



European Platform Undeclared Work

Platform Seminar: “How to Identify and Tackle Fraudulent Letterbox Companies?”

30 November 2017, Brussels, Belgium

The aim of the Platform seminar was to share approaches on how to identify and tackle letterbox companies¹ which utilise posted workers and/or stimulate forms of undeclared work through their business models. Discussion focused on how these arrangements impact worker rights and the gathering of tax and social security contributions by Member States, and the different approaches for tackling letterbox companies along with the importance of cross-border cooperation and policing of the enforcement of the Posted Workers Directive (PWD).

The seminar brought together Platform members and observers, including representatives of national ministries, labour inspectorates, social security authorities, tax and customs authorities, European-level social partners, international organisations – as well as members of the Expert Committee on the Posting of Workers (ECPW).

Key findings:

- Defining letterbox companies was identified as a challenge and a need was identified to establish a formal legal definition (i.e. as distinct from the definition presented in the OECD Glossary of Tax Terms)².
- The common objective of fraudulent letterbox companies is avoidance of worker rights and other tax/social obligations through ‘regime shopping’. Letterbox companies are seen to facilitate undeclared work/under-declared work arrangements, often through using foreign labour subcontracting and cross-border labour recruitment involving the posting of workers. Through subcontracting, firms obscure their relationships and obligations to employees.
- With regards to tackling the illegitimate use of posted workers in letterbox companies, Directive 2014/67/EU (the ‘Enforcement Directive’) was adopted in 2014. Article 4 of the Directive includes an assessment of genuine establishments based on a number of elements, with the test designed to identify where the core activities of an enterprise actually take place³.
- The policing of letterbox companies is nevertheless highly challenging. Most offices responsible for monitoring, identifying and addressing letterbox company activities are fiscal authorities. Compliance offices in the area of social security and pay (e.g. the latter commonly involves labour inspectorates) often have little competence to act in the field of company law in their own country, and have no competence to act abroad. In many instances, Member States are not as effective as they could be in facilitating exchanges of information and wider cooperation between departments.
- Case studies presented at the seminar underlined the problems relating to letterbox companies and the use of posting activities. In most cases, the labour relation (and notably the employer status) becomes blurred through the use of artificial arrangements. This was shown to prevail particularly in specific economic sectors such as construction, temporary work agencies, transport, metal construction and cleaning. Workers’ rights are especially

¹ Other names for letterbox companies include mailbox companies, paper companies, money-box companies, brass-plate companies, shell companies and pro forma-companies.

² See: <http://www.oecd.org/ctp/glossaryoftaxterms.html>

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0067>

at risk in subcontracting arrangements where workers are unaware of their rights surrounding working hours, pay, health and safety and social premiums linked to pension and health insurance access.

KEY OUTCOMES

- Due to the nature of letterbox companies, it is difficult to identify and ‘solve’ the problems they create. Member States need to develop a coordinated and integrated approach within their own Member State by improving working relationships between relevant government departments/inspectorates (e.g. tax and labour inspectorate departments and other relevant governance units).
- Many of the problems associated with letterbox companies involve the movement of labour, notably via posting arrangements. It is therefore important for Member States to develop partnerships and flows of communication with other Member States involved in the creation of letterbox companies and the sending/receiving of workers. This may be achieved, for example, through Memoranda of Understanding (MoUs) between labour inspectorates of different Member States linked by this issue. Timely information sharing between Member State authorities is vital in reducing the abuse of regulation.
- Systems to account for posted workers are important in tackling labour abuses. Estonia offered useful evidence of good practice in the registration of employees through a register (TÖR).
- Enforcement bodies focus their attention to the recovery of tax and social security contributions, rather than to the protection of workers’ rights. Labour inspectorates face a common challenge to bring forward proof of the existence of letterbox companies in criminal and civil proceedings and in particular to bring evidence necessary to restore workers’ rights. The violation of workers’ rights is rarely considered in criminal cases. .
- At the EU level the number of cases of letterbox companies is difficult to estimate. The majority of Member States do not appear to record the inspection of letterbox companies. Inspection cases are commonly conducted on an individual basis and can take a long period of time (e.g. from 2 to 2 ½ years to close the file and have a court case ruling). This period can be shortened if the incriminated company cooperates and regularises its situation. It is also difficult to define guidelines on how best to identify letterbox companies outside of Article 4 of Directive 2014/67/EU. This article is also designed for tackling abuses of the Posted Workers Directive, and so may not be appropriate for identifying all types of letterbox companies.
- In the absence of definitive legal tools for tackling letterbox companies, alternative tools should be developed. This may include whistleblowing protection for exploited worker groups, and media campaigns to raise awareness of problems caused by letterbox activities and the posting of workers. ‘White listing’ and/or quality labelling processes may also be adopted as a means of endorsing companies which maintain compliance with labour and tax obligations. Some Member States have also developed forms of chain liability in the construction sector, which is likely to work against letterbox subcontracting arrangements. Such practices may be transferable and could assist in a targeted (i.e. sectoral) approach to tackling letterbox activity.
- Policy recommendations are therefore varied and require amendments to EU company law, labour law and tax rules.

Further information: A Learning Resource Paper from the seminar, which discusses these issues in greater detail, will become available in early 2018.