



European Platform  
tackling undeclared work

# The lessons learned from the COVID-19 pandemic for the organisation of inspections and inspectorates

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Report of the peer learning dialogue

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# 1.0 INTRODUCTION

Dialogues for peer learning and cross-border action are a demand driven activity of the European Platform tackling undeclared work (hereafter 'the Platform'). Their aim is to explore an issue in greater depth with a small group of peers and/or to 'test' new approaches for tackling undeclared work. They allow Platform members/observers to facilitate learning and information exchange, deepening their cooperation, mutual trust and interaction to find and implement practical solutions to a specific challenge and kick-start future joint activities.

The dialogues for peer learning and cross-border action consist of three one-day meetings for up to six Platform representatives and one thematic expert facilitating the process. English is the working language of the dialogue.

Three dialogue meetings address different aspects of the topic chosen by the participants. The process of dialogues for peer learning and cross-border action includes:

- ▶ 1<sup>st</sup> meeting: Participants share the lessons learned and identify commonalities that can be actions/ proposals / recommendations for future.
- ▶ 2<sup>nd</sup> meeting: Participants share the lessons learned and identify commonalities that can be actions/ proposals / recommendations for future.
- ▶ Time for participants of the dialogues to test the actions / proposals / recommendations in their enforcement authorities.
- ▶ 3<sup>rd</sup> meeting: Participants share feedback on challenges faced implementing these actions/ recommendations / proposals and share tips on overcoming them.
- ▶ Outcome paper with joint reflections that other enforcement authorities might consider; and feeding into the wider work of the Platform.

All participants of the dialogues for peer learning and cross-border action are expected to participate in all three meetings of the dialogues and contribute with their knowledge and experience to form the best possible recommendations and to:

- ▶ Scope the topics addressed in the dialogues.
- ▶ Present and share good practices and/or lessons learned.
- ▶ Test dialogues recommendations in their enforcement authorities.
- ▶ Contribute to develop recommendations and operational guidance.
- ▶ Participants are strongly encouraged to volunteer as the chairs of sessions of the dialogue. The chairs trigger the discussion and ensure that group discussions are smooth, inclusive and effective to ensure the group makes the best of the allocated time. In addition, the chairs make sure that outcomes of discussions are collected and reflected in the outcome report.

This report documents the outcomes of the first Peer Learning Dialogue (PLD) on the lessons learned from the COVID-19 pandemic for the organisation of inspections and inspectorates. The aim of this Peer Learning Dialogue has been to produce recommendations and suggested actions (1) which Platform members can implement in their national practices and (2) where mutual learning at Platform and ELA level could occur to prevent all authorities having to "reinvent the wheel".

The PLD took place in the period from June to September 2021.

Based on the submitted applications for this PLD, the following topics were identified for discussion:

- ▶ **the future organisation of inspections:** alternative types of inspection to the physical inspection to detect and prevent undeclared work; changes in the planning and conduct of physical workplace inspections to detect and prevent undeclared work, and
- ▶ **the future organisation of inspectorates:** changes in ways inspectorates operate when tackling undeclared work and new skills and competencies required by inspectorates; and teleworking and other changes in the world of work and their implications for inspectorates.

To discuss this demand-driven topic, three one-day meetings have been held comprising seven countries who identified this as a topic for discussion:

- ▶ Greece: Dimitrios Souliotis, Hellenic Labour Inspectorate
- ▶ Ireland: John Kelly, Workplace Relations Commission
- ▶ Latvia: Maris Indrikovs, State Labour Inspectorate
- ▶ Norway: Yogindra Samant, Norwegian Labour Inspection Authority
- ▶ Portugal: Pedro António Soares Marques Da Costa, Authority for Working Conditions (ACT)
- ▶ Sweden: Cecilia Mobach, The Swedish Work Environment Authority
- ▶ Spain: Almudena Núñez-García Bada, Labour and Social Security Inspectorate

The meetings were facilitated by a thematic expert from the Platform services contract. English was the working language.

The three dialogue meetings addressed different aspects of the topic chosen:

- ▶ 1st meeting 7<sup>th</sup> June 2021: the future organisation of inspections.
- ▶ 2nd meeting 14<sup>th</sup> June 2021: the future organisation of inspectorates.
- ▶ 3<sup>rd</sup> meeting 6<sup>th</sup> September 2021: sharing feedback on feasibility of actions/recommendations/ proposals in terms of challenges and tips on overcoming them, and information/evidence on specific proposals.

Based on the three meetings, this outcome paper has been formulated summing up the discussions.

The next section reports the reflections from the PLD meetings on the future of inspections, section 3 on the future of inspectorates and section 4 draws together some conclusions and overall reflections on the Peer Learning Dialogue process, given that this was the first PLD activity undertaken by the Platform.

## 2.0 FUTURE ORGANISATION OF INSPECTIONS

In early January 2020, a new strain of coronavirus (SARS-CoV-2) producing a respiratory disease (COVID-19) began spreading across the globe. By April 2020, teleworking, the closure of businesses and the introduction of

health measures to restrict movement and the spread of the virus had affected 81% of the global workforce.<sup>1</sup> This has led in labour inspectorates to:

- ▶ Changes in the types of inspection conducted during the COVID-19 pandemic.
- ▶ Changes in the planning and conduct of physical workplace inspections during the COVID-19 pandemic.

Here, reflections are presented on the changes which could beneficially continue after the pandemic period.

## 2.1 Adopting alternative types of inspection to the physical inspection

During the **Platform plenary meeting on the 25 March 2021**, it was reported that while for most countries, 60% or more of inspections have continued to be on-site physical workplace inspections, compared to pre-pandemic level, many have pursued alternatives to the physical on-site inspection to detect and prevent undeclared work. These alternatives to the traditional physical on-site inspection include:

- ▶ remote inspections via telephone;
- ▶ remote inspections via video conference;
- ▶ postal and documentary inspections, and
- ▶ observation inspections (although these can be seen as a form of physical inspection).

At two **2020 Platform webinars** on COVID-19, many Platform members stated they had now learned that the labour inspectorate can do a lot without necessarily having to visit workplaces (e.g., Belgium, Denmark, Greece) when detecting and preventing undeclared work, although the verification of some rights and labour conditions still require a physical visit. Latvia asserted it had learned that most complaints regarding labour law issues (payments, salaries, firing etc.) can be solved with document exchange and asking opinions from both parties in written form and without a need to physically visit the company. Sweden voiced that the crisis has revealed the need for either the Platform or the ELA Working Group on Inspections to look at possibilities in the short and long term of how labour inspections (including concerted and joint inspections) could be done more remotely without human contact by utilising different information sources or without going to the workplaces or doing the inspections in a more restricted way. Desk-operated inspections have increased in Sweden to detect and prevent undeclared work, but the method adopted differs across regions, with for example some seeing them as a pre-cursor to a physical inspection later and others not, and some putting in demands which will be followed up and others viewing them more purely as a check-up. In Sweden in 2020, there was a tendency to use telephone rather than video due to secrecy and privacy issues with the use of many virtual platforms, which need to be sorted out before using video inspections to detect and prevent undeclared work.

Therefore, the crisis has raised issues of how inspections are conducted, that need to be taken forward in the recovery period to identify alternatives to the physical on-site inspection at the national and cross-border operational level. This desire was voiced to differing degrees by many Platform representatives (e.g., Belgium, Greece, Ireland, Portugal, Spain, Sweden).

However, the debate and discussion within and across authorities on these alternatives to the physical workplace inspection is when they should be used and for what purpose. There is also a need for evidence to be collected in

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<sup>1</sup> Williams C. (2021). *COVID 19: combating fraud in short-term financial support schemes*, European Platform tackling undeclared work; ILO (2020). *COVID-19 and the world of work: updated estimates and analysis*. Geneva: ILO.

enforcement authorities on the effectiveness of these alternative types of inspection compared with the physical inspection to detect and prevent undeclared work.

The following questions were therefore addressed by each PLD participant:

- ▶ What alternative types of inspection to the physical on-site inspection have you used during the pandemic to detect and prevent undeclared work?
- ▶ What lessons have you learned (e.g., about their benefits and effectiveness)?
- ▶ In the post-pandemic, do you intend to carry on using these alternatives to the physical on-site workplace inspection to detect and prevent undeclared work?
- ▶ When could they be used? When could they not be used?

Following this, a group discussion took place on changes that could be made to the types of inspection used in the future compared with pre-pandemic to detect and prevent undeclared work. This involved seeking answers to the following questions:

- ▶ What are the benefits of using these alternative types of inspection?
- ▶ What are the challenges faced in continuing to use alternatives to the physical workplace inspection in the post-pandemic period?
- ▶ Do you have tips to share on how these challenges could be overcome?
- ▶ What new skills and competencies are needed by inspectors, and how does this affect recruitment and training?

**Based on the discussion, the following conclusions were reached:**

- ▶ The value of electronic registers/databases and data mining in enabling risk assessment to occur to determine inspection targets was recognised. The pandemic had revealed the importance and value of Labour Inspectorate's using digital technologies to undertake their functions (e.g., to conduct risk assessment to select businesses for inspection, and provide information and advice).
- ▶ Where the strategic objective of a Labour Inspectorate is the number of onsite inspections conducted, this could be changed. This is in recognition that there are numerous types of inspection (e.g., announced and unannounced onsite, desktop/documentary inspections). The PLD participants suggest that labour inspectorates' KPIs on inspections could include not only the number of physical inspections (perhaps disaggregated) but also the number of desktop inspections, number of notification letters, etc. These should also measure the number of changes that resulted (e.g., the number of labour relations legitimised) and a 'test, learn and adapt' approach should be adopted to measure efficiency and effectiveness, so that enforcement is based also on quality-oriented KPIs as well as quantity-oriented KPIs.
- ▶ Physical inspections are essential for perceived risky/non-compliant businesses (e.g., for working time violations and other forms of undeclared work).
- ▶ If the risk assessment is that the organisation is compliant, then inspectorates could use desktop/documentary/postal inspections more often. This is the case for example, with large entities like municipalities and known established entities/companies. However, using desktop inspections with small/unknown entities was viewed by some PLD participants as creating more work and a more time-consuming process because of the time required to obtain and verify (potentially fraudulent) documents. The cost/benefit of the exercise seems of little utility with regards to potentially non-compliant businesses/entities.
- ▶ If desktop inspections are used to inspect potentially non-compliant businesses, then this will require inspectorates to identify which complaints regarding labour law issues (payments, salaries, firing etc.) can be

solved with document exchange and asking opinions from both parties in written form and without a need to physically visit the company. And which complaints cannot in their country. Evidence from PLD participants suggest that largely (although not exclusively) due to the pandemic, countries have been using desktop inspections. Sharing learning on where this fits with the traditional role of inspections, the situations where this could be used, and when it works and when it does not, requires careful consideration. PLD participants had various views. Some thought that it was only relevant in relation to larger compliant organisations. PLD participants also asserted that one of the major drawbacks with desktop inspections is the lack of a worker perspective. Given that obtaining the worker perspective is difficult even in physical inspections, it was asserted that this could be even more of a challenge when conducting desktop inspections. An additional issue, therefore, is whether this worker perspective can be explicitly built into the design of the desktop inspection process. There was also a perception that desktop inspection was not in many contexts effective at uncovering undeclared work. A conclusion was that if desktop inspection is used, it is necessary to conduct a risk assessment of the business first. This issue of when a desktop inspection could be used (if at all), and where it works and when it does not, could be part of a future activity on “Evaluating Complementary Inspection Types to Onsite Inspections”.

- ▶ Labour Inspectorates could make greater use of combining onsite and other forms of inspection, such as desktop inspections (e.g., initial meetings with compliant businesses at a distance, then physical inspection, and follow-up meetings at distance). Indeed, the experience of Norway was that they had been conducting desktop OSH inspections for many years but had serious concerns regarding the utility of desktop inspections via-a-vis undeclared work. They agreed that there might be added value of desktop inspections in inspectorates as they can be cost beneficial in terms of planned inspections with regards to compliant businesses. However, their experience suggests that desktop intervention may not be an effective intervention in terms of tackling undeclared work. Desktop inspections might serve the purpose of initial screening and as part of the process but are insufficient on their own. That is, desktop inspections may be a means to an end, but are not an end in themselves. It is essential that onsite inspections follow.

Before taking a decision on whether to adopt physical or non-physical inspections, an evaluation of their effectiveness is required by inspectorates. For example, what is the comparative cost of documentary inspections compared with physical inspections (i.e., how many an inspector can resolve per week compared with resolving via onsite inspections)? What is the strike/success rate of documentary inspections at resolving complaints compared with the success rate of using physical visits? Reviewing the evidence in their countries, PLD participants suggest that, although there is a widespread view that physical inspections are more effective, concrete evidence that this is the case could be gathered. ITSS in Spain, for example, has performed non-physical inspections for many years. It was highlighted that evaluating the effectiveness of physical vs non-physical inspection depends on the specific target (subject, type of company, etc.) and must be determined case by case and should be ex-ante evaluation as well as ex-post. PLD participants pointed to the empirical evidence on physical OSH inspections which indicates the value of onsite inspections as opposed to other forms of intervention, especially the classic study designed by UCLA, Harvard and Boston University on the positive impact of random physical inspections on OSH in the USA.<sup>2</sup> In 2020, similarly, Norwegian labour inspectorate designed a randomized controlled study in collaboration with their National Institute for OSH, where physical inspections and digital guidance are being compared to assess the impact on OSH compliance in home-based care, with the results expected by 2022/23. Therefore, there are methodological lessons to be learned from OSH when designing evaluation methods for comparing the impact of physical inspections with other types of intervention on detecting and preventing undeclared work. Designing a methodology and

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<sup>2</sup> Levine, D.I., Toffel, M and Johnson, M. (20) Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss, *Science* Vol 336, Issue 6083, pp. 907-911, <https://www.science.org/doi/abs/10.1126/science.1215191>

conducting evaluations could be a part of a future activity on “Evaluating Complementary Inspection Types to Onsite Inspections” or the core part of a separate activity on “Evaluating the effectiveness of onsite inspections in preventing undeclared work”.

- ▶ There is a need to consider the impact on inspectors of a shift towards more postal/desktop/documentary inspections, such as the need for competencies in using digital tools. Technicians might be used to do these desktop inspections. The skills and competencies they require need to be identified. In addition, career pathways need to be identified.

A wider discussion by Platform members and observers is required of the feasibility of using non-inspector technicians to do desktop inspections and inspectors only physical inspections. What are the challenges (e.g., whether non-inspectors have power in law to send out letters to businesses)? What skills and competencies would be required by these non-inspector technicians? How could a pilot experiment be conducted on this issue? Is it possible to develop a career path (e.g., from working in the call centre, then doing desktop inspections and then physical inspections)? How can an input from employees be included in a desktop inspection? Discussion of these questions could be part of a future activity on “Evaluating Complementary Inspection Types to Onsite Inspections”.

## 2.2 Changes in the planning and conduct of physical workplace inspections during the COVID-19 pandemic

During the pandemic, there have been changes in the way labour inspectorates plan and conduct physical workplace inspections to detect and prevent undeclared work.<sup>3</sup> These changes include:

- ▶ risk assessment of when a physical inspection should occur;
- ▶ the use of personal protection equipment (PPE);
- ▶ social distancing during inspections;
- ▶ contact and time spent in the workplace, and
- ▶ the mode of transportation and way pool cars are used.

Measures have been taken to protect enforcement authority staff. Such measures involve risk assessment when **planning** inspections for firstly inspectors and secondly, how to **conduct** physical inspections. For instance, a range of approaches have been used for protecting staff during workplace inspections including masks, gloves, visors, social distancing, time spent at the inspection and hygiene issues related to transport used.

The following questions were therefore addressed by each participant:

- ▶ What changes have you made to how physical on-site inspections are planned during the pandemic?
- ▶ What changes have you made to how physical on-site inspections are conducted during the pandemic?
- ▶ Which of these practices could be continued after the pandemic?

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<sup>3</sup> See Williams, C.C. (2020) *Tackling undeclared work: impact and responses to the coronavirus pandemic – internal Platform document*, European Platform tackling undeclared work.



Following this, a group discussion took place on changes that could be made in future compared with pre-pandemic when planning and conducting onsite inspections. This involved seeking answers to the following questions:

- ▶ What are the benefits of continuing with these new practices in relation to physical inspections after the pandemic?
- ▶ What challenges might be faced in continuing with these changes in the post-pandemic period?
- ▶ Do you have tips to share on how these challenges could be overcome?
- ▶ What new skills and competencies are needed by inspectors, and how does this affect recruitment and training?

Learning was shared on changes in how physical workplace inspections have been planned and conducted, and what practices could continue in the future.

**The conclusions were:**

- ▶ The perception of participants was that physical inspections will reappear as the predominant form of inspection once the pandemic is over and that remote inspections can be time consuming because more paperwork is often required.
- ▶ Nevertheless, the pandemic has made labour inspectorates focus upon whether a physical inspection is necessary, or some alternative type of inspection could instead occur. This change could continue in the future. Risk assessment to plan when a physical inspection should occur has become more normal and could continue in the future.
- ▶ Using apps for inspectors to access databases to get real-time data during onsite inspections could continue in the future.
- ▶ Hygiene issues related to use of pool cars (where used), including cleaning them after using them for inspections, could continue in the future.
- ▶ Contact and time spent in the workplace could continue to be less. Physical distancing has led to recognition of the value of spending less time in the workplace. For example, inspectorates could do more not onsite, and make greater use of short quick unannounced inspections, such as the 'streetscape' approach of inspecting all premises in a defined area (such as a city street, industrial estate, or businesses park) currently being used in Ireland.
- ▶ During onsite physical inspection, rather than use only paper-based questionnaires to employees, one could also give employees a hyperlink to the questionnaire for them to complete and return.
- ▶ Could experiment with digital recording of inspections, depending on the relevant data protection legislation in Member States.
- ▶ Use of PPE could continue in future (e.g., masks or ear plugs used in past and newer forms adopted recently could continue).
- ▶ Need to develop soft skills of inspectors with appropriate communication skills (e.g., language skills).
- ▶ There is a widespread belief among inspectors that physical inspections are necessary and effective. However, there is a need to collect evidence on the value of physical onsite inspections in tackling undeclared work. What other evidence could be collected (e.g., by sector) to show the value of physical onsite inspections compared

with other alternative types of inspection (e.g., desktop)? PLD participants agreed on the importance of collecting such evidence. It was concluded that a future activity would be useful on “Evaluating the effectiveness of onsite inspections in preventing undeclared work”.

## 3.0 FUTURE ORGANISATION OF INSPECTORATES

Discussion took place on future organisation of inspectorates, namely that the pandemic has led to:

- ▶ changes in ways inspectorates work and this means new skills and competencies required by inspectorates; and
- ▶ teleworking and other changes in the world of work and this has implications for inspectorates.

Here, reflections are presented on the changes which could beneficially continue after the pandemic period.

### 3.1 Changes in ways inspectorates work and new skills and competencies required by inspectorates

Beyond the changes in how inspections are conducted, there have been also changes in the ways inspectorates operate during the pandemic.<sup>4</sup> These strategic, operational and human resource management changes have included:

- ▶ More emphasis on the use of data mining and matching to detect violations;
- ▶ Greater resource dedicated to distance-oriented digital solutions (e.g., use of social media and websites for information distribution and complaint reporting; mobile apps for distance consulting);
- ▶ Greater home-based working by inspectorate staff;
- ▶ Greater use of virtual staff meetings in inspectorates;
- ▶ Online training of staff by inspectorates;
- ▶ Greater use of joined-up action via task forces and cross-government coordination and cooperation on strategy, operations and data mining, sharing and analysis;
- ▶ Re-thinking offices/seating in terms of use and layout in inspectorates, and
- ▶ Remote access to resources for inspectorate staff (e.g., inspection case management databases; other databases).

The following questions were therefore addressed by each participant:

- ▶ What changes in the ways your inspectorate operates have occurred during the pandemic?
- ▶ Which of these in the post-pandemic period could be usefully continued?

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<sup>4</sup> See Williams, C.C. (2020) *Tackling undeclared work: impact and responses to the coronavirus pandemic – internal Platform document*, European Platform tackling undeclared work.

Following this, a group discussion took place on changes that could be made in future compared with pre-pandemic in the ways inspectorates operate. This involved seeking answers to the following questions:

- ▶ What are the challenges faced in keeping these changes in how inspectorates work in the post-pandemic period?
- ▶ Do you have tips to share on how these challenges could be overcome?
- ▶ What new skills and competencies are needed by inspectorates, and how does this affect recruitment and training?

**The conclusions were:**

- ▶ Most staff in most inspectorates want a return to pre-pandemic normality across most functions. However, there are opportunities for some changes from lessons that have been learned during the pandemic.
- ▶ There has been greater recognition of the value of using data analysis to detect and prevent labour law violations during the pandemic. This could continue to be prioritised for further investment after the pandemic and will require: (i) the growth of staff with the necessary data analytical skills and (ii) ensuring that processes exist for inspectors to provide feedback when developing the predictive models so that they become more effective.
- ▶ There is also a need to look at greater data sharing at the national level. The pandemic has intensified the need for this.
- ▶ Given the shift towards greater use of data analysis, a next step for the future could be to start to consider whether national Employment Registers can be merged to create a pan-EU Employment Register, which would help detect and prevent undeclared work at the EU and cross-border level.
- ▶ Greater resources could continue to be dedicated to distance-oriented digital solutions when tackling undeclared work, in line with Digital Compass 2030. These include: the use of social media and websites for both information distribution as well as complaint reporting; and the continuing use and development of mobile apps for distance consulting. The use of social media both for information distribution and complaint reporting, and sharing of good practice (e.g., “Know your rights” in Norway), could be the subject of a future Platform work programme activity (e.g., channels most effectively used for targeting different groups).
- ▶ Greater home-based working by inspectorate staff could continue. The pandemic has overcome the issue that staff cannot be trusted to do so. Management and control systems need refining and developing to enable this to continue.
- ▶ Greater use of virtual staff meetings could continue in inspectorates. However, some office-based meetings will remain necessary for building social capital between team members.
- ▶ There has been greater understanding developed of managing staff at a distance in inspectorates.
- ▶ The investment in online training of staff by inspectorates could continue in the post-pandemic period. This is effective because it reduces the need for travel from local and regional inspectorates to a central location to receive training. All training could be video recorded for use in the future.
- ▶ The pandemic has displayed the value of joined-up action via task forces and cross-government coordination and cooperation on strategy, operations and data mining, sharing and analysis. This impetus could continue in the post-pandemic period in the realm of tackling undeclared work.

- ▶ There have been fewer visits of customers to inspectorates with information after inspections and approaches to the inspectorates by email and phone had increased. This could continue to be dealt with via digital means in the post-pandemic period.
- ▶ The pandemic resulted in providing remote electronic access to resources for inspectorate staff (e.g., inspection case management databases; other databases) both in the field and when working from home. This could continue in the post-pandemic period.
- ▶ The result of all these changes is that inspectorate staff require new competencies and skills, especially 'soft skills'. To extend the "train the trainers" approach in joint and concerted inspections being pursued by ELA, an international training programme for labour inspectors could be developed within ELA. The PLD participants have developed the following very provisional list of topics and ideas on the skills and competencies that could be developed in such a training programme and some delivery methods for achieving this:
  - ▷ Training in (1) 'content-specific' skills such as why tackle undeclared work, practical aspects of doing inspections, training in cross-border inspections (to train cross-border inspectors), training in OSH for undeclared work inspectors, training in the use of social media, developing harmony in common principles for inspections in EU, improving data sharing intra- and inter-nationally (including training on the use of Internal Market Information System ), learning better how other inspectorates operate, communications training, technology training, understanding data better and using data systems, use of AI in inspections<sup>5</sup>, developing shared views and common training on specific topics (especially on trafficking in human beings), and (2) developing human capital 'soft skills' such as empathy, oral communication skills, adaptability, emotional intelligence, resilience, handling cultural differences (inter-cultural communication), training in conflict resolution, mediation, people management, and interviewing employers and employees.
  - ▷ Training learning formats and delivery methods could include: a digitally delivered distance learning course in modules; in small groups online; in-person training delivered in Member States using the train the trainer model; keeping diaries to collect material, routines, scenarios; training in "mirroring"; role-play sessions where the inspector takes the role of the employer and/or employee during an inspection; case studies examination, etc.

Given the wide range of content, competencies and skills identified by PLD participants, it was concluded that a useful way forward could be for ELA to undertake a preliminary "Training Needs Analysis" with Member State labour inspectorates of what content, skills and competencies could be included, and what delivery methods and learning formats could be used.

### 3.2 Teleworking and other changes in the world of work and their implications for inspectorates

The pandemic has resulted in the growth of teleworking and other changes in the world of work that have implications for inspectorates when tackling undeclared work, especially labour law violations.<sup>6</sup> Often, labour law has been undeveloped in relation to clarifying the responsibilities of employers and rights of employees in relation to teleworking, and there are sometimes issues that arise around the inspection of workplaces when this becomes home-based. The result has been the call for updating legislation and regulations to make clearer the responsibilities of employers and rights of workers in relation to teleworking, so that labour law is clear and

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<sup>5</sup> EU parliaments publication on the use of AI and digital surveillance at workplaces is available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/656305/EPRS\\_STU\(2020\)656305\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/656305/EPRS_STU(2020)656305_EN.pdf)

This report raises some critical worker privacy issues, and the field is at best nascent in a workplace regulatory context.

<sup>6</sup> ILO (2020). *COVID-19 and the world of work: updated estimates and analysis*. Geneva: ILO.

violations can be detected. Beyond teleworking, including home-based working, there are other changes in the world of work which have implications for undeclared work. These include: (1) the continuing growth of digital labour platforms and (2) the issue of conducting inspections in households which has again come to the fore during the pandemic, especially in relation to personal and household services.

The following questions were therefore addressed by each participant:

- ▶ What changes have there been in the world of work that are potentially resulting in new forms of undeclared work?
- ▶ How do inspectorates need to respond?

Following this, a group discussion took place on the challenges facing inspectorates in responding to these changes, and tips on how these challenges can be overcome. This involved seeking answers to the following questions:

- ▶ What are the challenges faced in responding to these changes in the world of work?
- ▶ Do you have tips to share on how these challenges could be overcome?

#### **The conclusions were:**

- ▶ With the growth of teleworking, there is a need for the Platform to share learning on how employers' responsibilities and workers' rights have been clarified in Member States. Unless these are clarified, then labour inspectors will be unable to follow-up on potentially 'exploitative' working conditions. This could range from employers at an individual-business level clarifying their responsibilities in their corporate social responsibility strategies (CSRs), through collective agreements at the sectoral level, to mandatory legislation (e.g., Spain). Moreover, the applicable law is where the teleworker is working so this is a cross-national issue. This could be examined in a future activity in the work programme of the Platform to share learning and explore the feasibility of cross-border cooperation, including joint and concerted actions.
- ▶ The long-standing issue of labour inspectors being largely unable to conduct inspections in households has come to the fore during the pandemic. The Inspections Working Group could again share learning on how this has, and could be, resolved. Evidence gathered during the PLD event suggests that some countries (e.g., Ireland) have good practices on this issue and that sharing learning would be valuable. The PLD learned how in 2007 in Ireland, the Labour Relations Commission, now the Workplace Relations Commission, in consultation with representatives of the Social Partners, produced a Code of Practice for Protecting Persons Employed in Other People's Homes (2007)<sup>7</sup> which sets out the rights of persons employed in private homes. To carry out inspections of workers employed as domestic workers, predominately (but not exclusively) in private homes, a procedure has been developed. *Pre-inspection requirements* include: pre-appointment check of databases to establish if employer is registered as an employer; establish initial contact via standard appointment letter and enclose code of practice on 'Employment in Other Peoples Homes'; and note that the inspection policy on two people to enter private homes will not apply for the purposes of these inspections. Where there is an indication of risk, a request may be approved for more than one Inspector in those circumstances. *For the conduct of the inspection:* inspections are to be conducted under normal case management procedures. However, the following extra issues should be dealt with: inspectors to be particularly vigilant regarding revealing the source of the inspection and the policy of not commenting on the reason for inspection; if an employer does not want inspection in a private home, alternative arrangements must be agreed (employer must be advised of legal

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<sup>7</sup> S.I. No. 239/2007 - Industrial Relations Act 1990 (Code of Practice for Protecting Persons Employed in Other Peoples Homes) (Declaration) Order 2007 <http://www.irishstatutebook.ie/eli/2007/si/239/made/en/print>

position regarding ban on entering homes without permission); interview with employee is mandatory. Employees should also be told that if they are aware of other workers with employment issues, they can contact Inspection Services; obligation to communicate to employer regarding the legal responsibilities when employing someone; obligation to provide Written Terms and Conditions as provided for in Terms of Employment (Information) Act clearly setting out working hours and pay rates etc.; inspector may need to explain the legislation to the employer and employee, to assist in communication and act as mediator between employer and employee to communicate and deal with issues involving misunderstandings; if language is an issue, to engage an interpreter; for non-EEA domestic workers who may be employed with a work permit (this will not be common as permits are not generally issued for domestic work), check that the employer is adhering to the agreed terms as laid out in the Work Permit application (i.e. job description/hours of work/rates of pay/ employment location, etc.). General points highlighted for inspectors include: these inspections may take longer than normally is the case as employers may not have administrative skills; inspectors should be aware of indicators of trafficking and procedures in cases where it is suspected; as single inspector inspections, inspectors must be aware of potentially dangerous situations and ensure other colleagues know the location and times of inspections; and inspectors should have multi lingual cards which will enable clear communication with non-English speaking employers and employees

With the pandemic, an inter-related issue that might be considered alongside conducting inspections in households is teleworking. It is possible that there will be inspections on teleworking in the future in Sweden. If so, inspections will be carried out on how employers work with the systematic work environment management, including the work environment when teleworking (but there will be no inspections of households). The long-standing issue of conducting inspections in households might therefore be expanded in any future activity to include how employers manage the work environment of home-based working/teleworking.

- ▶ The use of digital platforms as a means of sourcing opportunities for engaging in undeclared work appears to be growing. Immediately prior to the pandemic, the 2019 Eurobarometer survey on undeclared work revealed that 11% of all undeclared work was sourced from digital platforms. There is also the issue of bogus self-employment which appears to grow. How these two issues can be addressed by inspectorates requires mutual learning at the Platform level.

## 4.0 REFLECTIONS AND SUGGESTIONS

### 4.1 Suggestions for Countries

The seven countries involved in the Peer Learning Dialogue have found that there is significant value in reflecting on the lessons learned from the COVID-19 pandemic for the future organisation of inspections and inspectorates. Considering what changes made during the pandemic period could be carried forward into the post-pandemic world has been a valuable and rewarding experience. Below, reflections and suggestions on how sharing of learning can occur are outlined. However, the PLD participants have also found that starting an internal discussion within their inspectorates on the above discussed issues can be useful.

### 4.2 Suggestions for ELA

- ▶ The lessons from this PLD could be shared at the next **plenary meeting thematic discussion** in October 2021 on “COVID-19’s impact on enforcement authorities’ work and priorities”. This could involve:

- ▷ (i) a plenary thematic discussion background paper that sets out the reflections presented above along with additional questions for discussion at the plenary thematic discussion (which should be circulated prior to the meeting), and
  - ▷ (ii) the four PLD chairs of each session could present the reflections of the session that they chaired.
- ▶ The reflections on the “future of inspections” could be presented to the **ELA Enforcement and Analysis Unit and** at the next meeting of the **Inspections Working Group**. This could involve:
- ▷ (i) a circulation of this report as background material prior to the meeting with views on the reflections requested at the meeting and the possible future actions that could be taken by the ELA Inspections Working Group.
  - ▷ (ii) the PLD chairs of these two sessions could present the above reflections/suggestions of the session that they chaired.
- ▶ Based on the outcomes of these meetings, ELA could consider what activities, if any, need including in the **future work programmes** of ELA, including the European Platform tackling undeclared work Working Group.

The **ELA** could consider the development of a training programme for labour inspectors based on the provisional delivery methods and list of topics and ideas on the skills and competencies that could be developed in such a training programme.

### 4.3 Reflections on Peer Learning Dialogues as an activity

Given that this was the first Peer Learning Dialogue, the participants reflected on the structure and process. The outcome was the following recommendations:

- ▶ The participation of seven Platform members or observers is the optimal number.
- ▶ It is preferable for the same participant to attend all three meetings to provide continuity and enhance learning.
- ▶ The chairing of each session by one of the participants was deemed useful, as was the pre-meeting briefing of the chairs by the support services team and thematic expert.
- ▶ The production of a brief background paper for each meeting is useful that sets out: the content to be discussed in each session; the questions to be answered, and that structures each session in three stages, namely: (i) short individual reflections of all participants on the topic (with the questions to be answered put in the background paper); (ii) a group discussion (again with the questions to be answered put in the background paper) and (iii) agreement on actions/recommendations/further work.
- ▶ It was felt to be important by participants to understand how the Peer Learning Dialogue fits into the overall work programme of the Platform and ELA more widely. For example, it was felt to be important to understand from the outset how the PLD report could potentially feed into planning future tasks and activities in the work programme and ELA more generally.
- ▶ Demand-driven topics need to be selected where the topic clearly feeds into future activities of the ELA, including the Platform.

## 5.0 BIBLIOGRAPHY

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