



European Platform  
tackling undeclared work

# **Plenary meeting of the European Platform tackling undeclared work**

**Thematic report on third country migration and  
undeclared work**

April 2021

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# 1 INTRODUCTION

The plenary meeting of the European Platform tackling undeclared work (the “Platform”) was held online on 24-25 March 2021. The first day of the plenary was dedicated to a thematic discussion on third country migration and undeclared work. The intention was to enable Platform members and observers to engage in mutual learning around policy solutions and to identify areas where national and/or collective action at the EU level could be required.

This report summarises the presentations and discussions on 24 March. It also draws upon the unpublished input paper prepared for the meeting and a more detailed Platform report on ‘Counteracting undeclared work and labour exploitation of third-country national workers’.<sup>1</sup>

The thematic half-day webinar consisted of an introductory session on third country migration and undeclared work, followed by presentations on two topics: improving detection and deterrence measures and prevention and awareness-raising.

## **Defining undeclared work, illegal employment and labour exploitation**

Illegal employment and undeclared work are both economic activities which are not compliant with migration and labour law and thus remain ‘invisible’ from the authorities which, in turn, increases the risk of labour exploitation.

**Undeclared work** is a paid activity not, or only partly, registered with the authorities and can be performed by third-country nationals and the native population. This includes under-declared employment, unregistered employment, undeclared self-employment and labour infringements through the use of fraudulent letterbox companies and other intermediaries. **Illegal employment** is defined by the European Migration Network as an ‘economic activity carried out in violation of provisions set by legislation regulating the employment of third-country nationals’. In the EU, illegal employment of third-country nationals is either the result of irregular residency or the missing/restricted right to work.

**Labour exploitation**, meanwhile, refers to work situations that ‘deviate significantly from standard working conditions as defined by legislation or other binding legal regulations, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment’<sup>2</sup>. However, labour exploitation often lacks a clear definition at national level, which challenges enforcement authorities to identify cases and to sanction exploitive employers. For workers, in particular irregularly staying third-country nationals, this reduces their chance to be recognised as a victim in need of protection, whilst facing migration enforcement outcomes, such as deportation.

Significant research has been carried out by the European Union Agency for Fundamental Rights (FRA) on severe labour exploitation, e.g. all forms that fall under criminal law. The report ‘Counteracting undeclared work and labour exploitation of third-country national workers’<sup>3</sup> focuses in particular on forms of labour exploitation that fall within the framework of an employment relationship subject to labour law. This is the realm of labour inspectorates or social insurance agencies, which at the same time are also responsible for addressing undeclared work.

While undeclared work can be an intentional strategy of employers and regularly staying migrants, labour exploitation is driven by various employer strategies to exercise control over the worker, such as debt bondage, threats, hiding documents or undeclared work itself (e.g. if the employer refuses to register the worker). Labour exploitation often ranges from mild inconsistencies with the principles of decent work and equal treatment to severe

<sup>1</sup> European Platform undeclared work, (2021). Counteracting undeclared work and labour exploitation of third-country national workers. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23573&langId=en>

<sup>2</sup> European Union Agency for Fundamental Rights. (2019). Protecting migrant workers from exploitation in the EU: workers’ perspectives. European Union Agency for Fundamental Rights (FRA) (2018). Protecting migrant workers from exploitation in the EU: boosting workplace inspections.

<sup>3</sup> European Platform undeclared work, (2021). Counteracting undeclared work and labour exploitation of third-country national workers. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23573&langId=en>

exploitation and forced labour. It is therefore important that labour inspectors, who often meet third-country nationals during inspections, are aware of less severe to severe forms of labour exploitation.

### 1.1 Undeclared work of migrants – what are the different irregularities?

Undeclared work of third-country nationals constitutes a serious concern for enforcement authorities and partners. Although data on third-country nationals working undeclared is scarce, there is anecdotal evidence that **non-EU nationals more often engage in undeclared work**<sup>4</sup> – and are consequently more often exposed to exploitative working conditions and unfair treatment. A poll during the plenary meeting revealed that tackling undeclared work and labour exploitation among third-country nationals is a high/very high priority for more than 60% of the responding participants.

The COVID-19 **pandemic** has highlighted the important contribution of migrant workers to key sectors such as agriculture, transport or health and social care. However, social distancing, the closure of key support services, and inappropriate accommodation and transportation have exacerbated the issue of undeclared, illegal employment and related exploitation, in particular in agriculture and other food processing sectors.

**Undeclared work, illegal employment and labour exploitation regularly coincide:** it is often not possible to fully differentiate between undeclared work (which is mostly covered by labour law interventions), illegal employment (covered by migration, labour and criminal law) and labour exploitation covered in national labour and criminal laws, as they interlink and reinforce each other.

The **situation of non-EU workers** depends on their country entry (regular or irregular), residency (regularly versus irregularly staying), work status (work authorisation with significant limitations, expired, non-valid or non-existing work authorisation) and form of employment (formal, undeclared or underdeclared). In order to explore the relationship between undeclared work, illegal employment and labour exploitation, three groups of third-country nationals can be distinguished:

- **Legally residing third-country nationals with a fully flexible work authorisation.** This group includes people who for example gained long-term residency or have been granted international protection. In theory, this group faces the same risk of entering undeclared, underdeclared work or bogus self-employment as EU nationals. However, while it is unclear if they enter undeclared work intentionally or are driven into it by employers, their risk of labour exploitation is heightened compared to EU workers. Employers may take advantage of their marginalised status – in particular of low-skilled workers who face challenges, such as language barriers, limitations of qualification recognition and skills validation, cultural differences and discrimination.
- **Legally residing third-country nationals with a restricted work authorisation.** Restrictions in the work authorisation can include a limitation of working time, for example, for students or au pairs, the authorisation to only work for a specific employer, or in some cases a set number of professions or sectors to work in. A breach of these conditions of their work authorisation results in irregular employment and potentially invalidation of their residence and work permit, so that the person is pulled into irregular residence. This increases their dependency on their employer and, in turn, creates a situation of vulnerability towards labour exploitation. Specific schemes that worsen this situation are work authorisations that are linked to a specific employer and posting arrangements which allow companies to post legally staying third-country workers with a work authorisation for a restricted amount of time to another Member State. For instance, there have

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<sup>4</sup> The Eurobarometer survey from 2019 (Special Eurobarometer No. 498 conducted in 2019 with 26 514 respondents) shows that those with working experience outside of the EU and those with working experience in another EU Member State are more likely to engage in undeclared, under-declared employment and bogus self-employment. However, only 9 % of all survey respondents have worked abroad and less than 2 % surveyed were migrants.

been growing concerns about cases where third-country nationals have been hired under fraudulent schemes and sent as (bogus) posted workers from one Member State – one with lower wages and social security contributions– to a Member State with higher wages and social security contributions.

- **Regularly residing third-country nationals without a right to work** (their status may not grant them access to the labour market or they have not/cannot apply for a work authorisation) **and irregularly staying third-country nationals.** This group is most at risk of labour exploitation due to their irregular status. People staying regularly but without a work authorisation are those who entered the EU on a tourist visa (in exploitative cases, arranged by the employer and with the intention of working full-time), third-country nationals whose work permit has expired, and asylum seekers who are not yet authorised to work.<sup>5</sup> Cases of irregular residency and employment concern those third-country nationals who are not entitled to stay in the territory of the Member State (for instance because they entered the country irregularly, continued to reside following the expiration of their visa or residence permit, or had their asylum application rejected). In particular, irregularly staying third-country nationals and those without a work authorisation often have no other chance than to work undeclared, to accept other exploitive working conditions and fear reporting exploitive conditions to authorities, because they may be afraid of the potential negative outcomes for themselves, such as losing the right to residency, their accommodation or their income, risking deportation, etc.

## 1.2 Challenges in addressing labour exploitation

Although the rights of third-country nationals are protected by international, EU and national law, they often face significant challenges to exercise their rights in terms of remuneration, working time, health and safety and non-discrimination. The **European Union Agency for Fundamental Rights (FRA)** presented data from the upcoming report on protective provisions of the 'Employers Sanctions Directive'<sup>6</sup> in 25 EU Member States,<sup>7</sup> such as the information about workers' rights, facilitation of complaints against employers, or back payments of outstanding wages.

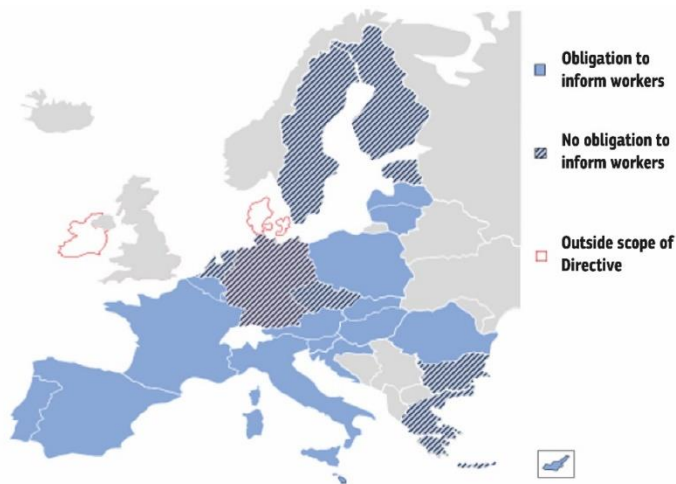
The Employers Sanctions Directive requires that irregularly staying third-country nationals are '**systematically and objectively**' informed about their rights. This requires the use of targeted multi-lingual information material.

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<sup>5</sup> According to EU Reception Directive asylum seekers must be granted access to the labour market no later than nine months from the date when the application for international protection was lodged, if a first instance decision by the competent authority has not been taken. Member States can decide to grant earlier access to the labour market. However, before this period, it may be likely that asylum seekers work to gain income while they wait for their decision enabling unscrupulous employers to fill low-paid jobs.

<sup>6</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. It is noted that the Directive does not cover legally staying third-country nationals, for whom no specific provisions exist.

<sup>7</sup> This excludes Denmark and Ireland.

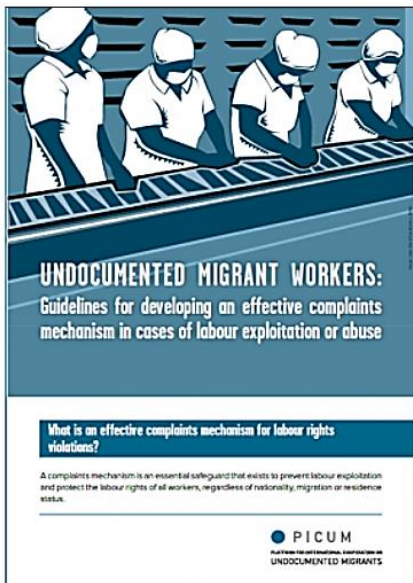


The upcoming report by FRA however confirms that especially irregularly staying third-country nationals do not report exploitation and undeclared work because they lack information on how to complain. Only in two-thirds of the Member States, labour inspectorates are **obliged to inform workers of their rights** and about the available complaint mechanisms. Moreover, the legislation in all but four Member States specifies that third parties may engage either on behalf of or in support of a worker, with his or her

Source: presentation by Ludovica Banfi, FRA (2021)

approval, in any administrative or the civil proceedings against an employer<sup>8</sup>.

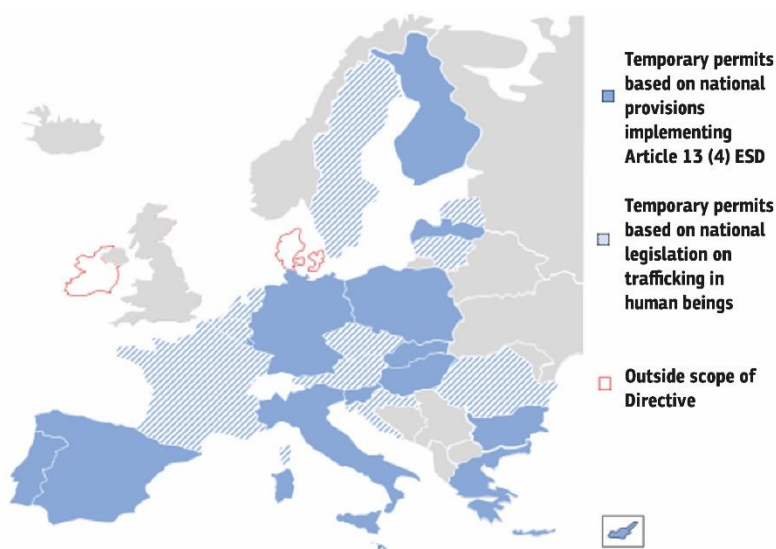
The **Platform for International Cooperation on Undocumented Migrants (PICUM)** presented findings from the report 'A Worker is a Worker: How to ensure that undocumented migrant workers can access justice', and outlined the specific barriers undocumented workers face, such as challenges to prove the employment relationship and the extent of the rights violations; and lack of access to formal complaint mechanisms without risking deportation. PICUM underlined that by placing migrant workers who file complaints at risk of immigration enforcement, the immigration system incentivises some employers to exploit workers, providing a cheap, deportable, replaceable workforce. Mixing immigration enforcement with labour standards enforcement uses the resources of labour authorities while undermining trust with workers, which is crucial to gather evidence and recuperate due wages, tax and social security from employers. For more effective complaint mechanisms, PICUM recommended the following:



- Complaint mechanisms should guarantee confidentiality and include clear safeguards to ensure that information about irregularities regarding a workers' residence or work authorisation is not used by police or migration authorities for immigration enforcement purposes.
- Workers should be protected from fines and other administrative sanctions, prosecution for immigration-related offences, arrest, detention and deportation.
- Practical barriers to migrant workers taking complaints should be addressed, for example, labour inspectorates should work with civil society and trade unions to undertake outreach activities and support workers to take complaints.
- Maintaining the independence and integrity of labour authorities.

PICUM, *Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse*, available here:

<sup>8</sup> FRA, 2021, Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive, available here: <https://fra.europa.eu/en/publication/2021/employers-sanctions-against-exploitation>



For victims of criminal forms of labour exploitation who are staying irregularly, a number of countries provide the possibility for **temporary residence permits** for workers who have experienced labour exploitation and who are cooperating in a case against their perpetrators. According to FRA, more than half of the Member States have domestic legislation establishing temporary resident permits for victims of particularly exploitative

Source: presentation by Ludovica Banfi, FRA (2021)

working conditions.<sup>9</sup> Access to permits depends on many aspects, such as the decision of prosecutors to pursue criminal charges, the assessment of law enforcement regarding the importance and use of the victim's continued presence for the prosecution.

According to PICUM, permits are an important tool to increase reporting by exploited workers and to protect their rights, however there are major **challenges when workers are required to prove more severe or criminal exploitation**, which is often not possible in practice. In addition, the permits are often linked to cooperation in proceedings and are only temporary, which may not fully reduce the reluctance to press charges against exploitative employers and uncertainty about residency and work authorisation often remain.

An example of a clearer and more accessible pathway for workers to re-enter declared employment following exploitation is the Irish '**Reactivation Employment Permit Scheme**'. This scheme allows third-country nationals, whose valid employment permit expired through no fault of their own (e.g. redundancy) or who were badly treated or exploited by the employer, to apply for a new residence and work authorisation. This is available for most occupations, excluding however all jobs in a domestic setting.

In Finland, proposed **amendments to the Aliens Act** will entitle exploited workers to a new fixed-term residence permit during the application process for a new job. In turn, the authorities hope this will increase reporting without fear of being deported from the country. The proposal also includes a future refusal of work permits to employers and contractors who are suspected of recruiting workforce from abroad for the purpose of circumventing entry regulations. These proposals are in line with increased attention of the Finnish government to prevent exploitation of migrants in the reform of labour migration.<sup>10</sup>

During the presentations and discussions at the plenary meeting, possible solutions and recommendations for labour inspectors and their partners to address undeclared work amongst third-country nationals were debated.

<sup>9</sup> According to Article 13 (4) of the Employers Sanctions Directive. In respect of criminal offences covered by Article 9(1)(c) or (e), Member States shall define in national law the conditions under which they may grant, on a case-by case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved, under arrangements comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC. Remaining Member States provide temporary residence only if the situation amounts to trafficking in human beings, as defined under national law.

<sup>10</sup> See also: [https://tem.fi/-/ulkomaisen-tyovoiman-hyvaksikaytto-esitys-lausunnot?languageId=en\\_US](https://tem.fi/-/ulkomaisen-tyovoiman-hyvaksikaytto-esitys-lausunnot?languageId=en_US)



## 2 TACKLING UNDECLARED WORK OF THIRD-COUNTRY NATIONALS

### 2.1 Well-defined cooperation approaches between labour inspectors and immigration law enforcement authorities

Many third-country nationals work in **sectors with a high share of undeclared work**: agriculture, construction, hospitality, domestic work, and transport. These sectors often require low-skilled labour and have characteristics which create challenges for inspections or other measures by the national authorities, such as remote and often changing workplaces or multiple subcontracting chains for recruiting and employing workers. There are also reported cases of recruitment into these sectors via private networks, such as through communities, friends and families, which are often difficult to track for enforcement bodies.

Some enforcement authorities have specialised teams, projects or units with a focus on both, mobile EU nationals and third-country nationals. Both groups face similar risks: language and cultural barriers, lacking knowledge of rights and obligations, and a low level of unionisation, which all decreases their chances of social protection.

However, **irregularly staying migrants**, or those without the right to work, are the most likely to work undeclared as they have, in most cases, no other choice than to work informally. Specifically, low and medium-skilled non-EU nationals working in the above-mentioned sectors are most likely to be working in precarious or undeclared employment, because fewer legal migration pathways for these third-country nationals are available.

Some countries have **regularisation schemes** which offer the possibility of irregularly staying workers to obtain the residency in the country and to move from undeclared work into declared work. With the recent pandemic, regularisation schemes were newly introduced or made more accessible in countries like Italy, Portugal or Spain.<sup>11</sup> Although these schemes provided some relief in the emergency situation, they did not address everyone staying irregularly.<sup>12</sup> Moreover, as mentioned above, victims of labour exploitation may be able to regularise their status only for a certain amount of time. Outside of these regularisation schemes, it is however often impossible to obtain a work permit when residing irregularly in a Member State.

When addressing undeclared work of third-country nationals, in particular of those staying or working irregularly, labour inspectorates and police and migration authorities need to **balance their respective mandates** to enhance declared work, protect workers' rights and enforce migration law. Also, as third-country nationals face different situations in terms of their residency and work status, **well-defined joint cooperation procedures** between relevant enforcement authorities, such as labour inspectorates, the police, migration, tax and social security organisations, are required. In that respect, the International Labour Organization underlines a clear division of tasks between enforcement authorities, for example that migration authorities focus on illegal employment and inspectorates on work conditions during inspections.

During the discussion at the event, Platform members and observers also expressed **cooperation difficulties with immigration enforcement authorities**. An informal poll during the event showed that 70% of the responding Platform members and observers were mandated to monitor aspects of immigration law, while 30% were not.

Where labour inspectors are obliged to report cases, there may be a need for national policy makers to **strengthen the safeguards** available to irregularly staying migrant workers, as part of the overall mandate of labour inspectorates to ensure fair work and working conditions for all workers.

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<sup>11</sup> See section 8.3 in European Platform undeclared work, (2021). Counteracting undeclared work and labour exploitation of third-country national workers. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23573&langId=en>

<sup>12</sup> Statewatch (2020) Spain/Portugal/Italy: Partial relief: migrant regularisations during the COVID-19 pandemic

Secondly, participants raised the issue of **conflicting organisational objectives and key performance indicators**, for instance police authorities instigating deportation before measures to protect rights and processes for back payments can be implemented. Moreover, the key performance indicators of enforcement authorities to transform undeclared work into declared work often do not apply for irregularly staying or working third-country nationals. As mentioned above, the transition into declared work is only possible when third-country workers are able to regularise their status. In sectors or countries where regularisation schemes are not available, irregularly staying third-country nationals who work undeclared rather face detention or return to their native country.

In that context, labour *and* immigration law enforcement authorities should **examine how they can best work together in practice** in order to promote declared work and tackle labour exploitation amongst third-country nationals. Firstly, this requires an understanding of each other's approaches, mandates and working methods, and secondly, developing common cooperation objectives, protocols and certain timeframes. It was also noted that authorities should start cooperating from the beginning of a case, to profit more efficiently from insight and expertise of partner organisations.

In labour inspectorates and police migration authorities, all staff involved in workplace monitoring need to be **trained to understand and assess the main risk factors** of undeclared work amongst migrants, as well as the rights of migrant workers, including those working irregularly, and indicators of exploitation. For example, in Finland, there is a new special unit at the Helsinki Police Department trained on the topic and dealing with labour exploitation.

**Joint inspections** performed by trained labour inspectorates and police authorities may have the potential to identify suspected cases of undeclared work and labour exploitation. In Belgium, inspectors of the National Office of Social Security inspect together with the police anti-trafficking units in suspected cases of labour exploitation. According to FRA, the risk of deportation for potential victims of labour exploitation remains low, as all staff members are aware of the 'typical' practices and signs of abusive employers.<sup>13</sup> In Italy, labour inspectors work with other enforcement authorities, including the Carabinieri (one of the country's police forces), local health care departments, and the financial police, to prevent and counter illegal recruitment and undeclared work of third-country workers via the gangmaster *caporalato*<sup>14</sup> system. Such practices indicate that well-defined cooperation can contribute to tackling labour exploitation in some cases, while also highlighting that numerous challenges and shortcomings remain.

## 2.2 Improving detection and deterrence measures

**Labour inspections** are the main instrument of enforcement authorities to address undeclared work of non-EU nationals, however, the number of inspections is often insufficient.<sup>15</sup> In some countries, the Covid-19 pandemic has led to fewer physical inspections of workplace settings in 2020, which has further increased the risks faced by vulnerable workers. In addition, while sanctions for employers are important to curb undeclared work, they depend very much on successful enforcement. This is strongly linked to the need of safeguarding effective complaint mechanisms in order to support exploited workers to come forward, ways to build trust during inspections with third-country workers.

### *Detecting undeclared work and protecting workers*

Participants stated during the meeting that they often found it difficult to detect third-country workers and their employers. Enforcement authorities generally use risk assessments, based on various data (such as previous inspection results, work permits or

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<sup>13</sup> European Union Agency for Fundamental Rights (FRA), 2019, Severe labour exploitation: workers moving within or into the European Union States' obligations and victims' rights. Available here: <https://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>

<sup>14</sup> An informal system of labour mediation in agriculture, where the intermediary (the *caporale*) retains a part of the worker's salary.

<sup>15</sup> European Union Agency for Fundamental Rights (FRA) (2018). Protecting migrant workers from exploitation in the EU: boosting workplace inspections.

data exchange from employment services) to plan inspections in high-risk sectors. Crucial is also information from **complaint mechanisms**,<sup>16</sup> however, as discussed earlier, third-country nationals are often very reluctant to report non-compliance with labour law or criminal law.

**NGOs and social partners** are important actors when it concerns reaching out to workers, to inform them about their rights, to facilitate complaints and to ensure their anonymity. For instance, in Germany, social partners and NGOs are joining inspections. The German Financial Control of Undeclared Work Unit (Finanzkontrolle Schwarzarbeit – FKS), works with the NGO Berlin Counselling Centre for Migration and Decent Work (BEMA), part of the nationwide counselling services 'Arbeit und Leben'.

In addition, monitoring **recruitment channels**, such as online advertisements or social media, can help to identify risks and intervene early. For instance, the German Unit for Monitoring Undeclared Work, the FKS, observes online recruitment, while the Dutch Inspectorate (SZW) analyses social media, and the Swedish Work Environment Authority searches for risk companies on job websites. It was also mentioned that cooperation with local support and social services can help to uncover labour exploitation of very vulnerable migrants. For example, there have been cases in Germany where homeless migrants have been 'recruited' by exploitive employers.

Some of the Member States systematically **assess sector-specific risks to guide inspections**. For instance, the Dutch and Finnish labour inspectors look at reports of accidents, injuries, hints by public authorities on suspicious work permit applications, long working hours or poor housing conditions. Precarious work and living situations are often linked to undeclared work, and often worsened during the Covid- 19 pandemic, for example because poor housing conditions would not permit appropriate social distancing measures to be taken.

A challenge mentioned by enforcement authorities is **identifying the employers**, as undeclared work and labour exploitation occur in sectors with long and complex subcontracting chains. Another issue are schemes under which third-country nationals are recruited in one country, where labour costs are usually lower, and then posted in another country. Here, better enforcement tools and more information about the role of fraudulent work agencies or fraudulent posting schemes would be needed.

#### *Inspections - building trust with the worker*

During inspections, **labour inspectors** identify undeclared work and labour exploitation, inform workers about their rights and obligations and follow up on detected irregularities. However, taking the time to build up trust is important but often hindered by the fact that (especially irregularly staying) third-country nationals are afraid of sanctions and deportation, and therefore do not trust any public authority.

A presentation from **the Netherlands** revealed how the 'Programme for investigating labour exploitation', by the Dutch Inspectorate (SZW) uses different tools to tackle labour exploitation of third-country nationals. The programme is based on four pillars:

1. Prevention; including multi-lingual websites, a planned app for workers coming to the Netherlands, research on social media in order to intervene early, but also campaigns to sensitise citizens about labour exploitation and migrant work.
2. Detection; looking at various indicators in a broad way, such as isolated and remote workplace settings, long working days, underpayment, poor housing and dependency (e.g. shown via threats and violence).
3. Stopping exploitation via cooperation with partners (police, tax authorities) to prevent impunity of employers.
4. Protection of workers by providing them with support.

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<sup>16</sup> Article 13 of the Employers Sanctions Directive also foresees effective mechanism for lodging complaints against exploitative employers.

The inspectors seek to establish an environment of **trust** during the inspections, through conversations with the worker, explaining that the inspection focuses mainly on the employer, encouraging them to report complaints and providing contact details. Using role play, inspectors are trained to move beyond completing the checklist during inspections and to engage in conversations with workers to build trust. The programme also uses tools, such as an app recording the conversation which is then later analysed to detect further aspects, e.g. looking at facial expressions and context. Moreover, inspectors know what type of follow-up they can offer to exploited workers (temporary permits, shelter, repayment of wages).

As part of the programme against labour exploitation, the inspectorate and the police in the Netherlands have also been working together in order to **intervene earlier**. For example, they inform third-country nationals upon arrival at the airport about their rights and risks, to avoid them working undeclared and becoming dependent on exploitive employers.

The Dutch example illustrates that training and capacity building of inspectors can contribute to tackling undeclared work of third-country nationals. In **Finland**, the foreign labour inspection unit, which operates within the Regional State Administrative Agency for Southern Finland/Division of Occupational Health and Safety, is another example of building the expertise and knowledge of staff. The unit was set up after EU enlargement in 2004 and comprises around 25 inspectors, working throughout the whole country.

The Finnish foreign labour inspection unit also focuses on **early intervention** in cases of undeclared work of third-country nationals and EU mobile workers. Labour inspectors receive tips from the public and other authorities. These tips are then checked, for instance by comparing them with data from other authorities, such as the Finnish Immigration Services, which draw attention to suspicious permit applications. Once a tip is considered reliable, unannounced inspections are conducted. Similar to the Dutch programme, the inspectors also use indicators to recognise undeclared work and labour exploitation, such as low wages, long working hours, uncertainty about the employer in subcontracting, contradictions between observations and employer's explanations and poor housing conditions. During the inspections, multi-lingual inspectors speak to the workers in their native language, or use interview templates available in multiple languages or interpreters.

Inspectors in both countries focus on recognising signs of undeclared work and labour exploitation, informing them of legal support mechanisms, and **building trust** in conversations:

### **Ways to establish trust with workers from third countries during inspections**

Talking to workers alone, not in the presence of the employer or other workers.

Having a conversation, not an interrogation.

Addressing possible language barriers, via multi-lingual inspectors or translators.

Highlighting success stories of the protection of victims and persecution of abusive employers.

Paying attention to specific aspects to identify labour exploitation (e.g. poor housing, long working hours etc.) Moreover, gender should be considered as a cross-cutting issue. For instance, some sectors are highly gendered (e.g. transportation or domestic care services) which can also trigger different forms of gender-based violence.

Informing workers of their rights, checking if they want to make a complaint, recording their complaint or facilitating their complaint. This requires that inspectors know the respective legislation and ways to file a complaint.

Encouraging confidentiality and safe reporting for workers, especially when victims of 'particularly exploitative working conditions' or other abuse, and ensuring that inspections give priority to the identification and referral of victims over enforcement of immigration law.

Cooperation with all stakeholders, such as NGOs and social partners, also to offer additional support, for example shelter in case of inappropriate housing conditions. These partners often provide valuable direct links to the workers and have workplace 'insight'.

Leaving business cards at inspections for further information and follow-up.

Working with cultural mediators (see Italian example below) who speak the language of the worker and are more 'neutral', compared to labour or police inspectors.

Once undeclared work and labour exploitation have been detected, inspectors need to offer follow-up support that allow exploited workers to file a complaint against their employer or to guide them towards services that can help them accessing social support, housing or with other issues.

*Source: Presentations by Italy, Finland, the Netherlands during the Plenary meeting.*

Another example of **informing workers during inspections of their rights** exists in Italy, where the national labour inspectorate hand out comprehensive information leaflets and other documents about the rights of workers, the employers' obligation to pay outstanding wages, pensions and social insurance contributions and how to file a complaint.

### 2.3 Prevention and awareness-raising

Third-country nationals often lack knowledge about their rights in the EU Member State where they reside, which prevents them identifying their situation as one of labour exploitation and increases the risk of working undeclared.

Prevention approaches are also relevant because it remains often unclear if **regularly staying migrants with access to the labour market** are unaware of their rights and obligations, if they intentionally work undeclared, or if they are forced by their employer not to comply. For instance, counsellors by the German support service 'Arbeit und Leben' observed that some migrant workers were aware of the risks, but continued in sub-standard work in the belief that this would be beneficial to them, while others were coerced by their employers or not even aware that they were working undeclared.

#### *Outreach to promote migrants' inclusion*

As discussed in previous Platform activities, undeclared work is often not only undertaken solely for economic benefit, but workers and employers may engage in undeclared work because they have little trust in public authorities, or limited awareness of social protection.

Moreover, discrimination and the unequal treatment between migrants and native workers prevail. During recruitment, migrants face more barriers to be successfully considered for a position, leading to higher unemployment and undeclared work. Once in employment, in particular in low-skilled professions, there are further concerns around working conditions and discrimination, which heightens the risk of isolation and undeclared work. These factors can further deteriorate the belief of migrants in public laws and institutions. Therefore, targeted **awareness raising efforts about migrants' rights** need to highlight the benefits of declared work and access to social protection, and tackle discrimination.

In order to address language and cultural barriers, **multilingual outreach** is important. For instance, in Italy, inspectors work with cultural mediators of the International Organization for Migration (IOM). The project specifically targets legally residing third-country nationals who are victims or potential victims of labour exploitation and forced labour. The task of the mediators is to inform workers, in multiple languages, about their rights and the available protection mechanism for victims of labour exploitation, as well as about health and safety protocols during Covid-19.

Moreover, the mediators also work with irregularly staying third-country nationals, as they supported the regularisation campaign in 2020, targeted at agriculture and domestic workers, to allow them to gain residency status and work declared. The mediators provided information about the regularisation procedure to irregularly staying third-country nationals (i.e. leaflets and voice messages in English, French, Arabic, Bengalese, Bambara, etc.). Regular visits of the cultural mediators helped to build a solid relationship with migrants and gain their trust. The presence of the **cultural mediators** during inspections

helped the inspectors to approach and interview third-country workers. Furthermore, a specific multi-disciplinary group comprising reception and health services, legal aid, centres against violence and employment services was established to support victims of labour exploitation through decent work opportunities.

#### *Multi-agency approaches to address undeclared work and labour exploitation*

The cultural mediators are part of Italy's **National Action Plan to Tackle Labour Exploitation, Unlawful Recruitment and Forced Labour in Agriculture 2020 - 2022**<sup>17</sup> which aims to increase cooperation among public national, regional and local authorities and social partners and to prevent and reduce undeclared work and labour exploitation in agriculture. The Plan sets out a three-year strategy, implemented through priority actions around the following main areas:

- Inspection and enforcement activities, through the support to inspections and staff training.
- Quality of the agricultural supply chain; including intensified cooperation between employment services and licensed private employment service providers and supporting employers in staff recruitment.
- Work recruitment and employment services; this includes an analysis of unlawful recruitment in the agriculture sector.<sup>18</sup>
- Strengthening of the Network of Quality Work in Agriculture;<sup>19</sup> run by the labour inspectorate, the National Institute of Social Security and social partners, focusing on transparent hiring of workers, as well as arranging decent transport and accommodation via a database. This includes establishing a list of companies registered with the National Institute of Social Security who comply with labour, social security, income and tax legislation. Previously, numbers of enterprises joining the network have been low, so further promotion of membership and a user-friendly website will be set up.
- Addressing transport and housing for workers, including licensing transport companies and provision of housing for migrant workers.

The national plan is mainly focused on priority actions related to socio-economic integration and active citizenship, as well as on prevention.

A multi-agency approach to prevent undeclared work and labour exploitation is also key for the **German 'Arbeit und Leben'** a free, confidential, multilingual counselling service on labour law and employment relations for workers from other EU and third countries, set up in 2010 by local authorities and labour inspectorates. Throughout the country, 33 agencies for foreign workers and potential employers address questions related to entry and residence, as well as labour market integration. The service also includes specialist centres, for example the Hamburg Welcome Centre for Professionals, which offers support for skilled workers and their potential employers.

The counselling centres are based on a wider **cooperation network** with social partners, FKS, occupational health and safety authorities, employment services, police forces and consulates and embassies. For instance, FKS inspectors make workers from third countries aware of the service during their inspections. According to the Berlin Counselling Centre for Migration and Good Work, some migrants consult their service after being made aware

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<sup>17</sup> Italian Ministry of Labour and Social Policy, (2020). Three-year Plan to tackle labour exploitation and unlawful recruitment in agriculture (2020 – 2022). Available at: [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/genericdocument/wcms\\_766362.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/genericdocument/wcms_766362.pdf)

<sup>18</sup> ILO, (11 March 2020). Press release: Italy adopts the first National Plan to tackle labour exploitation in agriculture. Available at: [https://www.ilo.org/rome/risorse-informative/comunicati-stampa/WCMS\\_738466/lang-en/index.htm](https://www.ilo.org/rome/risorse-informative/comunicati-stampa/WCMS_738466/lang-en/index.htm)

<sup>19</sup> European Platform undeclared work, (2018). Quality Agricultural Work Network, Italy. Available at: <https://ec.europa.eu/social/ajax/BlobServlet?docId=19454&langId=en>

of their rights by staff of the FKS during inspections. On local level, cooperation with social services helps to identify the 'recruitment' of very vulnerable migrant groups.

The centres reach out via multilingual information material and channels, providing advice in person or via phone and email. They visit remote workplace settings, such as agricultural fields or construction sites, or other places where third-country workers are more exposed to labour exploitation.

### 3 CONCLUSIONS AND THE WAY FORWARD

The Plenary thematic day significantly added to the findings of the input paper and the earlier report prepared for the Platform. Several important **conclusions** can be drawn from the presentations and discussion.

#### ***National-level recommendations***

- Labour inspectorates, law enforcement and migration authorities should set up clear and well-defined cooperation procedures. This requires a common understanding of their respective mandates and key performance indicators, as well as setting common collaboration objectives, data sharing procedures and joint inspections with the focus on declared work and protecting workers' rights. Mechanisms to safeguard confidentiality and equal treatment of migrant workers should be explored and developed.
- Inspectorates cooperating with NGOs and social partners can help workers to lodge complaints against employers. During inspections, these partners can offer support and establish trust (such as the cultural mediators in Italy). Moreover, they provide insight on-the-ground which is beneficial to develop common campaigns or information tools about declared work.
- Next to facilitating complaints, another way to detect undeclared work is the monitoring of 'typical' recruitment channels, such as fraudulent labour intermediaries, online advertisements or 'pick-up' spots. As third-country workers are also often recruited via advertisements on social media, monitoring these could be another aspect to look into. However, there needs to be further discussion around personal data protection issues when trying to detect undeclared work.
- Staff who inspect workplaces should be trained to understand and recognise the risk factors of undeclared work, and to build trust with workers. Joint collaboration between trained or specialised units in labour inspectorates and the police seem a promising practice to facilitate a common understanding about the different irregularities when it comes to undeclared work amongst third-country migrants. However, concerns around joint inspections remain, as these need to be clearly defined in terms of responsibilities, taking also into account the recommendation by the ILO that migration authorities focus on illegal employment and inspectorates on work conditions during inspections.
- During inspections inspectors could build trust with workers, including potential victims of labour exploitation (e.g. by addressing workers directly, not question them in front of the employer, using cultural mediators) and inform them about their rights and obligations (in multi-lingual information material, including rights when irregularly staying) and ways to file a complaint against their employer.
- Targeted preventative approaches inform migrant workers on their rights and regulations and build trust in public authorities while communicating the benefits of declared work. Here, it is important that the information reaches third-country nationals at an early stage, for instance via information sessions. Workers can be informed about compliance through multilingual materials, websites, advisory centres and outreach.

#### ***EU-level recommendations***

- Undeclared work by third-country nationals is often hard to address by enforcement authorities. The Platform tackling undeclared work provides an opportunity to share good practices and exchange information between countries, so as to promote the respect for fundamental labour standards in inspections and to develop a common understanding of undeclared work involving third country nationals and the links to labour exploitation. Based on the discussions during the event, the following points could be further addressed by the Platform:
  - The Platform can exchange on targeted policy and operational measures for third-country workers (especially those staying irregularly) and desired outcomes. This can include a balanced approach between control and preventative measures.
  - The Platform can further contribute to developing well-defined cooperation approaches with police and migration authorities to promote declared work and protect workers' rights, as well as cooperation with social partners and NGOs. Moreover, NGOs representing migrants' interests and social partners should be included in the design of all related policy measures.
- In order to inform future policy interventions, better qualitative and quantitative data on the issue of illegal employment, undeclared work and labour exploitation is needed, as well as further analysis of certain aspects, such as bogus posting, the role of fraudulent temporary work agencies or exploitative networks who recruit third-country workers.