



## European Platform Undeclared Work

### **Platform seminar: Tools and approaches to deal with undeclared work in the construction sector**

3 May 2017, Brussels, Belgium

The aim of this Platform seminar was to provide participants with an overview of existing tools and approaches for tackling undeclared work (UDW) in the construction sector. The seminar brought together Platform members and observers from 21 EU Member States (MS) and Norway (EEA) representing labour inspectorates and social security, tax and customs authorities, as well as EU- and MS-level social partners in the construction sector. The seminar provided these members and observers with an opportunity to exchange recent construction-related initiatives and good practices, identify aspects that could be transferred to different settings and explore how difficult challenges can be overcome.

#### **Key findings:**

- Construction has been in the top ten list of sectors affected by UDW since 1990s, though there is little sectoral information available.
- There is no uniform legal definition of UDW in construction: every MS defines this according to its own legislative framework and the definition can depend on the type of authority concerned (e.g. labour/ tax inspectorate, etc.).
- There are three key features of UDW in construction: UDW besides regular work in construction with cash-in-hand payment (also known as moonlighting); bogus self-employment (no uniform definition for bogus self-employment exists either); and agencies/ traffickers supplying gangs of cheap undeclared labour.
- There is no specific regulation at EU level; in the past, enforcement of UDW in construction was carried out in accordance with the principle *lex loci laboris*, i.e. respect for the regulatory frame of the MS where the work was performed. After the introduction of the free provision of services, important exemptions were introduced in this regulatory frame. It is important that policy options for tackling UDW across MS are not only reactive (carrot-and-stick approach), but also take a promotional, pro-active approach, for example, targeted campaigns or promotion of concerted action in neighbouring MS.
- The EU-level social partners in the construction sector have played a key role in helping to tackle UDW across a number of relevant initiatives in recent years, including: studies on bogus self-employment (2009) and social ID cards (2015) in the construction industry; a project on improving collaboration between public authorities and social partners on posting and a website on the implementation of the Posting Directive (2014/67/EU) and the Enforcement Directive (2014/67/EU); as well as joint advocacy activities emphasising the importance of national and bilateral solutions as well as bottom-up learning at EU level.
- As regards inspections of construction sites (theme of the first workshop), there was a shared understanding that non-compliance usually occurs in more than one area, and so the selection of construction sites for inspection should not be done randomly. This selection is currently based on information received from other bodies (e.g. other inspectorates, police, etc.) and from previous inspections. There was agreement that tools that could improve access to this information (such as hotlines, websites or apps for reporting any issues) are very much needed. Preparation and planning of inspections of construction sites was also commonly seen as key. An overview of preventive measures

and joint inspections by tax, labour authorities, as well as the police, was presented by Estonia, Denmark and Lithuania.

- The key challenges in tackling UDW in supply chains in the construction industry (topic of the second workshop) were well-known across MS to include: identification of subcontractors and of letterbox companies, lack of resources/ inspectors who can carry out on-site inspections, high level of unemployment in some MS which leads workers to accept poor working conditions, and difficulty to find evidence. Possible solutions were presented based on the experience of Belgium and Finland with joint or several liability in construction supply chains.
- Other interesting practices presented at the seminar ranged from a national system for mandatory preventive notification of posted workers (Belgium), to counselling services for posted workers (Germany), to an overview of the European Construction Mobility Information Net (ECMIN 2.0) launched by one of the EU-level social partners. Together with Belgium, Finland and Sweden, which presented on the introduction of social ID cards, these practices showed the array of existing tools and approaches for tackling UDW in the construction sector and the importance of neighbouring MS sharing data and working together in some instances.

#### KEY OUTCOMES

- It is important for MS, particularly neighbouring countries (e.g. Baltic region, Nordic countries, the Benelux, etc.), to collaborate with one another to try new tools and/ or approaches for tackling UDW in construction. To the extent possible, any ‘local’ action to address UDW in construction should be embedded within national regulatory frameworks.
- The EU-level social partners in the construction sector should continue to play an active role in helping to tackle UDW, for example enforcement should be an integral part of the bargaining agenda. There is a need to involve other important players in tackling UDW, particularly temporary agencies who recruit a substantial part of the construction workforce and have an interest in having a clean record.
- A common thread across discussions at the seminar was the importance of data (for example as enabler of targeted inspections) and data exchange between MS. It was considered that, for data exchange to work best, the sample of data should be small and cooperating authorities should establish and maintain a good working relationship.
- The most interesting preventive measures of UDW in construction are those that can be used by labour authorities to also act as deterrents (usually preventive measures and deterrents are viewed separately). Labour or tax inspections are very costly and should focus only on where they are most needed. As preventive measures can cover a lot of ground, they may help with the collection of data.
- Finally, limiting the number of sub-contractors to 2-3 was seen as a key solution to tackling UDW in construction supply chains.

**Further information:** An Analytical Paper from the seminar, which discusses these issues in detail, will be made available in June 2017. A Practitioner’s Toolkit that will showcase concrete examples and assist practitioners with practical guidance for implementing tools and approaches for tackling UDW in construction will follow later this year.

The input documents and presentations for the seminar have been uploaded to the collaborative workspace of the Platform.