonal agricultural work.
- The prevalence of undeclared work in the agricultural sector is in large part due to agricultural and horticultural producers being pressured to keep production costs low and quality high by food retailers and the food processing industry. Although the strategies of agricultural and horticultural producers for keeping production costs low can range from 'high road' strategies (e.g., technological innovations) to 'low road' strategies (e.g. illegitimate labour practices, including undeclared work), the high prevalence of undeclared work suggests that 'low-road' strategies often predominate.
- To tackle undeclared work in the agricultural sector, there was recognition that a holistic approach is required. This joins up the policy fields of labour, tax and social security law at both strategic and operational level, and includes social partners, and uses the full range of direct and indirect policy measures to transform undeclared work into declared work.
- To achieve this, participants recognised that greater cooperation between all the stakeholders is essential. This involves both cross-border and intra-national cooperation between tax, social security and labour authorities, as well as between state authorities and social partners, at the policy, enforcement, awareness raising and data mining levels.
- No one single 'magic bullet' policy will resolve undeclared work in agriculture. Instead, there is a need for a full range of both direct controls that seek to alter the costs of undeclared work and/or benefits of operating on a declared basis, as well as indirect controls that seek either to educate and raise awareness about the unacceptability of undeclared work or to tackle the formal institutional failures that lead to undeclared work in the agricultural sector.

- To take forward the learning from this event, there is a need for continuing effort on many long-standing issues in this sector (e.g., developing effective cooperation, issuing written contracts before the first day of work, administrative simplification). Some new initiatives were also identified, ranging from a very practical initiative of organising annual meetings at MS level between social partners and enforcement authorities involved in the agricultural sector, to a higher-level initiative of conducting a preliminary study of the feasibility of attaching conditionality to Common Agricultural Policy (CAP) payments based on the fulfilment of certain workers' rights or recent compliance of agricultural holdings with tax, social security and labour law.

1 EXTENT AND DRIVERS OF UNDECLARED WORK IN THE AGRICULTURAL SECTOR

Key question:

- What is the prevalence and drivers of undeclared work in the agricultural sector?

1.1 Prevalence and characteristics of undeclared work in the agricultural sector

Participants in the seminar concurred that undeclared work is more prevalent in the agricultural sector than in the EU economy in general. There was disagreement, however, on the precise level of undeclared work in the agricultural sector, which by its nature is difficult to accurately measure.

A presentation by the **ILO** reported that some 61.2 per cent of the EU agricultural labour force are engaged in informal employment¹, compared with 11.5 per cent of the manufacturing workforce and 15.4 per cent of those working in the service sector (see Table 1). As reported by the ILO the estimated proportion of the agricultural workforce in informal employment varies markedly across the EU from 3.4 per cent in Sweden to 91 per cent in Poland.

Table 1. Share of informal employment by sector: EU data

	Total	Agriculture ¹	Industry	Services
EU	16.3	61.2	11.5	15.4
Austria	10.0	37.2	4.2	10.6
Belgium	13.5	78.7	9.2	13.7
Bulgaria	15.9	48.1	8.7	15.8
Croatia	13.0	52.4	8.8	11.6
Cyprus	15.1	67.8	16.7	13.4
Czech Republic	9.2	12.0	7.9	9.9
Denmark	11.2	45.4	9.2	11.0
Spain	27.3	37.8	12.4	31.0
Estonia	6.9	19.3	3.3	7.7
Finland	6.3	34.6	5.9	4.9
France	9.8	33.9	5.4	10.2
Germany	10.2	19.3	7.2	11.1
Greece	32.8	90.5	26.7	25.2

¹ The ILO defines informal employment as persons whose main jobs lack basic social or legal protections or employment benefits. Persons in informal employment include: (a) own-account workers self-employed in their own informal sector enterprises; (b) employers self-employed in their own informal sector enterprises; (c) contributing family workers; (d) members of informal producers' cooperatives; (e) employees with informal jobs in formal sector enterprises, informal sector enterprises, and paid domestic workers employed in households; (f) own-account workers engaged in self-provisioning, if considered employed in the sense that the production makes an important contribution to household consumption (ILO, 2012, 2013).

	Total	Agriculture	Industry	Services
Hungary	12.2	37.9	9.1	11.2
Ireland	13.4	61.2	12.7	10.8
Italy	19.0	40.8	15.4	19.4
Latvia	13.2	40.8	8.3	12.1
Lithuania	12.6	44.4	8.9	10.1
Luxembourg	1.2	10.2	0.3	1.1
Malta	8.1	36.4	7.5	7.8
Netherlands	9.4	24.7	8.1	9.3
Poland	38.0	91.0	24.6	35.0
Portugal	12.1	51.0	8.3	11.3
Romania	28.9	90.5	8.9	12.6
Slovakia	16.7	25.4	18.6	15.4
Slovenia	5.0	41.0	3.1	4.6
Sweden	8.2	3.4	1.8	9.1
United Kingdom	13.6	35.5	16.4	12.6

Source: ILO calculations based on EU Statistics on Income and Living (SILC) data (Pintado Nunes, 2019).

Other estimates reported at the seminar of the proportion of the EU agricultural workforce engaged in undeclared work were somewhat lower. The presentation by the **European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT)** estimated that some one-third of the EU agricultural workforce are not recorded, which is in line with the estimates in the Platform report on the agricultural sector that used Eurobarometer and European Working Conditions Survey data (Williams and Horodnic, 2018).

Examining the types of undeclared work being used in the agricultural sector, the broad consensus of the seminar speakers was that wholly undeclared work is primarily used where the employment relationship is not declared to the authorities for tax, social security and/or labour law purposes. The use of bogus self-employment and under-declared employment was viewed as relatively less prevalent. However, many presenters recognised the need for better evidence on the prevalence and characteristics of undeclared work in the agricultural sector.

Turning to who engages in undeclared work in the agricultural sector, seminar participants again agreed that a much higher proportion of the workforce in the agricultural sector are third country migrants or EU movers than in other sectors. Indeed, **EFFAT** estimate that 40 per cent of agricultural workers are internal EU or third country migrants. Differentiating between EU mobile workers and third country migrants, moreover, it is estimated that 20 per cent of migrants working in agriculture are from third countries and 80 per cent are EU mobile workers. In some Member States and regions, a large proportion of these migrants are engaged in undeclared work. They not only suffer from a lack of access to social security but also access to information about their rights and a lack of support.

1.2 Drivers of undeclared work in agriculture

During the seminar, participants drew attention to how the agricultural sector in general, and the horticultural industry in particular, is part of a supply chain that primarily sells its output either to manufacturing industries (e.g., food processors) or directly to retail service businesses (e.g., supermarket chains). Over the past few decades, there has been an increased concentration of the retail food industry and the food processing

industry.² There has also been greater pressure on agricultural producers to keep production costs low and quality high from food processors and retailers higher up the supply chain.

To keep their production costs low, the presentation by **Oxfam** outlined a spectrum of options available to agricultural and horticultural producers, ranging from 'low road' strategies (involving a whole series of illegitimate labour practices, including forced labour and the use of undeclared labour) through to 'high road' strategies, involving technological innovations to replace labour in terms of production and harvesting technologies. The overarching evidence presented during the seminar on the prevalence of undeclared work suggests that low road strategies have often predominated in the EU agricultural sector, including horticulture.

A key driver of undeclared work is therefore the intense pressures on agricultural and horticultural producers to keep production costs low (and quality high) from food processors and retailers higher up the supply chain. As a speaker from **European Commission's Directorate General for Agriculture and Rural Development** reported, the power imbalance between agricultural producers and these manufacturing and service businesses higher up the supply chain has sometimes led to the emergence of practices that deviate from good commercial conduct. Farmers and small operators in the food supply chain, often lacking bargaining power, have been subjected to unfair trading practices such as short-notice order cancellations, retroactive changes to contracts, and late payments.

Therefore, how can undeclared work in the agricultural sector be tackled?

2 POLICY APPROACHES TO TACKLING UNDECLARED WORK IN AGRICULTURE

Key question

- What approaches are available for tackling undeclared work in the agricultural sector?

Decision 2016/344, establishing the European Platform Tackling Undeclared Work, asserts that "Tackling the complex problem of undeclared work ... requires a holistic approach". This involves national governments adopting a whole government approach by joining up the policy fields of labour, tax and social security law at both strategic and operational level, and cooperating with social partners and other key stakeholders. It also means using the full range of direct and indirect policy measures available with the objective of transforming undeclared work into declared work in an effective manner.³

As Table 2 highlights, 'direct' policy tools tackle undeclared work by ensuring that the benefits of declared work outweigh the benefits of undeclared work. This is achieved either by using deterrence measures ('sticks') to increase the costs of undeclared work and/or by making the conduct of declared work more beneficial and easier using incentives ('carrots'). 'Indirect' policy tools, meanwhile, seek either to change the norms, values and beliefs regarding the acceptability of undeclared work, so that these are in symmetry with the laws and regulations (e.g. using awareness raising campaigns and educational initiatives), and/or to change the formal institutional failings that lead to undeclared work. The Platform consensus which has emerged is that most effective approach for tackling undeclared work is to concurrently use the full range of direct measures alongside the full range of indirect measures.

² See [www.europarl.europa.eu/RegData/etudes/STUD/.../IPOL_STU\(2016\)578981_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/.../IPOL_STU(2016)578981_EN.pdf)

³ Williams, C.C. (2017) *Developing a Holistic Approach for Tackling Undeclared Work: a learning resource*, European Commission, Brussels.

Table 2. Policy approaches for transforming undeclared work into declared work in the agricultural sector

Approach	Tools	Example initiatives in agricultural sector
Direct approach: deterrents	Improved detection	Improved workplace inspections Better data mining and data sharing Joint operations Supply-chain due diligence Written contract by first day of employment
	Improved penalties	Proportionate sanctions Black lists
Direct approach: incentives	For employers	Simplification of compliance Simplified contracts for employing seasonal workers Co-employment/employee sharing Formalisation support and advice White lists
	For workers	Smoothing transition to formalisation Making compliance easy Service vouchers
	For customers	Labelling initiatives, Targeted direct or indirect tax incentives to purchase declared goods
Indirect approach	Change employers, workers & consumers attitudes	Education Normative appeals Awareness raising of benefits of declared work and costs of undeclared work
	Change formal institutional failings	Address unfair trading practices (UTPs) Conditionality of CAP payments based on compliance with tax, social security and labour law

Examples of these initiatives are elaborated later in this report.

Rather than apply the same approach to all sectors when tackling undeclared work, the Platform has recognised that **sector-specific approaches** are required. The Platform's 'glossary of terms' defines this as an approach where the direct and indirect policy measures are specifically designed and targeted at one sector whose characteristics in terms of undeclared work are different from other sectors and whose problems and risk factors require a specific approach. Depending on the specific problems of the sector and its unique risk factors, greater priority is therefore given to some policy measures than others, and each policy measure is tailored to address the specific and unique characteristics of the sector being targeted.

The holistic approach applied to the agricultural sector is therefore composed of two types of action. A first type of action is the use of the full range of policy measures, but these are tailored to match the sector-specific characteristics and drivers of undeclared work in the agricultural sector. The second action, discussed next, is to join-up on the policy and enforcement level of both strategy and operations the fields of labour, tax

and social security law, and involve social partners and other stakeholders. These are discussed in detail below.

3 DEVELOPING EFFECTIVE COOPERATION

Many participants in the seminar identified the lack of cooperation between different state authorities, and between state authorities and the social partners, both at the intra-national and cross-border level, as a principal barrier to tackling undeclared work in the agricultural sector. It was therefore agreed that, if undeclared work in the agricultural sector is to be tackled, there is a need to develop more effective cooperation at various levels, including:

- Intra-national cooperation between tax, social security and labour authorities on the level of policy, planning and intervention, not least to facilitate a customer-friendly approach whereby agricultural employers avoid duplication of effort. GEOPA-COPA stated during the seminar that it is not uncommon for an employer to be asked for more than one statement – with similar content – when establishing the same employment relationship due to multiple administrations managing this type of information (e.g., employment services authority, social security institutions, tax authorities). Integration between public IT systems to avoid unnecessary duplication is therefore required;
- Intra-national cooperation between the state authorities and social partners at the policy and enforcement levels. Indeed, EFFAT suggested that at the national level, an annual meeting between labour inspectorates and the national employer federations and trade unions responsible for agriculture, such as to exchange information, could be a useful way forward. EFFAT also suggested that state authorities having one single contact person would be a step forward.
- Intra-national cooperation between state authorities at the level of data mining and risk analysis. Indeed, several participants at the meeting and in evaluation feedback after the seminar noted that there was very little evidence of data mining being used in relation to undeclared work in the agriculture sector, and little understanding of what proxy indicators might be used to identify 'risky' agricultural holdings in relation to undeclared work;
- Cross-border cooperation between state authorities at the level of policy as well as planning and conducting operations;
- Cross-border cooperation between state authorities and social partners, such as via the European Platform Tackling Undeclared Work and potentially the European Labour Authority;
- Cross-border cooperation at the level of data sharing; and
- Cross-border cooperation on education and awareness raising activities.

A current initiative seeking to explore how this holistic approach based on more cooperation can be operationalised is **RAISE UP**⁴ (grass-Root Actions, Innovative approaches and Stakeholder Engagement to tackle Undeclared work Propensity). This is being coordinated by the FLAI CGIL (*Federazione Lavoratori dell'Agroindustria, Agro-Food Industry Workers Federation*). It is seeking to define and build a better shared understanding of a holistic approach for tackling undeclared work in the agricultural sector based on both national and transnational cooperation at a policy and operational level. This initiative was presented during the workshop. However, it is at too early a

⁴ Co-funded through European Union Programme for Employment and Social Innovation ("EaSI" – Progress Axis) 2014-2020, call for proposals VP/2017/005, activities in the field of undeclared work"

stage for lessons to be yet learned on developing more effective cooperation either at the intra-national or cross-border level. Once the project is complete, it will be useful to hear the lessons from this initiative on the obstacles confronted when seeking to develop more effective cooperation and how these have been overcome.

4 DIRECT POLICY APPROACH: DETERRENCE MEASURES

Key question

- What deterrence measures have been found to be effective in tackling undeclared work in the agricultural sector?

Direct controls reduce the costs and increase the benefits of employers and workers in the agricultural sector operating on a declared basis, while increasing the costs and reduce the benefits of them operating undeclared. Viewing those employers and workers participating or considering participation in undeclared work in the agricultural sector as rational economic actors, who weigh up whether the pay-off is greater than the expected cost of detection and punishment, the objective is to alter the cost/benefit ratio confronting them.

To do this, deterrence measures seek to increase the costs. The seminar heard how this can be achieved by **raising the penalties and sanctions for those caught** (e.g. besides fines, innovative forms of sanction are emerging in many countries, such as the use of 'black lists' which prohibit offenders from applying for public support programmes or public procurement tenders, or 'naming and shaming' initiatives where the names of offenders are made public).

At the seminar, both GEOPA-COPA and EFFAT asserted that proportionality as a principle is required. Sanctions should be proportionate to the type of the misconduct, so that on the one hand severe sanctions should be issued for major violations or wilful violations and at the other hand unintentional mistakes, minor violations or omissions unintentionally should be punished with lighter sanctions. See also GEOPA-COPA/EFFAT (2017).

There was also a great deal of discussion of how to **improve the perceived or actual probability of detection**. To do this, however, some key challenges were highlighted that need to be overcome. These are related to the difficulties in carrying out workplace inspections due to the **limited access to the workplace** (size and dispersion of workforce, lack of access to premises) and the prevalence of **not-written contracts**. Often the inspectors face communication issues because they lack the technical jargon of the sector, and there may be language barriers. There is also **the lack of data** related to undeclared work in the agricultural sector and the so far limited attention given to identifying proxy indicators of 'risky' agricultural holdings that can be used when data mining.

The resultant policy solutions discussed regarding improving the perceived or actual probability of detection arise directly out of these challenges. At the seminar, firstly, participants revealed that improving the effectiveness of workplace inspections requires that inspections of agricultural holdings need to be given greater priority in some Member States. Adequate transport facilities need to be provided for inspectors to conduct such inspections, the physical safety of inspectors needs to be improved, and issues related to access to the workplace need resolving. There is also a need to improve the use of IT in inspections. This includes not only state authorities exchanging and sharing data using ideally shared IT, but also the greater use of IT for targeting and preparing operations (e.g., drones, maps).

The **ILO 1969 Labour Inspection (Agriculture) Convention (C129)** sets out clearly that each Member State shall maintain a system of labour inspection in agriculture (article 3) in all agricultural undertakings in which employees or apprentices work, however they may be remunerated and whatever is the type, form or duration of their

contract (article 4). Article 5, nevertheless, makes clear that it is not solely agricultural holdings with employees which should be subject to inspection. As Article 5 states,

1. Any Member ratifying this Convention may, in a declaration accompanying its ratification, undertake also to cover by labour inspection in agriculture one or more of the following categories of persons working in agricultural undertakings:
 - (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
 - (b) persons participating in a collective economic enterprise, such as members of a co-operative;
 - (c) members of the family of the operator of the undertaking, as defined by national laws or regulations.⁵

As the ILO presentation highlighted, only three EU Member States have accepted this paragraph of Article 5, namely the Czech Republic (paragraph 1a, b and c), Latvia (paragraph 1b) and Slovakia (paragraph 1a, b and c). The European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe (2013/2112(INI)) recognises that there is a problem of inspecting agricultural holdings and calls on Member States to ensure that rural regions are properly covered by inspections.

However, paragraph 2 of article 16 in C129 is clear that "Labour inspectors shall not enter the private home of the operator of the undertaking ... except with the consent of the operator or with a special authorisation issued by the competent authority." As the ILO stated, if inspectors do not have access rights on the basis of national law, inspectors will need to improve their persuasion skills, to obtain evidence that avoids them having to enter the household, and/or to improve their working relationship with the judiciary (e.g., electronic authorisation, use of presumptions allowing access).

Inspections of agricultural holdings might not be the most effective way of tackling undeclared work in the agricultural sector. This is especially the case in relation to the intermediaries that are used in agriculture to match demand and supply. The problem of these intermediaries using undeclared workers was highlighted in many of the seminar presentations. Box 1 reports a presentation by the Gangmasters Licensing and Labour Abuse Authority (GLLAA) on how the problem of these intermediaries using undeclared workers had been tackled in the UK.

Box 1. Licensing Intermediaries: Gangmasters and Labour Abuse Authority, UK

Following the deaths of migrant cockle-pickers employed by gangmasters, the Gangmasters (licensing) Act 2004 was implemented to tackle the exploitation of workers in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging industries by labour providers known as 'gangmasters'. This created a Gangmasters Licensing Authority (GLA) to regulate labour providers and employment agencies. All gangmasters must be licensed and there are eight standards related to: pay and tax matters; prevention of forced labour and mistreatment of workers; working conditions; and sub-contracting and using other labour providers. It is an offence for labour users to employ workers supplied by unlicensed labour providers.

There are some 1000 licence holders in the UK. The benefits are that:

- **Workers** receive fair treatment, the pay, benefits and conditions they are entitled to.
- **Labour providers** are not undercut by those who pay less than the minimum wage or avoid tax. Industry standards are raised.

⁵ See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C129

- **Labour users** can check their workers come from a legitimate provider and are informed if their labour provider's licence is revoked.
- **Consumers** can be assured that their food has been picked and packed in an ethical environment. Illegal activities which lead to a loss of public revenue – income tax, VAT and NI – are reduced.

Since 2006, 284 licences have been revoked, with the number of revocations reducing from 38 in 2008/9 to 12 in 2017/18, and 247 applications have been refused. Since 2008, there have been 66 prosecutions for acting as an unlicensed gangmaster (i.e., the maximum penalty for operating without a licence is 10 years in prison and/or a fine) and 24 prosecutions for using an unlicensed gangmaster (carrying a maximum penalty of six months in prison and/or a fine). The outcome is better protection of workers' rights.

A further means of improving the probability of detection of undeclared work in the agricultural sector is to insist on a **written contract** by the first day of commencing work. This is a key recommendation of EFFAT. Indeed, it would make the detection of undeclared workers far simpler than at present. GEOPA-COPA similarly asserted during their presentation that a good practice potentially transferable to other Member States is the LIMOSA system (Belgium), where a declaration is submitted by Belgian employers before the work starts.

Another means of deterring undeclared work is to adopt **joint and several liabilities in subcontracting chains**. The seminar heard about the system of joint and several liabilities used in **Belgium**. There exists joint and several liability for the contractor to monitor the chain of (sub)contractors in a variety of sectors susceptible to fraud, including in the 'green sectors'. In brief, when a business owner calls upon a subcontractor to carry out works, the co-contractor (business owner) is responsible for overseeing payment of the share of wages that have not been correctly paid by the subcontractor. In the agriculture sector, a collective labour agreement has been signed which grants the co-contractor the possibility of terminating the contract thus avoiding the responsibility of having to pay wages in place of the subcontractor. It also states that it is possible to use part of the amount that has been invoiced for the payment of wages that have not been paid by the subcontractor. This increases the legal certainty for employers in the agriculture sector. It also offers social partners the possibility of signing agreements regarding responsibility in subcontracting chains.

In many other sectors, a key way in which the costs of undeclared work are increased is by using **data mining** to increase the actual probability of detection. However, several participants noted that data mining was not well advanced in relation to identifying undeclared work in the agriculture sector. Therefore, some attention will need to be paid to advancing the method of 'risk assessment' of agricultural holdings when using data mining. This might be one subject for discussion if the proposal elsewhere in this report is implemented for annual meetings at the national level between enforcement authorities and social partners. Social partners, after all, wish to tackle unfair competition and protect workers' rights, and also have the in-depth knowledge of their sector to be able to help with identifying proxy indicators that might be used to identify risky agricultural holdings (e.g. higher ratios of credit card to cash payments compared with other similar 'farm diversification' businesses, lower than average wage levels).

It is not just increasing the costs of participating in undeclared work that can be used to tackle undeclared work in agriculture. Improving the benefits and ease of engaging in declared work can also alter the cost/benefit ratio facing employers and workers when considering whether to engage in undeclared work.

5 DIRECT POLICY APPROACH: INCENTIVE MEASURES

Key question:

- What incentive measures can be used to make it easier and/or reward declared work in the agricultural sector?

To enable undeclared work in the agricultural sector to be transformed into declared work, incentive measures seek to make it easier to undertake, and reward, participation in declared work. These incentives can be targeted at either employers, workers or customers.

The seminar discussed initiatives to make it beneficial or easier for **employers** to engage in declared work. Among those highlighted were the simplification of compliance, such as simplified contracts for employing seasonal workers, co-employment or employee sharing, formalisation support and advice, and the use of 'white lists' of compliant agricultural holdings (rather than 'black lists' of non-compliant agricultural holdings) who may, or may not, receive certain benefits for being on the 'white list' (e.g., access to public procurement contracts, reduced inspections).

In their presentations, both GEOPA-COPA and EFFAT called for the simplification of administrative burdens in the form of 'better regulation', not deregulation. Presenters provided a range of ways in which this could occur. One particularly important simplification of regulation relates to the ease of registration of seasonal workers to make it easier for employers and workers to operate on a declared basis. Smaller or seasonal jobs are often currently conducted undeclared, often as a result the complex and, often inadequate systems required to declare them. To move such undeclared work into the declared realm, one option is to introduce simplified regulations for smaller and seasonal jobs. During the seminar, two examples were presented of how this might occur. Box 2 presents the simplified regulations for seasonal workers in **Hungary** and Box 3 the initiative to simply the regulations for registering short-term seasonal agricultural work contracts in **Bulgaria**.

Box 2. Simplification of employment for seasonal workers, Hungary

The *2010 Simplified Employment Act (Egyszerűsített foglalkoztatási törvény)* in Hungary was introduced to make it easier for seasonal and temporary employment to be conducted on a declared basis. Before this Act, it was necessary to complete in duplicate an official attendance sheet with 18 pieces of information for every seasonal worker in a 'Temporary Work Booklet'. This booklet was a breeding ground for various labour infringements and it was difficult to inspect it effectively because employers engaged in the erasing and rewriting of contracts, such as by using special inks that could be erased using heat on the paper.

From 2010, the Simplified Employment Act introduced electronic registration stating the exact data and time of registration. Since 2017, there has been a mobile app. This enables the mutually agreed simplified work contract to be notified either by: a simple text message (SMS) or electronically via the Client Gate System after they are registered and in the system (<https://ugyfelkapu.magyarorszag.hu/>). All obligations are fulfilled by entering two codes into the text message or into the Client Gate System.

This makes it much easier to conduct inspections and declare workers. There is a clear overview for inspectors and a separate database for this kind of registration ('EFA' – Simplified Employment Database). Workers can also be easily unregistered if they do not show up. It is therefore easy to inspect, and there are clear and fast procedures when detecting infringements.

Box 3. Short-term seasonal agricultural work contracts, Bulgaria

To reduce the share of undeclared work in the agricultural sector and encourage declared work, in 2015 an amendment to the Labour Code in Bulgaria was introduced - Employment Contracts for Short-term Seasonal Agricultural Work. This provides a legal tool for more easily hiring workers on a declared basis for short-term seasonal contract work. It assists anybody over 18 years old (including registered unemployed persons) to engage in legally regulated work, while guaranteeing a degree of social protection for these persons, since all taxes and social security contributions must be paid in advance.

An employment contract for short-term seasonal agricultural work is signed between a worker and a registered farmer for one day's work (and from 2018, this can be for either four or eight hours). The employer and worker sign a separate contract for each day worked. For the individual worker, the number of contracts of this kind must not exceed more than 90 days in one calendar year. The areas in which these types of employment contract can be signed include the manual processing of plants and collecting the harvest of fruits, vegetables, roses and lavender.

Employers, who must be a registered farmer, who wish to hire a worker in this way, can access the necessary forms for this type of employment contract from the Labour Inspectorate by post, or via the internet since 2017. The advantage for unemployed persons in particular is that they can work on this type of labour contract without the need to end their registration as unemployed persons and for all other workers they can do so easily and with their taxes and social contributions paid in advance.

Following an awareness raising campaign, the measure became popular among farmers because it allows the recruitment of workers for short-term agricultural activity during the short season. Workers can work legally and their registration as unemployed is not affected despite short-time employment. As the graphic below shows, the number of single employment contracts issued has increased each year.



So too has the number of farmers who use these contracts increased.



The lessons are that the key conditions for success include the following:

- The employers should be informed via an awareness campaign before the peak agricultural season about the measure, how it works and how to access the forms for this type of employment contract.
- An online tool for the administration of the measure is crucial.
- An inspection campaign in rural areas during the peak agricultural season should be undertaken.

A further measure to simplify compliance in the agricultural sector is what is variously termed **employee sharing, joint employment, employee groups or co-employment**. This is where the same worker, under a single employment relationship, can work for more than one employer. It provides flexibility in that multiple employers can use in agreement with each other and with no restrictions, the services of the same employee under a single employment relationship. From a regulatory perspective, there are two parties to the employment relationship (employer and employee), although the contract can have multiple individuals who are legally classified as employers.

Platform Seminar participants heard about a variant of this, joint employment in Finland (see Box 4). For a review of other variants, see Williams and Horodnic (2018).

Box 4. Co-employment, Finland

In Finland, co-employment, which is an employment contract between one employee and more than one employer, is useable on smaller farms and enterprises unable to employ full-time workers on their own, but still need a permanent workforce. This model of co-employment is possible under the Employment Contracts Act.

Most agricultural employment in Finland remains based on the one employer model. However, co-employment is legally possible and interest in such an arrangement is growing.

There are three different ways to organize this co-employment or what might be termed employers' (farm) ring systems where one employee is employed by two or more employers:

1. 'One employer' model: this is where two or more farms form an 'employer ring' where one employer acts as the main employer, and therefore oversees all legal duties (withdrawing tax, social security fees and other social insurance fees). Both employers must take care of occupational health and safety aspects. The sharing of employment costs between employers is contractually agreed by the employers themselves.
2. 'Two employers' model: two (or more) farms employ the same worker together and there is a common/joint employment contract. Each has their own employment contract with the worker, acting independently one from the other in relation to the obligations they have towards the employee. Both pay wages and social security fees independently. There is still need for agreement between employers such as to define working time, annual leave, sick pay etc. during the employment.
3. 'Organised employer' model: the employers form an enterprise, company or cooperative, which acts as a normal employer. In this case the new legal entity acts as the formal employer, overseeing all obligations, and the employee works for both farms who have constituted the new legal entity.

The advantages of co-employment are that it is suitable for smaller enterprises (family farms) which may not have possibility to employ full-time workers. For employees, meanwhile, it makes possible an open-ended employment contract with full-time salary, and enhances rural employment and rural economic development.

Until now, however, it has not been a very common practice. There is, nevertheless, a *Kimpparenki* (joint employment) project operated by ProAgria running from 1.1.2016 – 31.3.2019.

Several presentations at the seminar, moreover, voiced the possibility of another potential supply-side incentive initiative that perhaps requires further investigation. This relates to the Common Agricultural Policy (CAP) and the principle of conditionality. The view was that that making **CAP payments conditional** upon the fulfilment of certain workers' rights or upon recent compliance of agricultural holdings with tax, social security and labour law might be one useful future way forward. The concluding sessions of the seminar summed up the feeling of the seminar in stating that this requires much greater exploration, not least in terms of what form of conditionality might be involved, and who would inspect that these conditions are being achieved.

Another similar supply-side incentive that has already been experimented with is the use of **'white lists'** (compliant lists). 'Black lists' (non-compliant lists) are used to 'name and shame' non-compliant agricultural holdings. However, there is some evidence that those named and shamed are more likely to re-offend unless help with rehabilitation is provided (see Williams, 2018b). An alternative approach is to produce a 'white list' (compliant list) and to offer incentives for those listed as compliant, such as access to public procurement contracts or a reduced likelihood of inspections taking place. An example given one presentation is the Quality Agricultural Work Network in **Italy** (for more detail, see fiche, and Williams and Horodnic, 2018).

A similar 'white list' initiative is a social label initiative in **Belgium**, that the presentation at the seminar by GEOPA-COPA listed as a good practice. The mushroom growing sector in Belgium was experiencing difficulties due to low prices. Together with social partners, a plan for the sector's future was put in place. Employers who sign up (i.e., they must sign a declaration each year) to respect Belgium's social legislation and not to resort to systems involving posting abuses and bogus self-employment, and who agreed to keep the number of permanent workers at 2011 levels, could use seasonal workers for up to 100 days per seasonal worker per year instead of the usual 65 days. The social partners have been responsible for drawing up the list of companies eligible to make use of this expanded regime. The Minister for Social Affairs approves the list of 'social label' companies. The social label system has increased the number of companies in the mushroom growing sector.

Indeed, this use of **'social label' initiatives** whereby agricultural products received a social label if workers' rights were respected was mentioned in several presentations at the Seminar as a potential way forward. The common view is that this enables consumers to challenge supermarkets and other retailers to be transparent about their supply chains and the origin of the food they sell, respect the rights of small-scale farmers and workers in their supply chains.

Another labelling scheme presented by **Oxfam** is the **Supermarkets Scorecard** in the UK to support decent work. This promotes a race to the top among the largest supermarkets by raising awareness among consumers on their supply chains on human rights allegations, using the supermarkets public reported policies and actions in their supply chains in relation to transparency and accountability, workers, farmers and women.

This Oxfam initiative presented at the Seminar is one example of a wider call for **retailers** to map their supply chain and perform a **due diligence assessment of their direct suppliers, namely the processing companies** (Ethical Trading Initiative Norway (IEH), Ethical Trading Initiative (ETI) and Danish Ethical Trading Initiative (DIEH), 2015). This would include the location of the supplier and subsequent likelihood of manual harvesting, measures in place to respect trade union and workers' rights, and the extent to which the supplier can provide product traceability to farm level. Retailers

would then assess conditions at farms and cooperatives (for more detail, see Williams and Horodnic, 2018).

The UN Guiding Principles on Business and Human Rights, moreover, state that a business has a responsibility to respect human rights and shall put into place measures that ensure that its activities and relationships do not have negative impacts on people's rights. **Supply chain due diligence** is therefore a method, or process, through which a business can assure stakeholders that it is not infringing upon the rights of others, which in this case include workers in the supply chain of food production.

6 INDIRECT POLICY APPROACHES

Key question:

- What indirect controls can reduce undeclared work in the agricultural sector?

Indirect approaches recognise that citizens, workers and employers are not just rational economic actors (purely calculating the costs and benefits). They are also social actors who engage in undeclared work because their norms, values and beliefs do not align with the laws and regulations, for example due to a lack of trust in the state and what it is seeking to achieve.

To align them, two approaches are pursued. On the one hand, indirect policy approaches seek to **change the norms, values and beliefs** regarding the acceptability of participating in undeclared work, so that these are in symmetry with the laws and regulations (e.g. using awareness raising campaigns and educational initiatives). On the other hand, there is a need to **reform the formal institutions** by tackling the formal institutional failures that lead to undeclared work being undertaken.

A presentation on the **equine industry in Ireland** provided an insight into the culture of non-compliance with labour law in this sector, which is long-standing and heavily embedded. Grounded in a discourse of a 'love of horses', workers and employers often find it difficult to conceptualise that labour law applies to their employment relationships, resulting in labour law violations. Since 2017, therefore, an education and awareness raising campaign has been targeted at the equine industry about the need for compliance with labour law, largely among trainers and stable staff, which included employer briefings, presentations, trade journal articles, and inputs to industry training courses, as well as notification that there was to be greater seeking of compliance. This was then followed up with enforcement initiatives for those failing to comply. Criminal convictions resulted for many of those failing to comply and one outcome was that a change occurred to event-times and the number of events in the 2019 season, due to the long working hours which would have been involved for what were now recognised as 'workers' (rather than people doing the tasks due to their 'love of horses').

Given this embedded culture of non-compliance in the equine industry, seminar participants reflected on whether there are other sub-sectors of the wider agricultural sector or sub-sets of workers (e.g., family farms) where similar views exist that the workers should be and are exempt from complying with labour laws.

Education and awareness raising campaigns therefore have a key role in tackling undeclared work in the agricultural sector. Indeed, this is a policy measure where social partners can be heavily involved in leading and supporting. Such education and awareness raising campaigns can be targeted at either **agricultural employers, intermediaries, seasonal migrant agricultural workers, food processors, grocery retailers, or consumers**. Until now, education and awareness campaigns have been targeted at most of these groups.

An example of a good practice educational tool targeting employers provided at the seminar by GEOPA-COPA was a self-inspection tool in the Netherlands which is strongly promoted by employer organisations in the agricultural sector and allows agricultural employers to check online their compliance with the rules, such as on housing foreign

seasonal workers and labour conditions. There are also notable examples of education and awareness raising campaigns targeted at consumers (i.e., labelling initiatives), intermediaries (e.g., Gangmasters licensing education initiatives), grocery retailers (Oxfam's Supermarkets Scorecard), and seasonal agricultural workers (see Box 5). However, no education and awareness raising campaigns targeted at food processors, who are one of the major stakeholders forcing down production costs on agricultural holdings, were highlighted during the seminar.

Box 5. Education and awareness raising campaigns for seasonal migrant agricultural workers in Germany

The European Migrant Workers Union (EMWU), established in 2004 by IG BAU, administers several free advisory centers for workers from Eastern European countries in the regional states of Bavaria, Hessen and Rhineland-Palatine. These are financed through mainly public funds from the federal and regional states in Germany.

In 2016, there were 286,300 seasonal workers picking crops in Germany, most of whom came from Member States in Central and Eastern Europe (e.g., Poland, Romania, Bulgaria, Croatia). They have usually employment contracts directly with the farmers and are employed as short-term employees (*kurzfristige Beschäftigung*). They are exempted from social contribution fees if the seasonal work is not the main source of income and if it does not last more than 70 days.

To educate these seasonal workers about their rights, on-the-field face-to-face education and awareness raising campaigns have targeted seasonal workers picking crops in Spring (e.g. strawberries and asparagus) and in Autumn (e.g. grapes). Using short conversations with workers and leaflets produced in different languages, information is provided on the minimum wage, work contracts, working hours, board and lodging, safety at work, and social protection.

The campaign slogan is 'Only those aware of their rights can claim them.' The campaigns have a preventive purpose since most seasonal workers are not aware of the rules, especially regarding fair payment, work contracts and social protection. An evaluation by PECO-Institut für nachhaltige Entwicklung e.V. in 2017 and 2018 reveals that the major problems confronting these seasonal workers are:

- Circumvention of the minimum wage, non-transparent documentation of working-hours and pay;
- Long working-hours;
- Lack of written contracts;
- Unlawful deductions from salary for board and lodging or for work materials;
- Lack or insufficient health and safety measures.

Impacts of the campaign

- On workers: raised awareness and knowledge of their rights;
- On trade unions: more understanding on the specific problems of seasonal workers;
- On the public: raised awareness through media coverage;
- On the employers: some improvements (e.g. some farmers are now hanging up work contracts in the mother tongue of the workers in the housing facilities).

This education and awareness raising campaign approach is transferable to other Member States with high numbers of seasonal migrant workers in agriculture. However, external funding is crucial.

The main challenges are that it is difficult to provide effective support in cases of abuse due to: short notice periods; short stays in Germany (up to 70 days); lack of membership in trade unions, and disputes often arise shortly before departure. Therefore, campaigns cannot substitute for inspection controls.

Indirect policy approaches also seek to **change the formal institutions**, not least by tackling the formal institutional failures that lead to undeclared work being undertaken.

One option in this regard, advocated by Oxfam during their presentation, is the development of **alternative agri-food networks** such as farmers' markets to reduce the pressures that agricultural holdings face of reducing production costs from food processors and food retailers. This, however, would only by-pass the problem for the small proportion of agricultural produce which is sold direct to consumers. It does not tackle the intense pressures on agricultural producers to keep production costs low (and quality high) from food processors and retailers higher up the supply chain, which leads to undeclared work being used.

For this to be resolved, unfair trading practices (UTPs) need to be addressed. As a speaker from **DG Agriculture and Rural Development** reported, on 12 April 2018, the European Commission proposed new legislation on **unfair trading practices in business-to-business relationships in the food supply chain** (12.4.2018 COM(2018) 173 final).

Unfair trading practices (UTPs) are business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing. The Commission proposal aims to ensure a standard level of protection across all EU countries using a minimum harmonisation approach.

Article 3 distinguishes between 'black UTPs' which are prohibited whatever the circumstances, and 'grey UTPs' which are prohibited if the parties do not clearly and unambiguously agree beforehand:

The prohibited 'black' unfair trading practices are:

1. Payments later than 30 days for *perishable* agricultural and food products
2. Payment later than 60 days for other agri-food products
3. Short-notice cancellations of perishable agri-food products
4. Unilateral contract changes by the buyer
5. Money not related to a specific transaction
6. Risk of loss and deterioration transferred to the supplier
7. Refusal of a written confirmation of a supply agreement by the buyer, despite request of the supplier
8. Misuse of trade secrets by the buyer
9. Commercial retaliation by the buyer
10. Transferring the costs of examining customer complaints to the supplier

The prohibited 'grey' unfair trading practices are:

11. Unsold products
12. Payment of the supplier for stocking, display and listing
13. Payment of the supplier for promotion
14. Payment of the supplier for marketing
15. Payment of the supplier for advertising
16. Payment of the supplier for staff of the buyer, fitting out premises

The seminar recognised that this initiative attempts to tackle the broader formal institutional failures which lead to undeclared work in the agricultural sector in that it does so in a very targeted manner. Indeed, few other sectors where undeclared work is prevalent (e.g., tourism, construction) have so far witnessed such a targeted and tailored approach to dealing with the formal institutional failures that lead to undeclared work in its sector.

7 KEY LEARNING OUTCOMES

Given that undeclared work is far more prevalent in the agricultural sector than in the wider economy, this is an important sector to focus upon when tackling undeclared work at the EU level.

The causes of undeclared work in the agriculture sector are systemic. There is a broad consensus on the **need to adopt a holistic policy approach and to use both direct and indirect measures.**

Effective cooperation across government and between government and representatives of workers and farmers is crucial, for instance, through tripartite partnerships.

Additional approaches tailored to the sector are needed to develop more effective inspections. Measures such as whitelisting companies which are compliant with regulations may be an effective tool (see also the Quality Agricultural Work Network in Italy). Inspections may be improved with better risk analysis and data mining, which appear widely underutilised to date, to identify risky agriculture holdings.

It should be easier to comply. Further efforts should be made to simplify rules - particularly in relation to registering seasonal workers - and provide easily accessible solutions to work legally. IT tools should be fully utilised to simplify registration procedures (including the use of apps). This would make it easier for inspections and detection of irregularities as showed by recent experience in Hungary. Other examples exist - for instance, co-employment (Finland) or simplified contracts for short term workers (Bulgaria).

Simplification of procedures goes hand-in-hand with incentives to **ensure protection of employment rights.** Initiatives such as whitelisting and product labelling were mentioned as effective tools to incentivise compliant behaviours. Establishing a conditionality between receiving subsidies, for example from the Common Agriculture Policy, and collective bargaining agreements or compliance more generally could also be utilised to ensure better working conditions in the sector.

It is important to **invest in initiatives seeking to change the working culture of the sector and build trust in authorities.** There is a lack of solidarity and trust among workers as well as towards authorities. Examples of awareness campaigns include grassroots outreach initiatives, which specifically target workers, for instance the campaigns conducted by the CGIL in Italy or by the European Migrant Workers Union in Germany. There are also initiatives which focus on consumer behaviour, aiming to increase awareness of the quality of the products through labelling initiatives implemented in cooperation with farmers, workers and retailers.

Tackling the structural causes behind undeclared work is needed using deterrent measures which consider the business-to-business perspective. Examples which could potentially be replicated include licencing of businesses or agencies which operate as intermediaries / gangmasters, as seen in the UK, or liability schemes tackling the supply chain, as seen in Belgium.

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