



Different forms of cross-border undeclared work, including through third-country nationals

September 2021



This report has been written by Ruslan Stefanov, Tommaso Comunale, Daniela Mineva, Todor Yalamov, Goran Georgiev from Center for the Study of Democracy and Lisa Schönenberg from ICF.

The authors would like to thank all of the stakeholders consulted for their input into the study.

Manuscript completed in September 2021.

LEGAL NOTICE

This document has been prepared for the European Labour Authority however, it reflects the views of the authors only. The information contained in this report does not reflect the views or the official position of the European Labour Authority or the European Platform tackling undeclared work.

(C) European Labour Authority, 2021

Reuse is authorised provided the source is acknowledged.

For any use of material which is not under the European Union copyright, permission must be sought directly from the copyright-holder(s) indicated.

Neither the European Labour Authority nor any person acting on behalf of the European Labour Authority is responsible for the use which might be made of the following information.

This publication has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>.

EUROPEAN LABOUR AUTHORITY

Enforcement and Analysis Unit

Contact: Krzysztof Bandasz

E-mail: undeclared-work@ela.europa.eu

European Labour Authority
811 09 Bratislava



Contents

Executive summary	1
1.0 Introduction	5
2.0 Recent trends in mobility and policy measures	7
2.1 Overview	7
2.2 Recent trends in mobility	8
2.3 Recent trends in policy approaches	10
3.0 EU mobile workers and third-country nationals' participation in undeclared work: knowns and unknowns	13
3.1 Overview	13
3.2 Mobile workers, cross-border (frontier) workers, and posted workers	14
3.3 Third-country nationals	29
4.0 Country case studies	40
4.1 Bulgaria	40
4.2 Greece	43
4.3 The Netherlands	45
4.4 Poland	47
4.5 Portugal	50
4.6 Spain	52
5.0 Recommendations	54
References	56
Annex 1: Overview of interviews	64
Annex 2: Survey questionnaire	65



Executive summary

This report evaluates various forms of cross-border undeclared work that exist in the European Union (EU) and the European Economic Area (EEA). The analysis differentiates between EU mobile workers and third-country nationals, and identifies **three main forms of cross-border undeclared work** and **falsely declared work**: i) partially declared (or under-declared) short-term or permanent labour contracts, ii) bogus self-employment, and iii) fully undeclared work. It seeks to examine:

- ▶ Overall **mobility trends** across the EU;
- ▶ The level of **participation in undeclared work** of EU mobile workers and third-country nationals;
- ▶ Available knowledge on the **different forms of cross-border undeclared work** from a practical perspective in relation to the mandate of the European Labour Authority (ELA); and
- ▶ Existing and potential **policy responses** to tackle each form of cross-border undeclared work.

Methodology

This report combines **three key methods**: desk research, in-depth interviews, and country case studies. The desk research involved a comprehensive review of academic literature, analytical reports,¹ and previous studies conducted by the European Platform tackling undeclared work (the Platform). It also includes the most recent and relevant studies investigating the impact of COVID-19 on labour mobility and undeclared work. This report draws insights from eight in-depth interviews with EU-level and national stakeholders, enriching the analysis with practical issues encountered by labour inspectors, policymakers and social partners. Finally, the report features six country case studies (Bulgaria, Greece, the Netherlands, Poland, Portugal and Spain) addressing forms of cross-border undeclared work, key sectors of occupation and recruitment pathways, policy initiatives and recommendations, and providing insights on cross-border undeclared work from different perspectives.

Mobility of EU workers and third-country nationals: key findings

- ▶ **Intra-EU mobility** has seen an increasing trend in working age (20-64) long-term movers, with 8.9 million movers from the 27 EU Member States (EU-27) in 2019. EU-27 cross-border workers (EU citizens who live in one EU country and work in another, regardless of their precise citizenship) reached 1.3 million in 2019 (European Commission, 2021a).²
- ▶ The most prevalent **receiving countries** for EU citizens are Germany, France, Italy, and Spain. For **outflows**, more than half (58%) of movers come from five sending countries – Romania, Poland, Italy, Portugal and Bulgaria, with Romania (22%) and Poland (15%) the most prevalent countries of origin (European Commission, 2021a).

¹ Key reports containing data on EU labour mobility and different forms of cross-border undeclared work, including the European Commission's Special Eurobarometer 498 on undeclared work in the European Union (2020a), Annual report on intra-EU labour mobility (2021a), and Intra-EU mobility of seasonal workers (2021b).

² The focus is on long-term movers as EU-wide comparable data on short-term mobility are not available (see European Commission, 2021a, p.138). Data are based on the EU Labour Force Survey (EU-LFS) 2019 and refer to EU Member States as of 1 February 2020, thus excluding the UK.



- ▶ Two specific sectors of employment were particularly impacted by movers in 2019 – the **manufacturing and wholesale and retail trade** employed 15% and 12% of EU movers, respectively.³
- ▶ In absolute numbers, in 2018, most third-country nationals (excluding the UK) moved to Spain (308 400), Germany (268 200), Italy (166 000), and Poland (64 900), while less predominant countries included Latvia (5 000), Greece (4 600), and Slovakia (500) (European Commission, 2021a).⁴
- ▶ Geographical movement trends have seen the mobility of EU-27 workers contribute to a **population decline in Eastern European Member States, Portugal, Italy and Spain**, albeit with a smaller decline in the latter two. That decline has resulted in a **population increase in Western European countries**, particularly in Germany and Austria (the Platform, 2019a).
- ▶ Desktop research and the six country case studies indicate that **labour mobility decreased because of the COVID-19 pandemic** (as did levels of cross-border undeclared work). However, this downward change was not dramatic, is not expected to continue over time, and irregularities related to undeclared work persist. Available data suggest that the pandemic has served as a bottleneck and highlights the greater vulnerability of mobile workers. Nevertheless, it has not led to substantive changes in the geographical or sectoral distribution of labour mobility in the EU.

Forms of cross-border undeclared work: key findings

- ▶ Cross-border undeclared work is a **dynamic phenomenon** that changes based on the political, socioeconomic and geographical contexts of the Member States involved. Identifying universal red flags or risk indicators presents a challenge for enforcement authorities and researchers, and is compounded by discrepancies between legal and institutional frameworks.
- ▶ In 2019, **4% of EU-27 workers self-reported carrying out undeclared activities** in the preceding 12 months (European Commission, 2020a). The case studies and interviews for this report reveal that the most prevalent and diverse forms of undeclared work among EU movers relate to **under-declared work**, followed by bogus self-employment and fully undeclared work. In some sectors, such as personal services (childcare, elderly care, and cleaning), fully undeclared work is prevalent. Compared to EU workers, third-country nationals are more likely to experience more precarious work conditions and are more vulnerable to undeclared work. They also tend to be more excluded from social protection and welfare assistance.
- ▶ Although precise data are not available, the flow of cross-border undeclared work among EU mobile workers is primarily concentrated on the **East-West axis**. Another important divide for cross-border undeclared work is the **South-North axis**, although with lower prevalence (the Platform, 2019a).
- ▶ Looking at **undeclared work and sectors of occupation** in the **EU-27**, the most common sectors are **personal services**, followed by **construction** and **hospitality**. Case studies and anecdotal evidence suggest that these are also likely to be the sectors with most cross-border undeclared work.

³ Latest available figures. Figures refer to the EU-28 countries, including the UK as a then-Member State. Figures for sectors of employment for EU-27 countries only have yet to be published.

⁴ Figures rounded down to thousands. They refer to long-term intra-EU mobility of third-country nationals and do not include first residence permits for remunerated activities (work permits) issued to third-country nationals by EU Member States. According to Eurostat data, the latter increased continuously, from 375 000 in 2012 to 1 198 000 in 2019, and then declined to 903 000 in 2020. Some 56% of first-time work permits (mostly short-term, i.e. less than 11 months) were issued by Poland in 2020.



- ▶ The most prevalent occupation sectors for **third-country nationals** are **agriculture, tourism, and construction** (the Platform, 2021a).
- ▶ Sectoral data on **partially declared (or under-declared) employment** in the EU were provided by the Special Eurobarometer⁵ in 2007. Envelope wages **in 2007 were predominant in the construction sector**, which is disproportionately affected by cross-border undeclared work in many Member States. Some **10% of individuals employed** in construction received payment in this form (the Platform, 2020b).
- ▶ **Bogus self-employment** varied between 0.5% and 4% of total employment in the EU in 2017. Notwithstanding differences between countries, bogus self-employment was found to be prevalent in the following sectors: **agriculture, forestry, and fishing** (22% of employees in bogus self-employment), **wholesale and retail and motor repairs** (10%), and **construction** (9%) (the Platform, 2020a).
- ▶ Among those who self-reported engaging in undeclared work in different EU Member States in 2019, **fully undeclared work** was most prevalent in Germany (38%), Greece (35%), Portugal (32%), and Bulgaria (32%). In the EU-27, 21% of those reporting having worked undeclared in the past 12 months were fully undeclared, i.e. all of their paid activities were undeclared. Allowing that only 4% of all respondents self-reported engaging in undeclared work, fully undeclared accounted for less than 1% in the EU-27 (European Commission, 2020a).
- ▶ In the 2019 Special Eurobarometer on undeclared work in the EU, the main reasons prompting participation in undeclared work in the EU-27 included: **perceived benefit by both parties** (32%) and **accepted** undeclared work as an economic practice (21%), followed by **bureaucracy** and red tape (14%), and **lack of knowledge** (13%) (European Commission 2020a). The same reasons likely motivate cross-border undeclared work. As for third-country nationals, restrictions on accessibility and conditions of work permits are among the main drivers for undeclared work for this group of workers (the Platform, 2019c). The case studies show that workers from less affluent Member States and from third countries are motivated by the benefits of presumably higher remuneration and the standard of living, while employers wish to reduce their costs.
- ▶ The country case studies reveal **considerable discrepancies** in the operational and technical capacities of national authorities in tackling undeclared work in general, and cross-border undeclared work in particular. Some Member States (e.g. Spain) use data-mining and data exploitation techniques for both national and foreign workers. However, others such as Greece have yet to fully implement digital databases in all relevant fields (i.e. labour, tax, and social security) and still use handwritten documents for important procedures, such as foreign workers' registration for employment or social security.
- ▶ No new type of cross-border undeclared work was identified in the case studies or in-depth interviews. There are, however, **new challenges** in investigating under-declared work and bogus self-employment related to the emergence of online platforms and new payment methods. These difficulties are **accentuated in cross-border cases** due to their transnational element and the fact that online platforms and new payment methods ease international communication and transactions, making it difficult for authorities to track patterns with the same speed and precision (Kilhoffer, et al., 2020). While digitalisation makes traceability easier, it makes cross-border cases legally and technically challenging, requiring an increase in the capacity and speed of law enforcement actions and enhanced cross-border cooperation (e.g., information exchange between competent authorities). However, most undeclared work still concerns national rather than cross-border cases.

⁵ Eurobarometer surveys might underestimate the level of undeclared work, as some respondents do not report their undeclared activity to interviewers.



- ▶ Investigating and collecting data on **temporary work agencies**⁶ that operate transnationally and are deliberately set up as letterbox companies or 'virtual offices' remains a significant challenge for labour authorities throughout the EU. Effective and timely access to information from the national databases of other Member States (tax, social security, foreign workers registries, etc.) is considered the most important factor in tackling this issue.
- ▶ Effective policy measures to tackle cross-border undeclared work include direct policy approaches involving deterrence and/or incentive strategies, and indirect policy approaches or controls. Direct approaches involve improved detection strategies through **cross-border teams of inspectors, risk assessment tools, third-party involvement**, and incentive and preventive strategies, such as **tax rebates and notification letters**. In addition, direct approaches include **effective complaints mechanisms and remedy** for workers who are facing exploitative conditions. Indirect approaches rely on **information sharing tools and new technologies to improve data availability** (artificial intelligence, deep learning, etc.). **Awareness-raising campaigns** to inform employers of their liability in cases of illegal employment⁷ are also useful.
- ▶ Experts and policymakers continue to emphasise the need to transition to a **holistic approach** that combines conventional deterrence measures with indirect preventive measures. Authorities have yet to be convinced of the value of prevention as an inherent element of any strategy for tackling cross-border undeclared work.
- ▶ Realising a holistic approach requires intensive national and cross-border cooperation on the different aspects of undeclared work: labour, tax, social security, etc. **ELA and Member States' authorities should step up their efforts** to deliver this improved cooperation. They could work towards common definitions of undeclared work, introduce cross-border cooperation as a strategic goal, and upgrade public administrations to meet the digital challenges in labour, tax, and social security policies. **Stakeholder organisations** (such as employer organisations, trade unions, NGOs) **could inform and help** cross-border workers and find effective solutions to declare the work of third-country nationals.
- ▶ Key first steps could be to **align information gathering and exchange**, and **share risk analysis** of cross-border undeclared work trends. This will require using the same terms (i.e., definitions of sectors, undeclared work practices) and identifying common problems and irregularities across Member States.

⁶ Article 3 of the Directive on Temporary Agency Work (2008/104/EC) defines a temporary work agency (TWA) as 'any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction'. The majority of TWAs in the EU comply with legal and regulatory framework rules. However, fraudulent use of TWAs has been reported for the purposes of undeclared work. Lastly, TWAs differ from private employment agencies which 'solely provide services such as matching offers and applications for employment and never become a party to the three-way employment relationship' (the Platform, 2021c, p.8). TWAs also differ from private employment agencies providing services relating to recruitment and selection or information and training.

⁷ Illegal employment is defined as an 'economic activity carried out in violation of provisions set by legislation' (European Migration Network (EMN), 2018). The EMN definition is relevant to this study as it relates to the policy framework that enforcement authorities operate in, such as the Employers Sanction Directive and legislations enforcement authorities are subject to.



1.0 Introduction

Undeclared work among European Union (EU) mobile workers⁸ and third-country nationals⁹ presents a serious concern for fair competition, decent employment relations, and individuals' social and fundamental rights on the European employment market. This study aims to consolidate and upgrade the findings of the European Platform tackling undeclared work (the Platform) from the past five years, addressing different forms of cross-border undeclared work and outlining the available and most widely used instruments and policy responses to tackle each form of cross-border undeclared work.

The study defines cross-border undeclared work as 'undeclared work undertaken by mobile EU citizens and third-country nationals'. The analysis is driven by a conceptual framework classifying EU mobile workers based on work duration and (place of work) residence.

On work duration, **mobile EU workers** may engage in one (or more) forms of undeclared work in either the short term or long term. **Short-term** EU mobile worker typically refers to a person moving to another country for less than one year. **Long-term** EU mobile worker refers to a person moving their residence to a country of which they are not a citizen, for at least one year, to take up or seek work (European Commission, 2021a, p.18).¹⁰

Regarding residence in relation to place of work, this study divides EU mobile workers into:

- ▶ **Movers from the 27 EU Member States (EU-27 movers):** EU citizens who have their usual residence in a Member State other than their country of citizenship at a given point in time, or who moved their usual residence to a Member State other than their country of citizenship in a given period of time (European Commission, 2021a, p.148). Together with EU-27 movers, this study also considers movers from European Economic Area (EEA) countries.
- ▶ **Cross-border (including frontier) workers.** A 'frontier worker' is any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which they return daily or at least once a week (Regulation (EC) No. 883/2004, Article 1(f)). 'Cross-border workers' are EU citizens who live in one EU country and work in another, regardless of their precise citizenship (provided they are EU citizens). They include 'frontier workers', those who commute for intervals longer than weekly, and seasonal workers who only work in another country for part of the year (European Commission, 2021a, p.148).
- ▶ **Workers in the road transport sector.** This category was differentiated from above groups to reflect high mobility of workers in the road transport sector.

Building on the Platform's study on undeclared work of third-country national workers (van Nierop et al., 2021), the conceptual framework here identifies three types of **third-country nationals** who might engage in undeclared work:

⁸ EU mobile workers are defined as 'active EU citizens who reside in a Member State or [European Free Trade Area] EFTA country other than their country of citizenship' (European Commission, 2021a, p.8).

⁹ The European Migration Network (EMN) defines third-country nationals as any person who is not a citizen of the European Union (EU) within the meaning of Article 20(1) Treaty on the Functioning of the European Union (TFEU) and who is not a person enjoying the EU right to free movement, as defined in Article 2(5) Regulation (EU) 2016/399 (Schengen Borders Code). A third-country national found to be illegally present is a third-country national who is officially found to be on the territory of an EU Member State and who does not fulfil, or no longer fulfils, the conditions for stay or residence in that EU Member State.

¹⁰ This definition is also used by the EU Labour Force Survey (EU-LFS) and Eurostat population/migration statistics. It should be distinguished from the legal term 'permanent residence', meaning the right to permanently reside in a country after a residence of at least five years ([Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States).



- ▶ Legally residing third-country nationals with a fully flexible work authorisation (i.e. legally authorised to work to the same extent as EU nationals);
- ▶ Legally residing third-country nationals with a restricted work authorisation (e.g. limits on working time and eligible sectors of employment); and
- ▶ Legally residing third-country nationals without a right to work, and irregularly staying third-country nationals.

Overall, the framework addresses the **forms of cross-border undeclared work** from a legal point of view, differentiating the following types of undeclared work (see [Platform glossary](#) of terms):

- ▶ Partially declared (or under-declared) short term or permanent labour contract;
- ▶ Bogus self-employment; and
- ▶ Fully undeclared work.

Finally, the framework of this study does not cover illegally residing third-country nationals and forms of work not falling under undeclared work (such as illegal work).

Aim and objectives of the study

The **aim** of this study is to assess the different forms of cross-border undeclared work that exist in the EU/EEA, primarily from the perspective of labour inspectorate and labour law practitioners. The report has three key **objectives**:

- 1) To develop a typology of the forms of cross-border undeclared work as experienced in the work of the Platform since its inception, and as relevant for ELA.
- 2) To review and assess the knowledge on each type of cross-border undeclared work, including possible future trends. The analysis is based on Platform practice, available studies and literature, interviews and case studies, as well as statistical data on cross-border workflows.
- 3) To review and discuss potential policy measures and responses to tackle each form of cross-border undeclared work.

The report covers several questions:

- ▶ What are the overall **mobility trends** across the EU?
- ▶ What is the level of **participation in undeclared work** among EU mobile workers and third-country nationals?
- ▶ What **different forms of cross-border undeclared work** currently exist (according to Platform experience) and what is known about each of these forms with respect to ELA's mandate?
- ▶ What are the existing and potential **policy responses** to tackling each form of cross-border undeclared work?

To answer the research questions, the study relied on **three key research methods**:

- ▶ **Desk research** to provide a comprehensive review of key literature, comprising qualitative and quantitative evidence sources, particularly all relevant Platform studies and recent academic and non-academic studies. This study focuses on the **practical aspects of undeclared work** based on the review and experience of the Platform in the past five years. It includes current practical measurement instruments of the European Commission, such as the Special Eurobarometer on undeclared work.



- **Eight targeted in-depth interviews**, based on a semi-structured questionnaire. Interviews were with Platform members who are high-ranking labour inspectors from the national authorities of the six case study countries, and two representatives of the social partners at European level (one trade union, one employer). The interviews provide additional information on the practical issues encountered by labour inspectors, policymakers, and social partners.
- **Six case studies from Bulgaria, Greece, the Netherlands, Poland, Portugal, Spain**. The case studies focus on key sectors, occupations, recruitment pathways, forms of undeclared work, and policy initiatives, providing further in-depth knowledge on cross-border undeclared work. They provide insights into undeclared work from different perspectives. Based on data from the latest Special Eurobarometer on undeclared work in the EU, they comprise two (mostly) receiving Member States (the Netherlands, Spain), three mostly sending Member States (Bulgaria, Poland, Portugal) and one Member State that both sends and receives cross-border workers (Greece). All countries are also receiving countries for third-country nationals, with Spain being the biggest receiver of third-country nationals in the EU. Each has been reported as having a relatively high incidence of undeclared work (European Commission, 2020a).

Through a comprehensive review of the literature, collection and analysis of primary data originating from in-depth interviews, and country case studies, this report provides several new elements to enhance existing knowledge of cross-border undeclared work in the EU/EEA.

It provides **added value** by consolidating and building on past research, integrating the different aspects of undeclared work analysed to date. It employs a typology of the different forms of cross-border undeclared work, and explores the drivers and contributing factors behind the informal choice of each type of cross-border work. Finally, it identifies and discusses new policy measures (national, bilateral, multilateral), including their efficiency and applicability to each form of cross-border undeclared work.

2.0 Recent trends in mobility and policy measures

2.1 Overview

This section presents recent mobility trends across the EU/EEA, with a focus on the main countries of origin and destination, and recent trends in policy measures to tackle cross-border undeclared work.

Key findings

- In 2019, the most significant EU countries of origin were, in descending order: Poland, Romania, Italy, Portugal and Bulgaria, which together accounted for 58% of all EU movers. The most significant destination countries were Germany, France, Italy and Spain, accounting for approximately half of all EU movers.
- The primary direction of cross-border undeclared work remains the East-West axis and, to a lesser extent, the South-North axis, which is contributing to a population decline in Eastern European countries and a smaller decline in Portugal, Italy and Spain.



- ▶ In absolute numbers, the majority of third-country nationals were received by Spain, Germany and Italy. In 2018, Slovenia, Italy, Czechia and Spain received the highest share of third-country nationals relative to total migration inflows.
- ▶ There is a gradual shift towards using deterrence measures in parallel with preventive measures to tackle the root causes of undeclared work and transform it consistently into declared work. However, authorities still rely heavily on conventional measures, such as intensifying inspections and increasing penalties.
- ▶ There is a common perception that deterrence measures are demonstrably effective and deliver results quickly, while preventive measures are often seen as long-term solutions whose real benefits are difficult to quantify and assess.

2.2 Recent trends in mobility

In recent years,¹¹ **intra-EU mobility** has seen an increasing trend in long-term EU-27 movers of working age (20-64). The focus is on long-term movers, as there are no EU-wide comparable data on short-term mobility.¹² There were 8.9 million EU-27 movers in 2019, while EU-27 cross-border workers reached 1.3 million in 2019. The most prevalent receiving countries are Germany, followed by France, Italy and Spain. More than half (58%) of working-age movers come from five sending countries – Romania, Poland, Italy, Portugal, and Bulgaria, with Romania and Poland the prevalent countries of origin (European Commission, 2021a).

Two specific sectors of employment were particularly impacted by EU-28 movers in 2019 – the manufacturing and wholesale and retail trade¹³ employ 15% and 12% of EU movers, respectively (European Commission, 2021a).¹⁴ In 2019, more than one-third of mobile EU-28 movers (34%) had a tertiary level of education and were thus less likely to end up in undeclared work, which is primarily concentrated in jobs requiring low-skilled labour (the Platform, 2019a). This suggests that the engagement of high-skilled movers in certain forms of undeclared work primarily may be due to tax avoidance or other complex fraud schemes. From a geographical perspective, high-skilled workers, mostly from Poland, Romania, Italy, Bulgaria and Portugal, relocated to countries such as Germany, Spain, France, Belgium and Austria. In the past, the United Kingdom was traditionally a main destination of high-skilled movers, who may have now shifted away from the country due to its exit from the EU.

Overall, if migration and mobility of EU-27 workers continued as they have done in the past decade, a considerable population decline would be observed in Eastern European countries, Portugal, Italy and Spain (with a smaller decline in the latter two countries). On the contrary, population increase would be accelerated in Western European countries, particularly in Germany and Austria (European Commission, 2021a).

Mobility of working age citizens to the EU-27 countries has also involved **third-country nationals** living in the EU. In absolute numbers, in 2018, the majority of third-country nationals (excluding the UK) moved to Spain (308 400),

¹¹ Available EU/EEA data refer primarily to the pre-COVID-19 pandemic years. Numerous studies suggest that the pandemic seriously – albeit temporarily – disrupted the functioning of the EU labour market through the introduction of health-mandated movement constraints. However, there is reason to believe that labour mobility of both EU mobile workers and third-country nationals will continue its upward trend after the end of the pandemic. COVID-19 has also changed the nature of work by increasing digital and gig economy work and moving part of the labour force into home-office or distant work, with an associated impact on certain forms of cross-border undeclared work.

¹² See European Commission (2021a, p.138). Data are based on the EU-LFS 2019 and refer to EU Member States as of 1 February 2020, thus excluding the UK. Lack of clear data has also been reported by European Commission (2021b).

¹³ Manufacturing workers are employed in 'Elementary Occupations', among others, covering cleaners and helpers, food preparation assistants, etc. Sales workers refer to 'Services and Sales Workers' (incl. personal care workers, personal service workers, etc.). For more information, see European Commission (2021a, p. 153).

¹⁴ Figures here refer to the EU-28 countries, including the UK, as the authors provided research results for sector of employment at this level of aggregation.



Germany (268 200), Italy (166 000) and Poland (64 900), while less predominant countries included Latvia (5 000), Greece (4 600), and Slovakia (500) (European Commission, 2021a).¹⁵ Looking at stocks of third-country nationals by EU-27 country of residence, the largest receiving countries in 2019 were Germany (4.057 million), Italy (2.642 million), France (2.129 million), and Spain (2.067 million). A different picture emerges when looking at inflows of third-country nationals as a percentage of total inflows in 2018, when the most predominant countries were Slovenia¹⁶ (75% of inflow of mobile workers consists of third-country nationals), Italy (68%), Czechia (66%), and Spain (66%).

EU mobile workers and third-country nationals are not only involved in declared work but may also engage in **undeclared work**. Data from the Special Eurobarometer survey on undeclared work in the EU indicate that in 2019, 4% of EU-27 workers self-reported carrying out undeclared activities in the preceding 12 months (European Commission 2020a, T31). The Eurobarometer does not differentiate between national and cross-border undeclared work. It could be assumed that the highest risk of cross-border undeclared work is in cases when workers in both the sending and receiving country self-report high shares of involvement in undeclared work. Similarly, the least risk of engaging in cross-border undeclared work could reasonably be expected between countries with low self-reported engagement in undeclared work. Nonetheless, the cross-border movement may bring additional dimensions, forms, and risks of undeclared work into play, making it difficult to clearly identify the aspects related to higher risks of engagement in cross-border undeclared work.

From a **geographical point of view** – although there are no precise data the flow of cross-border undeclared work is mainly concentrated on the **East-West axis**, given differences in wage levels, as well as institutional and law enforcement maturity (the Platform, 2019a, p. 7). Sectors such as agriculture and construction have witnessed this trend, with workers moving from Romania to Spain to engage in undeclared work, for example. Undeclared work is also prevalent in construction for mobile workers moving to Belgium from Germany, and from Eastern European countries such as Poland, Bulgaria and Slovakia. Another important divide for cross-border undeclared work is the **South-North axis**, albeit with a lower prevalence than East-West (the Platform, 2019a).

According to one EU-level expert interviewed, the flow of workers from East to West has led to **discrepancies in policy priorities** between sending countries, whose mobile workers are seeking to improve their standard of living, and receiving countries, which have a near constant demand for workers in sectors unoccupied by their own citizens, such as agriculture and construction. Nevertheless, there are also signs that the geographical flows and national priorities related to labour mobility are becoming more diverse, as Member States in the East are themselves becoming receiving countries for third-country workers. EU citizens and stakeholders are also increasingly conscious that cross-border workers are far more vulnerable to poor labour conditions, despite the important role they fulfil in the European labour market.

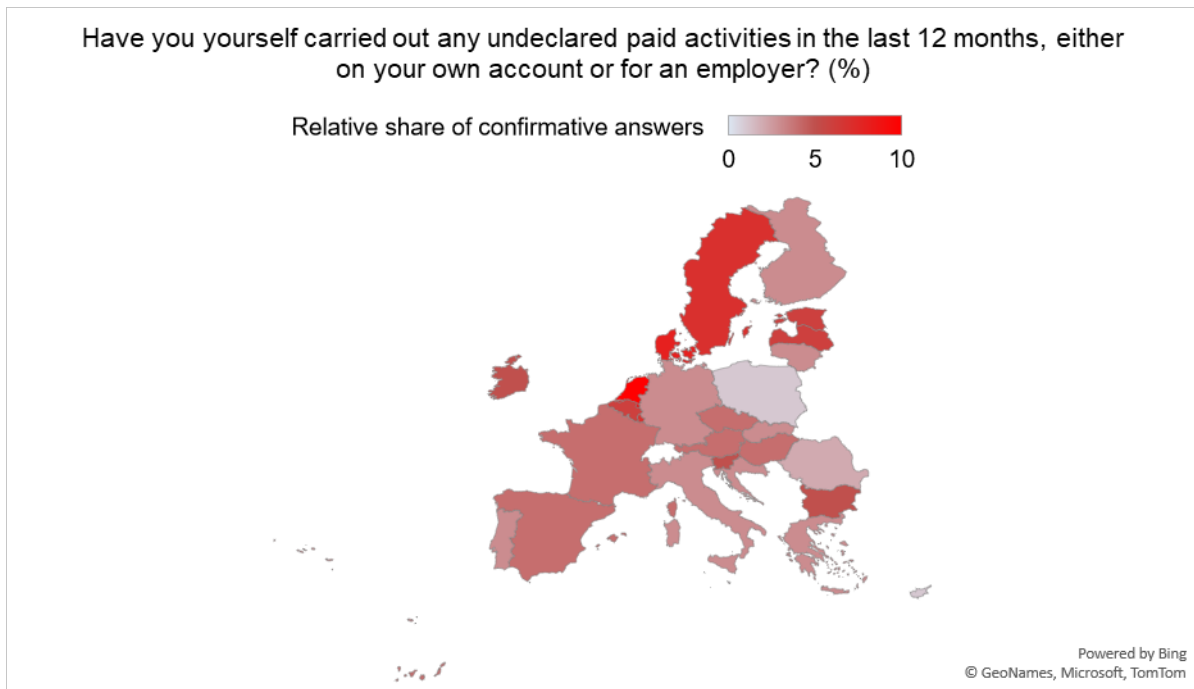
At national level, in 2019, EU workers self-reporting carrying out undeclared activities in the preceding 12 months were mainly from the Netherlands (10%), Denmark (8%), Luxembourg (7%), Sweden (7%), Latvia, Belgium and

¹⁵ Figures are rounded down to thousands (European Commission, 2021a). Figures refer to the EU-28 countries, including the UK as a then-Member State. Figures for sectors of employment for EU-27 countries only have yet to be published. Figures refer to long-term intra-EU mobility of third-country nationals and do not include first residence permits for remunerated activities (work permits) issued to third-country nationals by EU Member States. According to Eurostat data, the latter increased continuously, from 375 000 in 2012 to 1 198 000 in 2019, and then declined marginally to 903 000 in 2020. Some 56% of first-time work permits (mostly short-term, i.e., less than 11 months) were issued by Poland in 2020.

¹⁶ It is important to note that third-country nationals who are granted a work permit in Slovenia may not remain in the country but may be further posted to another Member State, for which no work permit is required. This could also apply to the other countries of first entry into the EU but further research is needed to confirm this hypothesis.

Estonia (each 6%). The lowest reporting countries were Romania (2%), Cyprus, Malta and Poland (each 1%) (European Commission, 2020a, p.154).¹⁷

Figure 1. Relative share of admissions of undeclared work, by Member State (EU-27), 2019



Source: European Commission (2020a, T31).

The **most common sector of undeclared work** in the EU-27 is personal services (27%), followed by construction (19%) and hospitality (16%). Construction is the most common sector among workers originating from Eastern Europe (29%, compared to 22% of workers from Northern Europe and 19% from Southern Europe), while undeclared work in miscellaneous areas outside of the top sectors is more prevalent in Northern Europe (31%) than other regions (15-18%).¹⁸ Cross-border undeclared work occurs at high rates in agriculture, forestry and fishing.¹⁹ Austria (49%), Italy (37%), the Netherlands (33%), Belgium (20%) and Germany (17%) have the highest estimated rates of seasonal cross-border undeclared work in that sector. While third-country nationals contribute somewhat, EU mobile workers constitute most of these undeclared workers. In Italy, for example, an estimated 80% of undeclared agricultural workers were non-Italian EU nationals (European Commission, 2021b). Data and anecdotal evidence suggest that undeclared seasonal work in the agricultural sector concerns specific sending (as Romania) and receiving countries (as Italy and Spain) (European Commission, 2021b, p. 52). Lastly, a high concentration of Romanian undeclared workers in the agricultural sector has also been found by several inspections organised by the Spanish enforcement authority (the Platform, 2019a, p.19).

2.3 Recent trends in policy approaches

This section presents recent developments in policy approaches, focusing on a holistic framework that employs different types of measures in parallel. Cross-border undeclared work is a dynamic phenomenon influenced by numerous political, social, economic and legal factors, all of which vary from country to country. EU experts and

¹⁷ While the Special Eurobarometer 498 provides comparable estimates of undeclared work across EU Member States, these statistics must be interpreted with caution as the measurement is the result of survey-based methods relying on information directly provided by the respondents. For more information, see European Commission (2020a, p.105).

¹⁸ Excludes Norway, as the Special Eurobarometer does not include EEA countries.

¹⁹ Agriculture, forestry and fishing treated as a single sector.



policymakers generally agree that the issue requires an integrated approach, based on consistent cooperation between a wide variety of stakeholders, and using the full array of contemporary direct and indirect measures and best practices.

Paragraph 22 of Regulation (EU) 2019/1149 on establishing a European Labour Authority to ensure fair labour mobility and tackling undeclared by the European Parliament and the Council defines tackling undeclared work as **'preventing, deterring and combating undeclared work as well as promoting the declaration of undeclared work'**. The Regulation repeals Decision (EU) 2016/344 which firstly stated that a holistic approach is necessary and that policy measures need to consider the various legal, political, social and economic discrepancies between Member States, especially in relation to cross-border undeclared work.

Policymakers and experts have thus increasingly emphasised the need to combine conventional deterrence measures (which detect and sanction undeclared work after the fact) with preventive and transformative measures (preventing undeclared work, or **transforming undeclared into declared work**) (Williams, 2020a). This has seen a gradual shift towards tackling the root causes of undeclared work rather than focusing solely on its consequences.

The country case studies confirm that **intensifying deterrence measures** (e.g., increasing fines to employers) often simply results into other forms of cross-border undeclared work. In other words, it changes the share of non-compliance between different forms of cross-border undeclared work without significantly decreasing overall levels of non-compliance or addressing the factors driving cross-border undeclared work. By contrast, **measures that incentivise** providers and users of undeclared work and its products to transition/remain in the formal economy by improving the ease of declaring work have shown considerable promise in reducing overall levels of cross-border undeclared work.

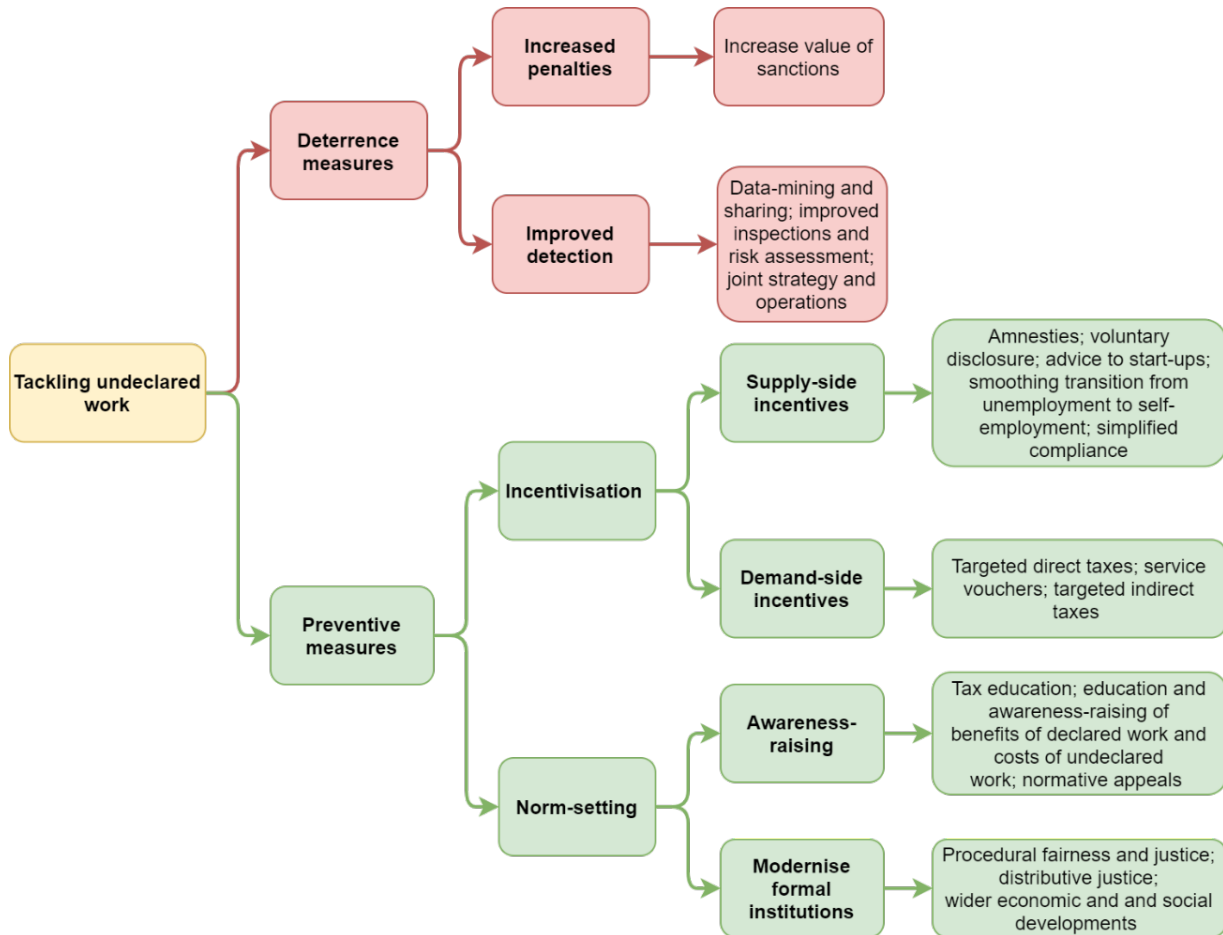
Desktop research and the country case studies confirm that **the shift to a holistic approach combining deterrence and prevention is still in its early stages**, with national labour authorities continuing to rely on conventional deterrence measures. Practitioners noted that the institutional framework of law enforcement agencies has traditionally focused on increasing the costs of undeclared work rather than preventing it from happening in the first place. Equally important is the perception that deterrence measures are demonstrably effective and deliver results quickly, while preventive measures are seen as long-term solutions whose actual benefits are difficult to quantify and assess (Williams, 2020a, p.2). In other words, some governments have yet to be convinced of the benefits of this paradigm shift.

Experts have developed a framework of measures tackling undeclared work that categorises and combines types of deterrence and preventive measures in a holistic model (Figure 2). There are two main types of deterrence measures – increased penalties and improved detection. There are four main types of preventive measures, which can be divided into two groups: **incentivisation and normative measures**. Supply-side incentivisation and demand side incentivisation use financial and/or bureaucratic means to encourage suppliers and users of undeclared work to shift towards the formal (declared) economic setting. Education and awareness-raising campaigns, along with the modernisation of formal institutions, can be described as **norm-setting or norm-synchronisation approaches**, which seek to address discrepancies between the attitudes of employers and workers, and the norms envisioned by national and EU law.

The framework employs **direct and indirect approaches**, including both deterrence and preventive measures (European Commission, 2020b). Direct approaches increase the costs and reduce the benefits for employers and workers engaged in undeclared work, while decreasing the costs and increasing the benefits of declared work. These include inspections, anonymous hotlines for complaints or other reporting mechanisms for workers to enforce their rights, tax rebates, advantageous social security arrangements, and others. Indirect approaches seek to synchronise the values held by employers, workers and other actors in the labour market with those codified by EU and national law, by conducting education, awareness-raising and other communication campaigns (the

Platform, 2019b). In essence, indirect approaches seek to address gaps and inconsistencies in the ‘social contract between government and its citizens’ (Williams, 2020b, p.28).

Figure 2. Types of policy measures tackling undeclared work



Source: Williams (2020a, p.3).

© European Union

Formal institutions and their governance are an overarching factor that determines citizens’ compliance. The latter depends on the level of trust in formal institutions and whether legal regulations are applied legitimately, fairly, effectively and transparently. While communication campaigns adjust the values of employers, workers and consumers, **modernising formal institutions** seeks to change the attitude of governments in line with the behavioural expectations created by indirect approaches targeting citizens. As outlined in recent literature, the modernisation of formal institutions has two main aspects: i) modernising enforcement authorities by updating their **internal procedures**, and ii) implementing **structural changes** related to macroeconomic factors and overarching social dynamics based on institutional theory (Williams, 2020b, pp.28-32).

3.0 EU mobile workers and third-country nationals' participation in undeclared work: knowns and unknowns

3.1 Overview

This section focuses on the key factors, affected sectors and policy measures applied in respect of EU mobile and cross-border workers' and third-country workers' participation in undeclared work. It offers some conclusions and ideas on new and innovative policy solutions for tackling cross-border undeclared work.

Key findings

- ▶ Member States have considerably different priorities and dynamics in respect of cross-border undeclared work by EU movers and third-country nationals.
- ▶ Differences between EU and third-country nationals' labour mobility are difficult to assess due to the manner and type of data collected by national authorities. The in-depth interviews found that Poland is the only country to report on the nationalities of foreign workers involved in undeclared work and the nationality of third-country nationals posted in the rest of the EU through Poland. Authorities tend to aggregate data for all non-national workers.
- ▶ Fraudulent temporary work agencies (FTWA) with transnational operational elements continue to be a primary path to cross-border undeclared work and to prove challenging for inspectors. Investigations are complicated where TWAs are located in another EU Member State, have a foreign owner, or employees are insufficiently authorised to represent the agency or deal with inspectors.
- ▶ A host of factors have contributed to increased participation by employers and EU movers in undeclared work, including higher taxation levels, increased costs of compliance, and bureaucracy. This is exacerbated by limited support from governments in key state functions, such as social protection, high-quality governance, and addressing poverty levels. Advances in the technological management of finances and work activities may be generally positive for the economy but have added another layer of complexity in transnational communication and transactions between workers, employers and intermediaries.
- ▶ Significant discrepancies persist in the operational and technical capacities of Member States' authorities. Some countries deploy data-mining techniques, while others have yet to implement digital databases for (non-national) workers or employers.
- ▶ According to the in-depth interviews and some available data, the COVID-19 pandemic decreased labour mobility and overall levels of cross-border undeclared work. This decrease was not dramatic and non-compliance continued. Many Member States issued extensions for work and visa permits to third-country nationals in response to the pandemic, and some made special exceptions to pandemic restrictions for seasonal workers.
- ▶ Being overrepresented in low-skilled and 'frontline' professions, workers from third countries are significantly more vulnerable to negative changes in the labour market. The COVID-19 pandemic disproportionately affected third-country nationals compared to EU movers, and likely widened the (already considerable) gap in undeclared work and unemployment rates.



- Types of vulnerabilities affecting third-country nationals include high levels of distrust of public services and having to work within a set of complex regulations. Language barriers combined with lack of access to information, dependency on the employer makes third-country nationals less likely to report abuse. Continuous adaptation of institutions' approaches is especially relevant for tackling cross-border undeclared work by third-country nationals.

3.2 Mobile workers, cross-border (frontier) workers, and posted workers

The review of previous studies on cross-border undeclared work reveals that EU mobile workers engage in different forms of undeclared work. Rather than a fixed phenomenon, undeclared work changes and adapts based on socioeconomic trends and the features of the national labour market, with studies noting the associated difficulty in **identifying universal red flags or risk indicators** (the Platform, 2018a). Notwithstanding that complexity, **three main forms of undeclared work** can be identified among mobile EU workers:

► Partially declared (under-declared) short-term or permanent labour contracts

Under-declared employment consists of formal employers unlawfully paying their declared employees part of their salary as 'envelope' wages. This may be either supplementary work for full-time employees, or where employees are falsely declared as part-time workers (the Platform, 2017a). In this way, an employee is paid an official declared salary as well as a salary that is not declared to the relevant authorities, reducing the tax and social security costs for the employer and revenue for the treasury. It is also relevant for self-employed professionals who declare only part of their remuneration, with the intention of evading tax and/or social security contributions. Under-declared work is **more frequent in industrialised economies** and can be detected in almost all sectors. It involves not paying nightshifts, weekend or overtime work, thus cutting on labour costs (Triandafyllidou and Bartolini, 2020). Under-declared workers are often channelled through letterbox arrangements, with employers failing to pay the minimum salary of the host country and/or overtime (the Platform, 2018b). Figures on partially declared (under-declared) work from 2019 report that **envelope wages in the EU-27** were paid for either regular work (25%), overtime or extra work (43%), or for both regular and overtime work (28%) (the Platform, 2020b).

► Bogus self-employment

Individuals engaging in bogus self-employment abuse self-employment regulations to avoid paying taxes and social security contributions. As previously reported: 'employers who hire bogus self-employed in the EU can save between 35-50% of the cost of employing a worker' (the Platform, 2019a, p.11). Countries with **higher levels of inequality, poverty, poor governance and low social protection spending by the State** tend to have a higher incidence of bogus self-employment (the Platform, 2020a). However, more research is needed to determine whether such countries are also the more likely sources of bogus self-employment across borders. Looking at socio-demographic characteristics, workers engaging in bogus self-employment tend to be men in older age groups, with lower educational background and migrant status. Bogus self-employment workers tend to be either professionals or to have sector-specific skills, often in agricultural, forestry, and fisheries (the Platform, 2020a).

► Fully undeclared work

Fully undeclared work, or unregistered/wholly undeclared employment, occurs when an employment relationship is neither declared nor registered with the relevant authorities. Individuals engaging in this type of undeclared work generally lack a written contract (in Member States where one is required), resulting in their remuneration being undeclared. Fully undeclared work can occur in some sectors with high short-term volatility of demand, such as tourism, housekeeping, and cleaning.



The following section presents the different forms of cross-border undeclared work characterising EU mobile workers. It details each form of undeclared work and the key factors associated with workers' involvement. It also examines the main EU and national policy measures to tackle the phenomenon. It closes with a review of innovative policy solutions to detect, tackle and prevent undeclared work.

EU-27/EEA movers (including posted workers)

EU nationals are generally involved in **long-term rather than short-term work**. They also engage in cross-border undeclared work, although undeclared work is primarily a national issue, with workers typically performing undeclared work in their country of citizenship (Terziev and Mineva, 2020, p.4).

Studies have argued that one of the factors underpinning undeclared work is that EU movers initially plan short-term mobility. The plan to remain in the host Member State for a short period incentivises workers to engage in undeclared work, avoiding tax and social security contributions (the Platform, 2019a). Unlike the domestic population, however, EU-27 movers tend to take part in **less desirable and less prestigious occupations**. This is particularly true for the agricultural sector in Spain and Sweden, as well as elderly care in Italy (Terziev and Mineva, 2020). As for the type of undeclared work, EU movers not only engage in fully undeclared work, but also in bogus self-employment, in the form of both long-term and short-term mobile labour (the Platform, 2019a). EU movers engaging in undeclared work can also be posted workers in both short-term and long-term engagements (with undeclared work taking the form of falsely declared posting). Posted workers are generally involved in **undeclared work through FTWA²⁰ and letterbox companies**, which actively recruit cross-border and abuse the rules for posting to avoid paying taxes and social security contributions. This can result, for some type of posted workers engaged through FTWA,²¹ in being not provided with terms of employment under EU or national employment legislation, ending up in poor working conditions for lower salaries.

Cross-border (including frontier) workers

Cross-border workers, including frontier workers, are one of the main types of EU mobile workers engaging in cross-border undeclared work. Like other types of mobile workers, cross-border workers involved in undeclared work are engaged with employers who do not pay some/all of the tax and social security contributions due. More specifically, undeclared work among cross-border or frontier workers may occur in the form of partially declared (under-declared) work or fully undeclared work.

Workers in the road transport sector

Workers in the road transport sector engage in different forms of undeclared work. Previous studies found that all forms of undeclared work are encountered in the road transport sector: partially declared (under-declaration), fully undeclared, and bogus self-employment. Under-declared work has been found in the transport equipment rental sector, in which enterprises renting or leasing cars and trucks do not fully declare their income (the Platform, 2020b).

²⁰ TWAs that do not comply with existing regulations are identified as FTWAs. These may be unregistered and unlicensed agencies or agencies underreporting the economic activities and hours worked, thus prompting undeclared work.

²¹ Engagement through TWA does not apply to some other types of posted workers. For instance, a worker who has never worked in the sending country or has no intention to return to that country cannot be considered as lawfully posted. In such a situation, the employment contract and social security contributions should be paid in the receiving country (and in the case of third-country national posted workers, their work permit should be issued in the country where they actually work and not in the country from which they were formally posted).



3.2.1 Key factors for participating in undeclared work

In recent years, the Platform has investigated the factors associated with employers and workers' involvement in undeclared work. Mobile workers' engagement in undeclared work is either **intentional** – by choice or necessity (including being forced) – or **unintentional**. Workers may engage in undeclared work **by choice** for a number of reasons, including financial benefit, acceptance of undeclared work as normal, or lack of trust in governmental institutions. By contrast, intentional engagement **by necessity** is driven by low social benefits or pensions, and generally poor economic conditions. Engagement by being forced may instead occur when workers are heavily dependent on their employer for the sake of income, accommodation, and/or residence status. Unintentional involvement in undeclared work occurs because individuals are not aware of the formal requirements needed to perform declared work (the Platform, 2018c, p.2).

The key factors for participating in undeclared work were analysed in the Special Eurobarometer no. 498. The survey reported that in 2019, Europeans who performed undeclared or partly declared work in the preceding 12 months cited **benefit to both parties** as the most prevalent reason at EU-27 level (32%) (European Commission, 2020a). Other key reasons given were **acceptability** (undeclared work is tolerated as economic practice) (21%),²² **bureaucracy** and red tape (14%),²³ and **lack of knowledge** (13%).²⁴ At country level, the largest proportions indicating that both parties benefitted from undeclared work were in Austria (65%), Sweden (58%), Latvia (51%), and Slovakia (50%). The second most recurring category at EU-27 level – believing that intentional undeclared work of small secondary income is perfectly acceptable – was most often cited by respondents in Luxembourg (41%), Sweden (40%), and Finland (39%).

Drawing on findings from previous studies, the following section discusses the key factors prompting EU mobile workers to participate in undeclared work.

Recruitment pathways

Different recruitment pathways encourage EU mobile workers into undeclared work.

One of the key pathways is the engagement of mobile workers through **FTWA** and **letterbox companies** (the Platform, 2020c). FTWA hire third-country nationals and EU nationals who then engage in work that is fully undeclared (or unregistered) or partially declared (or under-declared). Workers engaging with FTWA are generally young and low-skilled. They can also be involved in undeclared work through fraudulent letterbox companies that receive falsely declared posted or temporary agency workers for permanent rather than temporary service. Letterbox companies are hard to detect, partly because they can easily close and reopen under a different name in the event of inspection (the Platform, 2018b). Letterbox companies might also be liquidated to avoid recovery of payments of social security contributions and wages due, or to avoid joint and several liability in subcontracting chains (the Platform, 2018b).

Letterbox companies are particularly concentrated in the **construction** sector, although recent cases have been discovered in the **meat** and **transport** sectors across European countries. Investigations found that German companies had relocated parts of their business to Eastern European countries, exploiting letterbox subcontractors in Poland, Hungary and Romania, which have a lower-cost workforce (the Platform, 2018b). Posted and cross-

²² Selected 'You believe that intentionally not declaring small secondary income is perfectly acceptable'.

²³ Selected 'Bureaucracy or red tape for minor or occasional activities is too complicated'.

²⁴ Selected 'It was not clear whether the work needed to be declared'.



border workers are recruited through FTWA and letterbox companies not only because of the lower cost of these low-skilled workers, but also to engage in **tax and security contribution avoidance**.²⁵

Inspectors from all six countries covered by the case studies reported the challenge posed by FTWAs deliberately set up as 'virtual offices' or letterbox companies to avoid controls and legal consequences for non-compliance. These entities are often owned by foreign nationals no longer residing in the country and are used to post workers to the rest of the EU, without conducting any actual activity in the host country. When inspecting 'virtual offices' in Poland, inspectors have found only employees who are not authorised to represent the agency, thus proceedings come to a halt. In the Netherlands, many TWAs are registered abroad, making the authorities entirely reliant on information exchange and cooperation with those countries. Similarly, Bulgaria's General Labour Inspectorate Executive Agency (GLI EA) struggles to identify TWAs or private employment agencies and the workers they recruit for foreign employers. Outside of cooperating with receiving countries and consulting their registries for foreign and posted workers, GLI EA has no tools to monitor the labour relations of workers who are posted or otherwise sent to work for an employer outside of Bulgaria. A related issue is the short timeframe in which inspectors must identify and control non-compliance. Certain social partners at EU level, such as the European Federation of Building and Woodworkers (EFBWW), are now **calling for a complete ban on employment intermediaries** until an effective solution can be implemented to control FTWAs and related entities.

EU nationals may be recruited through **informal networks (family or social networks)**, especially in low-cost businesses, with the employers often from the same country of origin (Clark and Colling, 2016).

A Platform focus group on evasion of taxes and social security contributions warned that the **development of artificial intelligence (AI)** increases the pressure on small companies competing with large corporations and may contribute to new risks of undeclared work through tax evasion (the Platform, 2018d).

Administrative procedures

Cross-border undeclared work is associated with several factors, including certain aspects of administrative procedures.

FTWAs and letterbox companies play a crucial role in individuals' involvement in undeclared work. From an administrative perspective, FTWAs may be designed to avoid legal and regulatory obligations such as tax and social security contributions (the Platform, 2019a, p.10). Other major administrative aspects leading to cross-border undeclared work can involve all types of workers or be sector-specific. Overall, a combination of socioeconomic factors contributes to the increasing involvement of mobile EU workers in undeclared work, including compliance costs and limited or lack of trust in the state (e.g., inadequate social protection, low-quality governance, high poverty levels). **Other factors** include:

- ▶ Advancement in the **digitisation of services and the platform economy**, as well as the acceleration of easy-to-relocate companies (the Platform, 2019a) with a heavy reliance on falsely self-employed workers. Digital services, together with the unconventional, off-site paths to monetisation offered by the digital labour platforms, facilitate international labour relations and mobility. Yet they also pose new risks for increased levels of cross-border undeclared work in the EU, as regulation and law enforcement do not keep pace with such trends.
- ▶ **Complex bureaucracy and legal rulings** that are often difficult to understand. This is particularly true for bogus self-employment, which can be associated with undeclared work because of lack of trust in the State and lack of benefits for compliance. New forms of atypical, temporary, and sometimes even illegal employment

²⁵ These practices are known as 'social dumping' and consist of employers posting their employees to work temporarily in 'low wage' EU Member States to gain market advantage over employers located in Member States with higher pay and social standards.



have become commonplace in some markets, exacerbating legal uncertainty and the incidence of bogus self-employment.

- ▶ In several EU countries, some **rigidities in the labour market** (e.g., overly bureaucratic regulation of temporary work, costs for dismissal) could provide additional incentives for employers to offer undeclared work for a trial period before obtaining a legal contract (Cappelen and Muriaas, 2018). In other cases, rigid employment protection legislation means that employers are more willing to hire personnel without contracts, giving them the flexibility to adapt to market uncertainty and achieve higher profits (Karabchuk and Soboleva, 2020).
- ▶ The **agriculture sector** is characterised by higher levels of labour mobility than the EU economy in general (European Commission, 2021b). Undeclared work in agriculture is associated with **complex regulations and intense cost pressures** exerted on farmers by the food industry (the Platform, 2018e; the Platform, 2019c). Rather than looking for other strategies to enhance their competitiveness, developing alternative channels or shorter supply chains, most employers in the agricultural sector opt to decrease their labour costs by reducing pay, offering work without contracts, and lowering working conditions (Palumbo and Corrado, 2020). These drivers are usually linked to relative economic under-development, **low levels of implementation of contemporary governance methods** (such as whole-of-government approaches), lower levels of State intervention in the economy, and low tax morale (the Platform, 2018e; the Platform, 2019c). Here, **seasonal jobs** may take the form of undeclared work because complex regulations combined with inappropriate systems to declare such work, and informal undeclared employment allows for greater labour force flexibility (Rye and Scott, 2018).
- ▶ In the **construction sector**, undeclared work is reportedly **associated with employers** (or businesses) because it allows faster delivery of goods and services through undeclared transactions. In addition, the lack of availability of declared construction businesses may favour the involvement of unregistered or undeclared businesses. This can be further eased in the case of long subcontracting chains, which make it more difficult to control compliance, detect wrongdoing and attribute liability. Fully undeclared employment among workers in informal settings may be driven by necessity, while involvement of both workers and employers in formal settings may be driven by necessity and choice (the Platform, 2017a). An additional aggravating factor is increased activity by FTWAs, which exploit EU movers' lack of information (the Platform, 2017c).
- ▶ The **air transport sector** is a cross-border sector regulated by EU and international law, where a variety of factors have been found to be related to undeclared work.²⁶ Bogus self-employment is prompted by the **intensity of cost competition** and the potential profitability of '**rule shopping**' (Trafikstyrelsen, 2015, p.7).²⁷ Institutional factors, such as the lack or inefficiency of control mechanisms, may increase the likelihood of individuals' involvement in undeclared work for tax avoidance reasons.

Lack of information on labour rights and how to claim them

EU nationals can be involved in cross-border undeclared work for reasons stemming from limited knowledge or lack of information on labour rights. Individuals may engage in some forms of undeclared work (including bogus self-employment and posting), unintentionally and unintentionally, due to the **difficulty of understanding legal rulings and guidelines** (the Platform, 2020a). Unclear legislation or difficulty in interpreting legislative adjustments for new types of work also contribute to employers' and individuals' lack of understanding of the relevant institutional, tax, and social security frameworks. Fraudulent businesses using mobile workers for undeclared work take advantage of that lack of knowledge, which is often linked to individuals' **lack of bargaining power and/or**

²⁶ Whether to consider aircrew as posted workers is currently subject to debate. A recent [report on the application of the EU posting rules to aircrew](#) recommended creating a practical guide on the application of the posting rule to aircrew.

²⁷ In the aviation sector, legal rule shopping (a term to classify social dumping) indicates that 'airlines take advantage of the differences in the rules of Member States and in the Member States' interpretations of EU rules.'



unfair trading practices (e.g. late payments, retroactive changes to contracts) (the Platform, 2019c). For instance, procedures for posting workers have been abused in the employment of movers from Eastern Europe into Western European construction industries. Finally, misapplication of EU legislation by employers (e.g., air transport sector) or lack of understanding of the negative consequences associated with undeclared work (e.g., construction sector) may lead to engagement in forms of undeclared work (the Platform, 2020d; the Platform, 2017a).

3.2.2 Affected sectors/occupations of work and types of employment

Cross-border undeclared work does not involve all types of sectors or workers, but, rather, is a sector-specific phenomenon. It may involve high-net worth professionals seeking tax avoidance through misrepresentation of their employment relations, information and communication technology (ICT) professionals whose remuneration is difficult to track online, or low-skilled workers employed in labour-intensive jobs.

According to Special Eurobarometer no. 498, in 2019, Europeans who performed undeclared activities on their own or for an employer mostly reported involvement in three sectors: **personal services** (including childcare, elderly care, and cleaning) (27%), **construction** (19%), and **hospitality** (17%).²⁸ The least reported sectors were transport (5%), industry and manufacturing (5%), and administration (4%).

Looking at **geographical distribution** of undeclared work across these three main sectors, **personal services were chiefly reported in Western Europe**, particularly in the Netherlands (51%) and Germany (46%). Undeclared work in the **construction sector predominated in Eastern Europe**, with the top seven countries all from this region. Workers from Romania had the highest reported levels of undeclared activities (44%), followed by workers from Lithuania (42%), Bulgaria (35%), Latvia (33%), Estonia (31%), Slovakia (30%), and Czechia (27%). Given the high mobility of the construction labour force, it is expected that **high levels of self-reported engagement in undeclared work spill over across borders**. In hospitality, the top three countries were from three different regions, namely Southern Europe (Spain, 30%), Eastern Europe (Czechia, 28%), and Western Europe (Germany, 23%) (European Commission, 2020a). In the Nordic countries, despite the general prevalence of declared work undertaken by mobile workers from Central and Eastern Europe, undeclared work is similarly present in construction and manufacturing sectors (Friberg and Eldring, 2013).

Partially declared (under-declared) short-term or permanent labour contracts

Recently, the Platform addressed data availability on partially declared (or under-declared) employment in the EU at sectoral level (the Platform, 2020b). It reports that the latest relevant sectoral figures were provided by the Special Eurobarometer in 2007. Then, envelope wages were predominant in the **construction sector**, with 10% of individuals employed in this sector receiving their salary in that form. Envelope wages may be a common practice because of the mutual interest of both parties, with necessity or individual financial gain as a less prevalent explanation. For other sectors, under-declared work in 2007 also featured prominently in the **agricultural sector** (9%). Some 6% of employees in hotels and restaurants, repair services, retail, and transport received envelope wages, compared with 5% of all employees in the EU-27.

Bogus self-employment

The Platform recently investigated the platform economy and bogus self-employment (the Platform, 2020a).²⁹ The authors used various methods to estimate the distribution of bogus self-employment across sectors in the EU, including the results of the EU-LFS, reporting that bogus self-employment accounted for between 0.5% and 4% of

²⁸ All data based on the EU-27 (European Commission, 2020a).

²⁹ Figures refer to the EU-28.



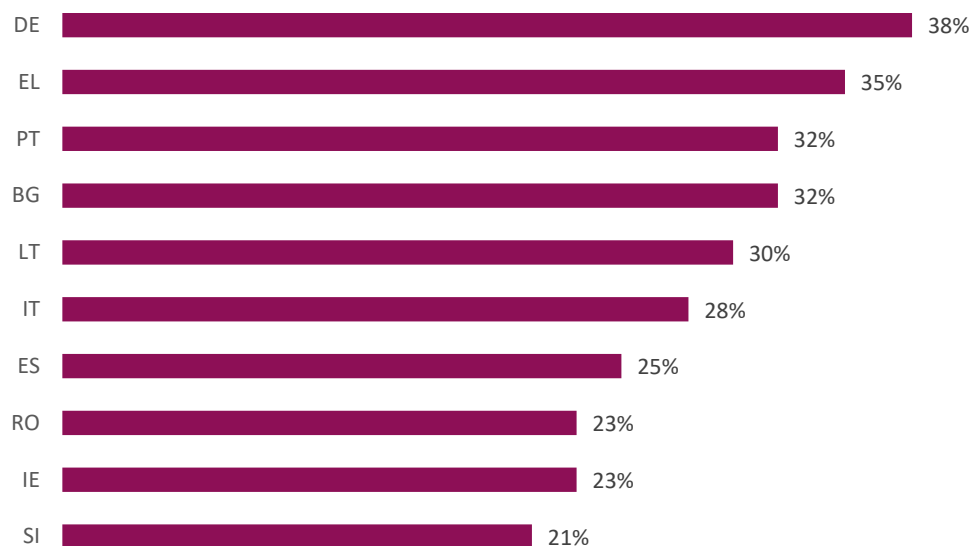
total employment in the EU in 2017.³⁰ It highlighted the prevalence of bogus self-employment in the following sectors: **agriculture, forestry, and fishing** (22.3%), **wholesale and retail and motor repairs** (10%), and **construction** (9%) (the Platform, 2020a, p.35). In 2019, 26% of EU Member States confirmed they had cross-border inspections on bogus self-employment, but there were considerable regional differences. Some 71% of Western Member States reported such cross-border inspections, compared to 20% for Northern countries and 10% for Central and Eastern European Member States. No Member State from Southern Europe reported cross-border checks of bogus self-employment (the Platform, 2020a, p.58).

Fully undeclared

Platform studies investigated the prevalence of fully undeclared work across different occupational sectors. Results showed that 15% of all unregistered employment in the EU in 2015 was in **activities of households as employers**, as well as **public administration and health**. **Arts, entertainment and recreation** accounted for 13% of all unregistered employment, while **accommodation and food service activities**, as well as **agriculture, forestry and fishing**, each accounted for 12%. Of all unregistered employment, 10% was in 'wholesale and retail trade; repair of motors', while 7% was in construction (the Platform, 2020b).³¹

In 2019, the countries with the largest share of fully undeclared work – of those that self-reported working undeclared in the preceding 12 months – were Germany (38%), Greece (35%), Portugal (32%), and Bulgaria (32%) (Figure 3). These numbers are only an indication of the relative self-reported prevalence of fully undeclared work. For the four countries above, the shares of respondents self-reporting engaging in undeclared work in the preceding 12 months in 2019 were 3% for Germany, 3% for Greece, 3% for Portugal and 5% for Bulgaria. Thus, slightly over 1% of the population aged 15 years and older was engaged in fully undeclared work.³²

Figure 3. Proportion of Europeans self-reporting engagement in undeclared work in the preceding 12 months declaring that all of their paid activities were undeclared, by country of residence, top 10 countries, 2019



Source: European Commission (2020a).

³⁰ The EU-LFS uses a narrow definition of bogus self-employment that includes only employees working for one (or predominantly one) employer, who establishes their working hours (the Platform, 2020a, p.2).

³¹ Figures refer to the EU-28.

³² On methods of measurement of undeclared work, see European Commission (2020a, p.105).



3.2.3 Policy measures undertaken

Decision 2016/344 of the European Parliament and the Council on establishing a European platform to enhance cooperation in tackling undeclared work highlighted that Member States have introduced a variety of policies targeting undeclared work and recognised the need to develop a holistic approach to managing this complex issue (the Platform, 2016).

A **holistic approach** tackling undeclared work is a whole-government approach that requires strategic and operational input from actors in the fields of labour, tax and social security law, as well as cooperation with social partners and other relevant parties (see section 2.2). The Platform defines these approaches as **direct and indirect policy measures** created for a specific sector whose characteristics related to undeclared work differ from other sectors and whose areas of concern require a targeted approach (the Platform, 2020b).

Direct policy approaches – deterrence strategies: improved detection

Direct policy approaches aiming to deter undeclared work through improved detection and increased penalties may use many existing measures.

In **improving detection**, cross-border cooperation inspections are one approach to tackling cross-border undeclared work. At **EU level**, support and comprehensive solutions, involving ELA and the Platform specifically, can play a critical part in encouraging cross-border cooperation. Key measures for reinforcing cross-border concerted and joint inspections can be summarised as follows (the Platform, 2019d):

- ▶ **Cross-border teams:** Specialised teams of inspectors can better direct resources towards EU-wide concerns about undeclared work.
- ▶ **Risk assessment:** Common risk assessment tools are more effective in identifying, analysing and evaluating undeclared work and standardising responses while accounting for various strategic goals (e.g. Belgian and Dutch labour inspectorates cooperate using a bilateral agreement and the Benelux Treaty, which implies a comparison of national risk assessment tools and use of shared data to analyse high-risk sectors and companies).
- ▶ **Third-party participation:** Social partners and related law enforcement authorities (labour inspectors, tax officials, migration authorities) can contribute the necessary technical, legal and IT support, while respecting each other's competences (e.g., the Norwegian Labour Inspection Authority and the Lithuanian Labour Inspectorate included various officials in a joint inspection in March 2018 in Lithuania to tackle unregistered construction labour).

Several examples of **cross-border team** cooperation exist (the Platform, 2018f):

- ▶ **Benelux cooperation**
 - ▷ The Benelux Committee of Ministers issued a 2015 recommendation to enhance collaboration to fight social fraud and dumping. Under the recommendation, Belgium, the Netherlands and Luxembourg committed to work together to combat undeclared work. That cooperation included sharing good practices and successful approaches to data-matching/mining at national level, as well as data-sharing across borders. These efforts serve as a model of meaningful collaboration for other Member States (the Platform, 2017d). The Benelux working group on bogus constructions targets cases of cross-border fraud involving posted workers. The pilot project on sharing and matching data on posted workers successfully detected a high number of irregularities related to cross-border fraud and errors in posting workers (the Platform, 2017b). A joint Belgium-Dutch Labour Inspectorate investigation in 2014 uncovered a flagrant case of bogus self-employment, involving Turkish, Bulgarian and Romanian workers hired through a Dutch TWA and fraudulently registered as self-employed.



► Belgium-Romania cooperation

- ▷ This partnership used the Internal Market Information (IMI) system to investigate worker posting issues through information exchange and joint visits by national labour inspectorates. This exchange of information was based on the Posting of Workers Directive 96/71/EC and the Enforcement of Posting of Workers Directive 2014/67/EU, as well as a bilateral agreement between the ministries overseeing the labour inspectorates of the two countries.

► France-Poland cooperation

- ▷ A joint investigation of letterbox companies in the food processing sector revealed a fraud scheme intended to avoid various declarations in the host country. Polish workers concentrated mainly in France were hired by Cypriot and UK letterbox companies on the assumption that the companies were based in Poland. The investigation involved administrative cooperation and exchange of information between the French and Polish Labour Inspectorates. Some cooperation between the French and Belgian Inspectorates and the French and UK Inspectorates – facilitated through IMI Liaison Offices – also played a role in the investigation. While there was no specific France-Poland bilateral agreement, the joint investigation was facilitated by liaison from the Centre of European and International Liaisons for Social Security (Cleiss) and the IMI system.

► Netherlands-Poland cooperation

- ▷ Cross-border cooperation between the Polish and Dutch authorities targeted companies posting Polish workers to the Netherlands to work in the agriculture and transport sectors, which regularly entails the exploitation of workers and violation of labour regulations. The cooperation also involved exchange of information between authorities and joint inspections to detect undeclared work and enforce EU directives on posted workers (the Platform, 2019e).

► Spain-Portugal cooperation

- ▷ The joint inspections implemented by Spain and Portugal's Labour Inspectorates to tackle undeclared work in the fishing sector proved successful and were relatively low cost because of their proximity. The cooperation overcame legal constraints and monitored fishing vessels of national registry operating in other European ports (the Platform, 2019f).

Risk assessment systems have become increasingly important in tackling undeclared work in recent years. In a 2018 Platform workshop, participants explained that risk assessment systems encourage the transition from a reactive to an active approach in tackling undeclared work. They agreed that robust risk assessment systems enable authorities to put in place precise prevention and enforcement measures (the Platform, 2018a). Some countries, such as Belgium, have already implemented effective and advanced risk assessment systems. Belgium's experience affirms the need to engage with social partners and business sectors to facilitate authorities' understanding of sector practices and processes. These relationships also accommodate early warnings and prevention of undeclared work.

Member States can benefit from others' efforts by understanding the most common schemes and adopting best practices. One example of shared best practice is the requirement for part-time employees to pay 100% of relevant income and social security taxes on the minimum wage. Part-time workers in multiple jobs are thus prevented from avoiding social security contributions. This practice has been adopted by Estonia, Lithuania, Romania and others (the Platform, 2018a). It is arguably a temporary measure until more sophisticated and better targeted prevention and deterrence measures are adopted.



The Platform developed a **toolkit for risk assessment systems** for more efficient inspections, which should encourage a process-oriented approach. The three main phases of the risk assessment process improve the identification of high-risk entities and targeted inspections tackling undeclared work:

- 1) Initiation and planning phase: several sub-steps create the system's foundation. These steps are (a) Setting goals; (b) Ensuring participation from political support staff; (c) Estimating costs and ensuring financial and human resources; and (d) Establishing collaborators.
- 2) Design and implementation phase: several sub-steps further develop the system, including (a) Establishing the organisation's risk management framework and risk assessment process; (b) Developing methodology; (c) Ensuring data availability and quality; (d) Selecting tools and technical support; (e) Identifying priorities, red flags, and treatment procedures; and (f) Piloting.
- 3) Evaluation phase: sub-steps include (a) Selecting monitoring and evaluation methodologies, procedures, and performance indicators; (b) Re-evaluating and updating red flags and/or methodology; and (c) Relaunching (the Platform, 2018g, p.5).

This toolkit enables Member States to improve their current systems by implementing best practice components. Using a risk assessment system with developed data-mining, analytics and matching tools improves prevention, enforcement and awareness-raising of (cross-border) undeclared work. These systems transition labour inspectorates from random inspections to risk-based selections, encouraging cost-effectiveness, clear and targeted enforcement, and increased education and prevention (the Platform, 2018g). In the specific context of cross-border undeclared work, more accurate risk assessments improve authorities' ability to identify cooperation needs across borders. Countries with shared dynamics and/or established flows of labour mobility can compare results or conduct joint risk assessments for improved accuracy.

Experts from EU-level social partners emphasised the need to speed-up the implementation of the **Electronic Exchange of Social Security Information (EESSI)** and the **European Social Security Pass**. They believe that the EESSI will be an invaluable tool in identifying and tackling cross-border undeclared work. At the time of writing, however, the system is not fully operational despite being ready for use since 2017 and a July 2019 deadline set for implementation by the Member States. The European Social Security Pass began an early piloting stage in March 2021 that will run until 2023. Rather than introducing unique social security numbers at EU level, the European Social Security Pass will make use of the **European Digital Identity (EDI)**, itself in the very early stages of development. The European Commission and Member States are expected to agree a technical framework for EDI by October 2022, at which point pilot projects can begin. Experts from the social partners have criticised the slow pace of development and implementation of these digital solutions, given their important role in tackling cross-border undeclared work. In the meantime, some social partners at sectoral level have introduced their own **digital labour cards** as an alternative to the official EU-wide system of digital identification and verification.

Member States have established large **employment registers** to improve workplace inspections and enable data-mining to identify instances of undeclared work. Estonia, for example, merged several employment registers to tackle undeclared work more efficiently (the Platform, 2016). In Finland, the Grey Economy Information Unit was created, in part to counter undeclared work by producing and sharing relevant information on such work.

Member States have sought to improve detection by developing more **strategic and coordinated approaches to governance**. Italy, for example, established the Labour Inspectorate to simplify and concentrate efforts against undeclared work by resolving a previously fragmented approach (the Platform, 2016). Norway similarly unified local, regional and national efforts to improve detection, and formally integrated social partners (the Platform, 2016). Belgian inspections seek not only to detect irregularities but to share information with other Member States through IMI requests or multilateral agreements with Benelux countries (the Platform, 2019g). These national



initiatives represent good practices in creating a more effective, integrated and coordinated plan to tackle undeclared work.

Sector-specific strategies are also evident. A workshop run by the Platform discovered that most efforts in the construction sector target the costs of undeclared work by increasing the perceived or actual probability of detection (the Platform, 2017c). Enforcement authorities and social partners pursue policies that utilise identification (ID) cards, supply-chain liability, joint inspections, and similar initiatives. These tools mainly target larger construction sites instead of the home repair, maintenance or improvement sectors, as the former is believed to engage in the most exploitative forms of undeclared work.

Authorities in Spain and the Netherlands adapted to the changes in circumstances caused by the COVID-19 pandemic. Inspectors adjusted their methods to **use remote communication**, such as email, phone or videoconferencing, to contact and monitor companies. Inspections were also conducted in sectors that were not previously targeted, such as platform work. There is still a lack of evidence on the effectiveness of these measures in comparison to physical workplace inspections.

Direct policy approaches – deterrence strategies: increased penalties

Cross-border sanctions are a key example of deterrence strategies employing increased penalties. They are necessary where the nationality or country of residence of the offending party (e.g., company, legal person, responsible manager, worker) is unknown or the offender has no residence in the Member State issuing the sanction (the Platform, 2020e). In such circumstances, criminal procedures maintain uniform rules and might utilise legislation or tools for cross-border mutual assistance, such as:

- ▶ European arrest warrant (pursuant to Council Framework Decision 2002/584/JHA);
- ▶ Freezing of assets order (pursuant to Council Framework Decision 2003/577/JHA);
- ▶ Mutual recognition of a confiscation order (pursuant to Council Framework Decision 2006/783/JHA); and
- ▶ Establishment of national procedures for cooperation in criminal matters (based on Council Act 2000/C 197/01) (the Platform, 2020e). In some countries, certain deterrence measures have been adopted to discourage and prevent undeclared work. In Romania, for example, amendments to the Labour Code (having effect from 1 May 2011 until 2017, when the provision was repealed) established new penalties for undeclared work, treating it as a criminal offence where employers use more than five workers simultaneously without a contract.³³

Most cross-border sanctions are **administrative fines**, commonly in response to posting issues. For other violations, sanctions carried more severe **criminal charges**, including imprisonment, business closure, prohibition on public tendering, freezing of assets, or termination of operating licences. Some promising proposals and actions have recently been introduced, including collaboration at national and EU level (supported by EU legislation) and information exchange (such as the cross-border cooperation on minimum wage violations involving the Belgian Labour Inspectorate (the Platform, 2019g)), and national bilateral accords and sanctions (such as joint risk assessment strategies in Belgium and the Netherlands to address cross-border undeclared work (the Platform, 2019d)). Establishing liaison officers and legal departments in labour inspectorates are key steps towards achieving these goals (the Platform, 2020e).

Direct policy approaches – incentives

Direct policy approaches employing incentive strategies should aim to make compliance easier and more beneficial. These include efforts to **simplify rules** on compliance and registering workers (particularly seasonal

³³ See <https://ec.europa.eu/social/BlobServlet?docId=18175&langId=en>



workers), provide accessible solutions to work legally, simplify registration procedures (e.g., through **IT tools** such as mobile applications), and make easier for workers to claim their right to declared work (e.g. by anonymously denouncing fraudulent employers to claim unpaid wages and social security contributions). In short, positive incentives must make the declaration and legal process easier for both employees and workers. This would complement other direct policy approaches, such as improving inspections and detection of irregularities (the Platform, 2019c).

Contributions from social partners is among the key direct policy approaches using incentive strategies. This has proven particularly successful when targeting different types of (cross-border) undeclared work, and within specific economic sectors (i.e. construction, agriculture, transport) (the Platform, 2019h). These contributions can materialise in different ways, including broad multinational and national strategic cooperation with various other parties. Other preventive approaches to undeclared work focus on **tax rebates and notification letters**. Tax rebates are mainly used in sectors where cash is the primary form of payment, such as household work, care or nursing. Notification letters have also proved effective tools in tackling multiple types of undeclared work, including bogus self-employment, under-declared hours, letterbox companies, and unregistered employment (the Platform, 2019i).

The need for measures incentivising workers and employers to transform cross-border undeclared work into declared work was particularly evident in the **Greek** case study. Greek law has seen a steep increase in fines for fully undeclared work in the last decade. In 2013, a new sanction regime was introduced for employers whereby they have to pay EUR 10 500 for each fully undeclared worker who has worked for more than three months (the Platform, 2017f, p.79). At over 15 times the minimum wage in 2021, the fine can be imposed on the spot by inspectors at the site. According to the inspectors from the Greek Labour Authority, the substantial sanction saw a shift from fully undeclared work to partially undeclared (under-declared) work, which in turn led the government to increase the fine for partially declared (under-declared) work from EUR 1 500 to EUR 2 500. Amendments in 2018 and 2019 saw the introduction of a **supply-side incentive** for employers, whereby the fine per undeclared worker reduces to EUR 2 000 where the employer hires the employee on a full-time basis for at least 12 months within 10 days of discovery of the infraction (the Platform, 2020f). For seasonal workers, the initial fine can be reduced to EUR 5 000 where the worker is hired for a minimum of three months, or cancelled entirely where the worker is hired for additional three months.

Direct policy measures have been used to tackle some forms of (cross-border) undeclared work at national level. When crafting direct policy measures to tackle bogus self-employment, Member States typically use two different types of initiatives: **raising the costs of misclassification**; and **incentivising appropriate classification**. Countries may raise costs by increasing sanctions (civil and/or economic) for misclassification or by increasing the likelihood of detection. They might incentivise proper classification by making legal procedures to legitimise employment easier, lowering the financial cost of using dependent employment, and preventing advantages from misclassification by offering increased social protection to self-employed workers. These policies mix deterrence and incentive-based approaches. Several good practices for detecting and countering (cross-border) bogus self-employment have been identified (the Platform, 2018d):

- ▶ **Creating sector-specific risk indicators:** specific criteria can improve detection by helping to define unique signs of potential bogus self-employment. In the construction sector in Italy, labour inspectors verify who owns the machinery and equipment that self-employed workers might use and investigate whether the worker is contracted by a single client.
- ▶ **Involving social partners:** social partners offer unique input and can help to amplify government efforts to counter bogus self-employment. In the Netherlands, trade unions in the postal sector participated in campaigns that highlight abuses from TWAs and organised campaigns to notify the public of high-risk areas of work.



- **Developing tax schemes that favour appropriate classification of work:** tax reduction schemes can encourage compliance for domestic work and related services by lowering the costs for appropriately labelled work. Several countries (France, Denmark, Finland, Sweden, Luxembourg) have introduced tax reduction schemes that target domestic work and related services (such as cleaning, private lessons, IT assistance). Spain requires businesses/clients to pay retained tax for self-employed workers, or to collect a portion of profits as advance tax payments, similar to a value-added tax (VAT) reverse-charge system (the Platform, 2018d).
- **Encouraging joint initiatives** that tackle bogus self-employment: Germany and France have conducted several joint audits in their fight against undeclared work and cross-border abuse of social benefits and employment. The Dutch and Belgian Labour Inspectorates have also coordinated a joint investigation into cases of bogus self-employment (the Platform, 2020a).

Indirect policy approaches

Combined with direct policy approaches, indirect policies can help to tackle undeclared work through the use of information tools and by investing in initiatives that seek to change working culture and build trust in authorities.

Information tools can serve as an important measure against undeclared work. To be effective, planning processes must identify all potential groups of concern, encourage their participation, and incorporate their feedback. This often requires a long-term, step-by-step process to select the right tool, message and forum to reach the identified audience (the Platform, 2018c). To maximise information tools' efficacy, it must incorporate several key factors: (1) begin with good and thorough planning, and accurate evaluation and monitoring systems with measurable analytics; (2) choose the right channel of communication, selected with the target audience in mind (e.g. workers from other Member States are often in a different socioeconomic position than national workers, may experience language barriers and less access to information, or move in different social circles); (3) use social media to disseminate examples and statistics on the benefits of declared work in a manner that targets EU migrants from important sending countries; (4) ensure cooperation and trust between social partners and authorities; (5) boost the effectiveness of information tools through cross-border collaboration and exchange of best practices; and (6) seek support at policy-making level if necessary.

Another type of indirect policy approach includes initiatives such as **awareness campaigns**, which can incorporate grassroots outreach programmes to create solidarity and trust among workers and towards relevant authorities. In a Platform workshop on information tools used in the fight against undeclared work, participants called for an EU-wide awareness-raising effort that included a database of good and bad practices. This would encourage mutual learning among Member States and disseminate successful information tools. Participants also suggested that ELA could serve as a central hub for creating and sharing information tools. Awareness-raising campaigns are particularly important in tackling undeclared work in the agriculture, forestry, and fishing sectors. These campaigns can target segments of the supply chain or the sector as a whole.

Member States have used indirect policy measures such as education and awareness-raising campaigns to tackle bogus self-employment. Many provide online access to information (often in multiple languages) about the characteristics that determine whether a worker ought to be classified as a dependent employee or self-employed. The Netherlands offers an online tool that workers can use to check if they qualify as dependent employees or are self-employed (the Platform, 2020a). The Irish Department of Employment and Social Protection orchestrated a month-long campaign explaining the potential effect of bogus self-employment on social welfare benefits and employment rights.



3.2.4 New and innovative policy solutions

A growing body of literature on undeclared work underlines the need for a holistic approach to tackling undeclared work through the joint efforts of State entities responsible for labour, tax and social security, and involving social partners and other stakeholders. A multidisciplinary approach at national level should be complemented by a range of direct policy measures to enforce compliance (including workplace inspections) and indirect approaches (awareness-raising and increasing trust in the authorities) (the Platform, 2018e). More efforts should be implemented at cross-border level through coordination of Member States' direct and indirect efforts and by **modelling/transferring existing cooperation frameworks**. For instance, a cross-border cooperation framework between Polish and Dutch authorities comprises the exchange of information to facilitate joint inspections aimed at detecting undeclared work among Polish posted workers in the agriculture and transport sectors in the Netherlands (the Platform, 2019e). Joint inspections are also implemented by Spain and Portugal's Labour Inspectorates (the Platform, 2019f). Finally, examples of existing cooperation frameworks include multilateral agreements on information sharing between the Benelux countries to improve detection of undeclared work (the Platform, 2019g).

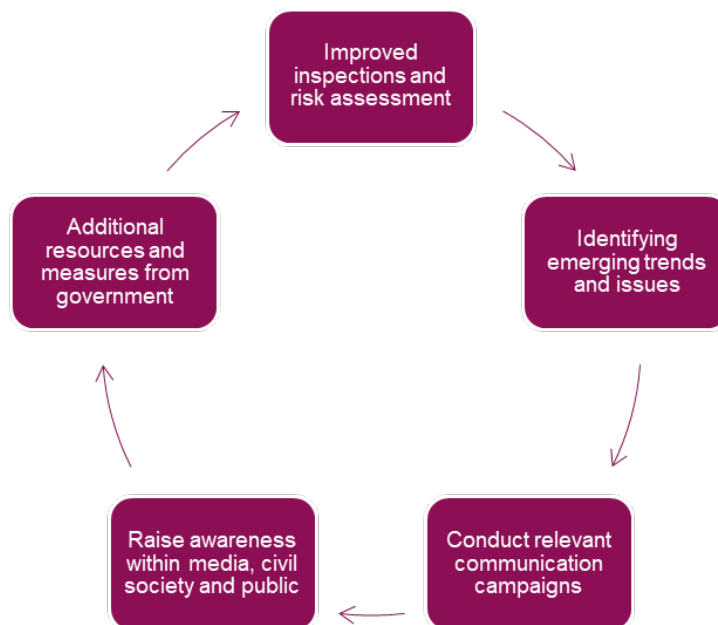
A key area of improvement relates to increased cooperation on **risk assessment and early prevention**, at national and European level. Effective risk assessment systems should steer authorities towards more active and better-targeted prevention measures that complement existing enforcement policies. Preventive approaches centred on risk assessment systems will create a stronger stimulus for businesses to move from undeclared to declared practices with fewer resources (the Platform, 2018a). The implementation of a comprehensive risk-based approach should be supported by the development of **databases and risk analysis systems** at national level and their harmonisation at cross-border level (the Platform, 2018a). For risk assessment systems to be effective, authorities should seek to link to many similar internal and external, cross-border databases or systems (e.g., registers of companies working across borders). It could be based on the EU Portal for Business Registers, as well as the EESSI and the European Social Security Pass (ESSP), enriched with information on ownership/management data, corporate finance, tax and social security liabilities (the Platform, 2019d).

The Greece case study demonstrates the limits of conventional measures (intensifying inspections, increasing sanctions) in deterring undeclared work. Increased penalties can lead to a situation where offenders adjust their practices and/or make them more sophisticated and harder to detect and control. The similarities between criminal markets and grey markets should not be ignored solely because of their legal and technical differences. Similar to criminal markets, increasing the monitoring and severity of sanctions does not necessarily lead to increased deterrence and, in some cases, can cause increased **recidivism** and sophistication of unlawful practices (Nagin, 2013).

Measures aimed at **prevention and norm-setting** have the potential to circumvent rebounding effects caused by more severe penalties. They are also faster to implement and well-suited to EU policy-setting, where significant legal discrepancies remain, and Member States have different needs and priorities. Preventive measures such as **awareness-raising and education campaigns** are flexible and can be deployed quickly and with EU support to address emerging trends in particular economic sectors or geographical locations, according to local risk assessment systems. The **modernisation of formal institutions** needs to be prioritised in Member States where trust in institutions is especially low. In essence, there is a need to implement measures that tackle the root causes of undeclared work and consistently transform it into declared work. Recent activities of Bulgaria's GLI EA, such as online teaching sessions for students in their last year of high school and implementing innovative self-assessment surveys for employers, serve as good examples. The same is true of supply-side incentives recently introduced in Greece, whereby non-compliant employers were given the chance to reduce their fines where they transformed undeclared labour into declared working relationships.

The holistic model outlined in section 2.3 has potential **virtuous cycle effects**. Deterrence measures such as inspections and risk assessment systems are the basis for identifying trends, contributing factors, affected sectors and localities. In turn, the information collected by inspectors can feed into communication campaigns to tackle the root causes of undeclared work and transform it into declared work through appropriate incentivisation and norm-setting measures. In addition to their preventive nature, education and awareness-raising campaigns are effective tools for drawing the attention of media, civil society organisations and the public to particularly vulnerable groups of workers, sectors and/or locations. That attention then exerts pressure on politicians to adjust regulations, provide more resources, and introduce new measures and competences (deterrence and prevention-based) for law enforcement authorities.

Figure 4. Virtuous cycle effects between deterrence and preventive measures



Source: Authors' elaboration.

Additional emphasis should be placed on the need for labour and tax administrations to **share information** internally and across borders, and to explore ways in which different data sources can be used to minimise opportunities for shadow economy activity (the Platform, 2018d). Different data sources, such as statistical surveys of companies and population, administrative data, and Big Data sources from mobile and internet-related companies, can improve the accuracy and reliability of statistical indicators on informal employment. National statistical authorities' use of administrative data and adoption of innovation approaches (e.g., geographical information systems (GIS)) are widespread in the Nordic countries and have contributed to understanding the scale of undeclared and informal employment (undeclared work) (Kriuchkova et al., 2020).

More focus could be placed on the **deployment of new technologies** and practices in the identification and registration of taxpayers and in securing authentication, including the use of biometrics and blockchain (the Platform, 2018d). Reinforcing data-mining tools for risk management and risk analysis purposes can help to detect cases of undeclared work, as well as sharing and collecting information. Data-mining practices already implemented can help policymakers and enforcement authorities to improve monitoring through more targeted inspections. This powerful tool for risk management and risk analysis **needs to be further shared** with Member States that are only at the early stages of developing and implementing such tools (the Platform, 2017d).

Significant **discrepancies remain in Member State authorities' technical and operational capacities**. In Portugal, queries from the labour authority to financial investigative units are still submitted on paper. In Greece, workers or employers without a national tax number submit the necessary documents via email to the relevant



municipal office, making retrieval and verification of the information slow and difficult. Non-Greek workers must provide their social security numbers, but these are not stored digitally. By contrast, Spanish authorities introduced a data-mining Anti-Fraud Tool in 2015 and have continued to enhance its capability. According to experts from EU-level social partners, Member States need to be dissuaded from further budget cuts and encouraged to invest substantially in labour authorities' operational and technical capacity.

Existing measures and initiatives to put in place cooperative cross-national policies for tackling undeclared work are hampered by **differences in legislation, administrative procedures, and terminology**, which can impede common understanding and common policies (the Platform, 2017e). Existing bilateral and multilateral cooperation between Member States (based on agreements and memoranda of understanding) have created a forward-looking approach to cross-border cooperation based on joint monitoring and enforcement efforts, awareness campaigns and exchange of information. **Having relevant and detailed legislation in place** is a key prerequisite to implementing effective national and cross-border policies to tackle undeclared work. The establishment of ELA as a means to improve cross-border cooperation and the harmonisation of regulations on the basis of the updated legislation and the latest EU directives are essential to the ongoing development of joint actions (the Platform, 2017e). The Platform can provide essential support in drafting, implementing and evaluating bilateral agreements and memoranda of understanding (the Platform, 2017e), while ELA's wider activities may introduce complementary EU-wide solutions.

A more **strategic and coordinated approach** is needed between policymakers and enforcement authorities to tackle EU-wide or cross-border undeclared work. Training can help to clarify discrepancies and avoid any misrepresentation of the EU legislation, as well as upskilling on tools for information exchange (e.g. IMI, EESSI). Taking practical steps to organise concerted and joint inspections in a cross-border context, peer learning activities to implement and follow-up inspections, and enhancing the exchange of information on specific cross-border undeclared work cases will reinforce the strategic approach to undeclared work at EU level (the Platform, 2019d). Cross-border and joint inspections can be complemented by effective enforcement measures in the form of **cross-border sanctions**, which likewise require tailored and consistent infringement definitions across the Member States (e.g. fraudulent posting of workers, abuse of social security systems, tax obligations, working conditions). The effective enforcement of sanctions for cross-border undeclared work helps to reinforce compliance with labour, social security and tax regulations, and provide guidance on future risks (the Platform, 2021b). ELA has developed multilingual tools, guidelines and training materials for the national authorities and social partners involved in joint inspections, which provide concrete examples of proven actions and measures (ELA, 2021).

Overall, while some cooperation agreements and mechanisms are already in place to tackle undeclared work, enforcement authorities need to step-up their collaboration efforts by bringing together the expertise, information, and resources of multiple partners. In particular, the EU institutions and national enforcement authorities could **better engage with social partners** on education, training, and risk analysis exercises, as well as the design, implementation and evaluation of policy measures (the Platform, 2019h). In several countries, social partners are important stakeholders in education and raising awareness, as well as detecting cases of undeclared work (the Platform, 2019h). Joined-up efforts at national and EU level, together with the full range of direct and indirect policy measures, involving a wide range of public sector stakeholders working closely with social partners, can help to establish a more effective and efficient response to cross-border undeclared work.

3.3 Third-country nationals

Precise evidence on the extent and characteristics of third-country nationals involved in cross-border workflows is difficult to obtain, particularly because most national authorities collect data for mobile and migrant workers as a whole and do not disaggregate between EU and third-country national workers. However, previous analyses have pointed to some estimates for certain sectors. For instance, the European Federation of Food Agriculture and



Tourism and Trade Unions (EFFAT) reported that third-country nationals account for 20% of migrants working in the agricultural sector, with the remainder comprising EU mobile workers (the Platform, 2019c).

FTWAs engage with EU mobile workers and with third-country nationals to a significant extent, contributing to the involvement of migrant workers in undeclared work at both national and cross-border level (the Platform, 2021c). Third-country nationals engaging in undeclared work are often one of **three main types**:³⁴

- ▶ Legally residing third-country nationals with a fully flexible work authorisation;
- ▶ Legally residing third-country nationals with a restricted work authorisation; and
- ▶ Legally residing third-country nationals without the right to work, and irregularly staying third-country nationals.

While the first type enjoy the same labour rights as EU citizens, in practice they face certain socioeconomic challenges compared to EU citizens, namely limited language skills, restricted recognition of qualifications or skills, cultural differences and discrimination (the Platform, 2021a). These barriers make them vulnerable to lower employment levels and increase the risk of their engagement in exploitative undeclared work conditions. The second type of third-country nationals are even more likely to engage in undeclared work for many reasons, including practices by employers (under-declaring hours worked, refusing to hire people regularly), inability to secure sufficient income through the restricted employment permitted, potential financial gain (earning more through working undeclared hours) and better work opportunities in sectors or with employers with whom their status precludes them working. On the other hand, people try to avoid undeclared work as it can cost them their residence permit and all they have invested in building a life in a new country. These migrants can also be students or asylum seekers. The latter are especially exposed to the risk of undeclared work because of restrictions and limited access to work authorisation (the Platform, 2021a). The third type of third-country nationals do not have the right to work regularly and thus end up in undeclared work. People whose visas have expired may be included in this category. Generally, patterns of irregularity have become extremely diversified, including third-country nationals who have lost their residence status because of unemployment, and rejected asylum seekers (Triandafyllidou and Bartolini, 2020).

Generally, third-country nationals **at higher risk of involvement in undeclared work** are the young and low-skilled who struggle to meet the complex administrative requirements and procedures. This includes workers lacking language skills, familiarity with administrative procedures of the country, and individuals whose country of origin has lower living standards than the country of destination. Low-skilled workers face difficulties integrating into the labour market because their limited language capabilities, long working hours, low pay and precarious working conditions, or (for some) unauthorised status prevent them from enrolling in educational or vocational courses. Third-country nationals from countries with lower living standards are accustomed to lower salaries and job opportunities, placing them at high risk of involvement in labour exploitation (the Platform, 2021a). Work permits are often linked to a particular employment, with limited possibilities to change employer and job from within the country, without having to apply for a new permit from outside of the country. This makes it difficult for workers to find alternative employment even when conditions are substandard; people are unable to negotiate better working conditions and at high risk of exploitation.

Recent studies on **the effects of the COVID-19 pandemic** have underlined the vulnerable status of migrant workers from non-EU countries. As third-country nationals are often involved in undeclared work arrangements that deprive them of social and economic protection/security, they were even more exposed to undeclared activities (Tamin et al., 2021). The sudden plunge in economic activity in the wake of COVID-19 restrictions and the suspension of international recruitment significantly reduced labour demand in sectors with traditionally high

³⁴ The report does not cover illegally residing third-country nationals and forms of work not falling under undeclared work (as illegal employment).



involvement of third-country nationals, particularly hospitality (EMN, 2020a), leaving many non-EU workers without regular employment. Migrant workers in the informal sector were particularly affected by the COVID-19 crisis, which created greater health risks due to their limited access to medical services and affected remittance flows to their home countries (EMN, 2020b).

According to the latest European Commission report on employment and social developments in Europe, COVID-19 has disproportionately affected third-country nationals, who tend to be employed in low-skilled, 'essential' or 'frontline' professions, especially in care and agriculture (European Commission, 2021c). The difference in unemployment rates between third-country nationals and EU workers was widening even before the pandemic and had nearly doubled in the Southern half of the EU between 2008 and 2019. The report confirmed that the pandemic caused a significantly higher rate of unemployment and a decrease in the activity rate for third-country nationals compared to EU workers (Tamin et al., 2021, p.84).

The country case studies show that the COVID-19 pandemic highlighted cases of undeclared work and poor working conditions for third-country workers in Portugal, Spain, and the Netherlands. Inspectors in those countries recognised that **third-country workers were more vulnerable to the virus and the social and economic consequences of the pandemic**. In Portugal, the normally quiet municipality of Odemira turned into a national news sensation after it was revealed that some 6 000 agricultural workers from Asia were working and living in deplorable conditions, with 15 to 20 workers sharing a single room or having nowhere to live. Other irregularities included small supermarkets (200 m²) with 30 to 40 employees, and beverage-selling spaces with 10 times the usual number of workers, as such businesses were a front for illegal activities (Donn, 2021).

The case studies also show that **the COVID-19 pandemic decreased labour mobility flows**, with a corresponding decrease in the levels of cross-border undeclared work. However, this downward change was not dramatic and irregularities persisted. Established geographical and sectoral trends from previous years were temporarily interrupted, but the case studies do not confirm continued or substantive changes in labour mobility. While it is possible that long-term changes or emerging trends related to the pandemic measures are yet to materialise fully, it appears more likely that the pandemic has instead acted simply as a bottleneck.

3.3.1 Key factors for participating in undeclared work

Recruitment pathways

There are different methods of recruiting third-country nationals into undeclared work, which vary by sector. Workers might have engaged in undeclared work in their country of origin due to the lack of formal jobs, and then moved to another country to find formal employment, or they might work undeclared on a temporary basis until they obtain a formal job (Williams and Horodnic, 2020). Four main recruitment approaches can be identified: FTWAs, private employment agencies, private contacts and networks, and pick-up spots (the Platform, 2021a).

Third-country nationals are particularly vulnerable to **FTWAs** in the national and cross-border contexts. FTWAs tend to hire third-country nationals to engage in undeclared work, organising their entry, accommodation and jobs, thus making the workers completely dependent and exposed to the risk of labour exploitation. They often charge high and illegal recruitment fees, deceive workers by promising jobs or conditions (e.g., residence permits) that do not exist and cannot be guaranteed once the worker arrives in the Member State, and are often involved in trafficking in human beings (European Union Agency for Fundamental Rights (FRA), 2019). Such agencies can be established in countries of origin, or they may have branches established in third countries or mediators who speak the same language and create greater trust than the authorities in the host country of employment (the Platform, 2021a). A cross-border dimension is even more prominent when FTWAs operate as letterbox TWAs with complex ownership structures in several Member States and third countries. Other schemes enabling cross-border undeclared work involve unregistered and unlicensed TWAs, and 'phoenix' activities, which often rely on complex



subcontracting chains involving several entities across different countries (the Platform, 2020c). Schemes supplying labour through the activities of letterbox companies and FTWAs are often difficult to detect as they disappear swiftly during investigations.

In some Member States, recruitment of third-country nationals occurs through **private employment agencies** in their countries of origin, which then post their workers to an EU Member State. Those workers are thus placed beyond the regulatory reach of the host country's labour legislation, enabling employers to opt out of the tax regulations (Axelsson and Hedberg, 2018). This is especially relevant for seasonal occupations, including the picking sector, which relies heavily on low-paid foreign workers. Often, private employment agencies provide false information on salary, work and living conditions, putting foreign workers at risk (Alho and Helander, 2016).

Another type of third-country national recruitment scheme that is challenging for authorities to detect and access relates to **private contacts and networks**. Third-country nationals often rely on networks to find work and to organise their travel and accommodation abroad (Tyldum, 2020). Their recruitment into undeclared work through private contacts and informal networks often occurs in labour-intensive businesses, sometimes owned by people from the same national background or social network.

Pick-up spots are used to recruit workers in smaller-scale operations, such as house renovation or gardening, and often rely on undeclared cash-based payments. In sectors such as agriculture, forestry and horticulture, the role of 'gangmasters' (informal labour providers) is especially prominent and is often related to undeclared work and labour exploitation of third-country nationals (the Platform, 2019c). Gangmasters are often members of the same ethnic group or network of workers, with connections to agricultural employers. Third-country nationals with irregular residence status are particularly reliant on their social networks to find employment (the Platform, 2021a). Gangmasters are not only involved in migrants' employment and travel, but also provide workers with accommodation and thus fully control their stay in a foreign country. Similar to FTWAs, recruitment via gangmasters is often associated with poorer working conditions and transfer of responsibilities for risks (Rye and Scott, 2018).

Administrative procedures

Several factors may contribute to undeclared work among third-country nationals, including current labour market regulations, lack of access to legal employment in sectors with particularly high labour demand (agriculture, construction, domestic work), specific national rules on the enforcement of labour and migration legislation, and social norms in respect of compliance (the Platform, 2021a).

The **lack of transparency and complexity** in existing legal migration procedures in some Member States, the lack of understanding of labour market regulations in the countries of destination, and an overly complicated process for issuing legal work authorisations, , create even more push factors for third-country nationals to engage in undeclared work (the Platform, 2019c).

Complex bureaucratic procedures for obtaining **seasonal work permits** and the tight timeline for seasonal visas due to the agricultural annual cycle make workers and employers reluctant to seek available temporary visa programmes (Organisation for Economic Co-operation and Development (OECD), 2018). These policies also make it very difficult for such migrants to move from temporary to longer-term work or to obtain residence permits (Urzi and Williams, 2017). Labour migrants from third countries generally find themselves in vulnerable conditions due to their uncertain residence status which is dependent on particular employment: if they lose their job, they must find another within a limited period, which forces them to either leave the country or switch to undeclared status (Chudžíková and Bargerová, 2018).

Some Member States **restrict the labour market** for third-country nationals. The likelihood of gaining legal / declared employment is very low due to regulations requiring employers to prefer EU citizens (Juul, 2017).



Difficulties arise in recognising foreign degrees and work experience, suggesting that migrants may need additional support in translating their skills and education for formal integration into the foreign job market (International Labour Organization (ILO), World Bank and International Monetary Fund (IMF), 2016). Inconsistencies in administrative rules for employers, lack of incentives to legally hire foreign workers, weak workplace enforcement, and employer sanctions also contribute to the illegal and undeclared employment of third-country nationals (ILO, World Bank and IMF, 2016). The practice in some Member States of linking national work authorisations to a specific job and employer creates additional pressure for third-country nationals to accept undeclared work and exacerbates the risk of being exploited by their employer by linking their employment and residence status (Juul, 2017).

In some cases, the restrictive policies in respect of third-country nationals' access to the labour market generate **illegal residence status and work** that make it difficult for workers and employers to regularise the situation (Triandafyllidou and Bartolini, 2020). This results in a mismatch between restrictive national policies and economic demand for labour in construction, cleaning, caring, catering, and tourism. A recent study on the prohibition of access to the labour market of asylum seekers in the UK found that existing asylum policies and practices significantly influence asylum seekers' transition into undocumented work. These restrictions, combined with the lengthy asylum application process and insufficient State financial support, push asylum seekers to engage in undocumented work. The study also found that undocumented work during the asylum process continues once refugee status is granted and access to the employment market is permitted (Targarona Rifa and Donà, 2021).³⁵

Migrating legally to EU countries has become increasingly difficult. Some scholars argue that irregularity has become a part of a labour market strategy to accommodate employers' needs for cheap and abundant labour in certain sectors to drive down costs and increase profits (Triandafyllidou and Bartolini, 2020).

The **COVID-19 pandemic has amplified the administrative complications** stemming from delays and suspensions of visa application processes and issuing residence permits for third-country nationals. In addition to the closure of public offices, several countries introduced restrictions on lodging and processing residence permits, temporary authorisations of stay, and long-stay visa applications at missions abroad, accepting only certain categories of migrants and providing assistance only in urgent situations (EMN, 2020c). Although many Member States established temporary safeguards to prevent regularly staying third-country nationals from falling into irregular status, providing general extensions to residence permissions and other flexibility, the increased unemployment rate has significantly affected the renewal and maintenance of work and residence permits (Triandafyllidou and Bartolini, 2020).

Lack of information on labour rights

Third-country nationals can unintentionally become involved in undeclared and illegal employment through lack of knowledge of labour regulations. This may also be the reason why employers sometimes fail to declare a legally working third-country national. The lack of knowledge of legal provisions, socially embedded obligations and prevailing perceptions of the short-term economic benefit deriving from unregistered work can also provide fertile ground for undeclared work (Juul, 2017).

The lack of knowledge of existing regulations is exacerbated by the **lack of safe channels** to claim one's rights and effectively report abuse – in an anonymous way without facing risks of immigration enforcement – and a **lack of trust in public institutions**, which is often higher among third-country nationals than mobile EU workers or the native population (Juul, 2017).

³⁵ Continuous engagement in undeclared work is often due to socioeconomic barriers (such as language barriers and lack of qualification recognition), resulting in refugee workers struggling to engage in declared work even with legal authorisation to reside and work in a country.



The lack of information on labour rights particularly affects non-EU nationals due to their vulnerable status and insufficient understanding of local language or national legal contexts. This creates an additional push towards FTWAs and letterbox company-type chains (the Platform, 2020c). Engagement in undeclared work with such companies often entails legal abuse and labour exploitation, including underpayment of wages, illegal overtime, and harsh working conditions (the Platform, 2018b). In most cases, however, third-country nationals working without the necessary permits under exploitative conditions are not viewed as victims of labour exploitation but, rather, as irregular/undocumented migrants (except where human trafficking is involved) (Chudžíková and Bargerová, 2018). This creates a system where labour exploitation is perpetuated because workers are unable to claim their rights without risking deportation (the Platform, 2021a). The lack of information about their rights means that third-country nationals are often denied the possibility to access social protection (the Platform, 2019c) and have limited opportunities to access complaint mechanisms (EMN, 2017).

A lack of knowledge of labour regulations and local language are accompanied by incomplete understanding of migration rules and provisions. Third-country nationals arriving through legal migration schemes/quotas often have to switch to irregular status because they do not know how to request their temporary residence permit on arrival. Some employers exploit migrants' lack of awareness in order to obtain cheap labour under exploitative conditions (FRA, 2019).

3.3.2 Affected sectors/occupations and types of employment

Partially declared (under-declared) short term or permanent labour contract

Third-country nationals engaging in (short-term or long-term) partially declared (under-declared) work are generally found, among other sectors, in the **transport** sector. This makes it difficult to determine the country in which the work is performed, as workers move across EU countries, creating additional challenges in applying relevant legislation, rightful working conditions, and tax and social security schemes (the Platform, 2021a). Investigations into West-African migrants in Denmark, for example, found that workers in the **care and cleaning sectors** were more frequently involved in a combination of both declared and undeclared employment, undertaking additional hours on an informal basis (Juul, 2017).

Bogus self-employment

Bogus self-employment is prevalent in **personal and household services**, and some countries have now introduced legislation regulating household work.³⁶ For example, some require third-country nationals to obtain a permit for domestic work (often very difficult to get) or may impose requirements such as labour market tests. These administrative restrictions increase costs and access to employment, and may result in some workers falling into bogus self-employment or exploitation of domestic workers under au pair schemes (the Platform, 2021a).

Fully undeclared

Unregistered or wholly undeclared employment usually occurs in sectors that require **low-skilled and low-paid workers** and a flexible workforce. Lack of social security, information about labour rights and support are linked to the engagement of third-country nationals, who perform duties and jobs considered undesirable by native residents (the Platform, 2021a). Third-country nationals often engage in undeclared work in places where the local population tends to be involved in unregistered economic activities, i.e. where the grey market already exists. These observations contradict existing assumptions that migrants are the main promoters of undeclared and illegal activities (Sabaté-Dalmau, 2018).

³⁶ All EU countries require third-country nationals to get a work permit, aside exceptions for particular nationalities. This applies for all jobs, but the permits are only available for certain jobs.



Third-country nationals from countries at an EU Member State border can be involved in cross-border undeclared economic practices, notably petty trade. Studies on women's participation in the informal economy highlighted **gender-based characteristics** in the informal activities at the Belarus-Lithuania border, mainly driven by social and economic factors and discrimination against women in various spheres (Sasenkuvich, 2018).

A recent Platform study reported that third-country nationals are at **higher risk of involvement in undeclared work** in the agriculture, tourism, and construction sectors (the Platform, 2021a).

- ▶ **Agriculture:** EU nationals have progressively abandoned the agricultural sector, as its seasonal character provides income for just a few months per year and it is hard physical work. EU nationals were predominant in agriculture where they were subject to labour market restrictions. Following the accession of the Eastern European Member States, most countries retained their labour restrictions for seven years (e.g. Romanians and Bulgarians were subject to restrictions until 2014). Agriculture was exempt, thus it attracted most workers in those transitional years (Barbulescu, 2019). The sector has now turned to third-country nationals to provide low-cost and flexible labour, particularly in the Southern European countries, such as Italy, Spain, and Greece, where a large pool of migrant labour, often informally recruited, low paid and mistreated, enables agricultural producers to minimise their labour costs and remain competitive (Urzi and Williams, 2017). The high levels of flexibility required in the agriculture sector – especially in seasonal work – have resulted in the illegal employment of a high number of foreign nationals (OECD, 2018).
- ▶ **Tourism:** undeclared foreign workers may be involved in the tourism sector, given the proportion of third-country nationals in the sector (7%) (the Platform, 2021a).
- ▶ **Construction:** numbers of third-country nationals working in construction have increased, with Central and Eastern European countries among the most prevalent sending countries. Third-country nationals are often recruited through TWAs and may engage in undeclared work as a result of the economic recession (leading to lower wages and job loss). Despite control and enforcement mechanisms, third-country national posted workers remain vulnerable in the construction sector due to the concealing effects of subcontracting, cross-border mobility and temporary service provision (Danaj, 2019).
- ▶ A high proportion of undeclared work performed by third-country nationals is observed in the **domestic services** sector. This can be explained in part by employers' unwillingness to pay taxes and the high costs of social security contributions. The fact that inspections are unlikely (due to the inability to access individuals' homes) and the low level of technical proficiency required increases the likelihood of this work being done on an undeclared basis (Decker and Lebrun, 2019).

3.3.3 Policy measures undertaken

Different policy measures have been undertaken at EU and national level to tackle undeclared work among third-country nationals.

At **EU level**, the **Employers Sanctions Directive (2009/52/EC)** addresses employers engaging irregular third-country nationals by providing sanctions and measures to tackle undeclared work and labour exploitation, including protective measures for undocumented workers. The Directive criminalises employers making extensive use of irregular third-country nationals and employers knowingly exploiting minors or human trafficking victims for undeclared work (the Platform, 2021a). According to the Directive, an employer who has employed an irregularly staying third-country national may be prohibited from performing the activity concerned and may be subject to the permanent or temporary closure of their business.

At **national level**, several countries have sought to regularise third-country nationals' work status or residence in recent years. Such approaches are based on voluntary disclosure and seek to facilitate third-country



nationals' transition into declared work. They take different forms and target specific groups or occupational sectors. Temporary financial support for employers or third-country nationals can serve as an economic incentive to transition from undeclared to declared work. Italy's 'Relaunch' bill aimed to reform the agricultural, domestic, and social care sectors to limit and tackle the engagement of nationals and third-country nationals in undeclared work. The reform allowed migrant workers to regularise their status by submitting a request within a specified timeframe (1 June to 15 August 2020). This measure resulted in limited undeclared work improvements in the domestic work sector, with a reported increase of 7.5% in the number of employment contracts in 2021 (Marchese, 2021). Regularisation should be prioritised by the European political agenda, particularly in light of the COVID-19 pandemic worsening the effects of undeclared and illegal employment (e.g., in agriculture and food processing). At the same time, increased card payments may have reduced the scope for undeclared work during the height of the pandemic, pushing these workers into unemployment.

Some EU Member States use **awareness-raising campaigns** to inform employers of their liability if they are found to illegally employ third-country nationals. Those campaigns involve guidance and training on labour laws and regulations. In Germany, information campaigns are disseminated in high-risk sectors by government and non-public actors. The national campaign launched in France in 2017 promoted awareness-raising through meetings with companies and used local media to share information on the consequences and sanctions for illegal employment of third-country nationals (OECD, 2018). Bulgaria's GLI EA is increasingly reliant on self-control methods, information campaigns and other preventive measures. These include an online system of over 100 interconnected surveys that help employers to identify and remove irregularities and report back to the Labour Inspectorate in new surveys. A total of 104 questionnaires were developed, together with software supporting the Labour Inspectorate with the automatic processing of survey results (GLI EA, 2020b).

Cross-border initiatives between some Member States have reinforced measures to tackle undeclared work among third-country nationals. The project '[Towards stronger transnational labour enforcement cooperation on labour migration](#)' was launched in the Visegrad countries (which experienced a significant increase in labour migration from outside the EU) and aims to reinforce cooperation and experience-sharing among labour inspections, non-governmental organisations (NGOs) and other actors. It also aids migrant workers to protect their labour rights and enforce labour standards.

A holistic approach is required to effectively monitor, detect, and raise public awareness of undeclared work among third-country nationals, including workers' rights and obligations. Such an approach necessitates cooperation between different actors, including public authorities, social partners and NGOs. This type of cooperation is essential to detect and prevent engagement in undeclared work, as undeclared workers and potential victims of labour exploitation can find support from NGOs and social partners in reporting their employers to the relevant authorities (the Platform, 2021a). In general, the identification of undeclared work is carried out by labour inspectorates in each Member State. Sweden's Labour Inspectorate cooperates with the national Tax Agency to inspect tax avoidance. In Germany, the Netherlands, and Italy, enforcement authorities have a prominent role in tackling undeclared work as part of a broader strategic approach to detect and solve irregularities in the labour market.

Some countries have addressed undeclared work among third-country nationals through cooperation between different public authorities. For example, Belgium, Estonia, and Slovakia perform **cross-checks of social security and employment status** in common databases. In Finland, labour inspectors, national immigration services and the public employment service (PES) cooperate to detect suspicious applications. Also, labour inspectorates often cooperate with police and border control authorities and tax authorities, for example in Sweden, to reinforce each other's capabilities and legal authority. At the same time, undocumented workers are deterred from filing complaints due to risks of immigration enforcement, job loss and employer retaliation. Therefore, in a Communication issued in September 2021 on the application of the Employers Sanctions Directive (2009/52/EC), the European Commission called for Member States to make sure that these complaint mechanisms are easily



accessible and take into account confidentiality that can encourage lodging complaints from irregular migrant workers and unveiling cases of exploitation, as well as establish safe reporting policies or protocols to ensure that irregular migrant workers can report employers in violation and engage with law enforcement without facing the risk that their migratory situation affects the exercise of rights. Such policy responses are being developed, for example, in Belgium and the Netherlands.³⁷

Third-country nationals have been especially affected by the COVID-19 pandemic due to the high prevalence of temporary contracts and the tendency to work in non-telework occupations. Several Member States have thus taken measures to assist non-EU migrant workers. For example, authorities in several countries **extended permits to stay**, residence permits, and, in certain cases, granted short-term and long-term visa safeguards to prevent legally staying migrants from falling into irregular situations (EMN, 2020c). This could have assisted those third-country nationals who lost their jobs during the crisis by giving them additional time to find regular employment.

In six EU Member States, residence permits were not withdrawn due to unemployment or business difficulties. For example, Italy, Spain, and Portugal reported the extension of residence permits for third-country nationals, while Slovakia facilitated the renewal of business permits for third-country nationals. Similarly, in Poland, residence and work permits were extended until the end of the pandemic crisis, including into 2021. In Greece, an expedited procedure was introduced to recruit more agricultural workers. Some countries introduced flexibility regarding the minimum income requirements to prevent the withdrawal of a residence permit (EMN, 2021b). Several Member States also provided financial support to third-country nationals who became unemployed as a result of the COVID-19 crisis, with unemployment benefits granted to residence permit holders (EMN, 2021b). Finally, a number of countries applied exceptions in order to accommodate labour market needs, particularly in the essential sectors of healthcare and agriculture (EMN, 2020c). In March 2020, the European Commission published four sets of guidelines on measures addressing the consequences of the COVID-19 pandemic, with recommendations for travel restriction exemptions for third-country nationals in specific sectors, including health, agriculture and transport (EMN, 2020a).³⁸ Some Member States applied those guidelines or adapted their national guidelines to meet labour market needs. Finland grouped permitted occupational sectors into three categories, authorising third-country nationals working in these sectors to enter the territory (EMN, 2020a). Similar exemptions for several categories of essential workers were put in place by Estonia, France, Lithuania, Spain and Poland (EMN, 2021b).

Particular attention was paid to **seasonal workers**. Some Member States (e.g., Czechia, Estonia, Finland, France, Greece, Italy) implemented specific contingency plans to facilitate access of third-country nationals already on their territory to address the shortage of labour in critical sectors such as agriculture and healthcare (EMN, 2021b). Admission of migrants continued in the transport sector and the support of critical infrastructure in some cases (EMN, 2021b). Belgium, Spain, Cyprus, Finland granted or extended the right to work in essential sectors to asylum seekers (EMN, 2020a).

Special measures were taken for **international students**, who, before the COVID-19 pandemic, were only permitted to work a limited number of hours. Belgium, France and Ireland all adjusted the maximum working hours

³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions [on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#), COM(2021) 592 final, 29.9.2021.

³⁸ [COVID-19: Guidelines for border management measures to protect health and ensure the availability of goods and essential travel](#), C(2020)1753, 16.3.2020; Communication from the Commission to the European Parliament, the European Council and the Council, [COVID-19: Temporary Restriction on Non-Essential Travel to the EU](#), COM(2020)115 final, 16.3.2020; [Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak](#), C(2020)2051, 30.3.2020; [Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy](#), C(2020) 2050, 30.3.2020.



for international students and proposed measures to grant access to national funds (EMN, 2020d). These initiatives helped to support students financially and prevent their involvement in undeclared work.

In recognition of the disproportionate effect of the pandemic on migrant workers, the Dutch government established the Migrant Worker Protection Taskforce in May 2020, which produced two sets of recommendations to address abuses among labour migrants in the Netherlands (Rijksoverheid, 2020). In December 2020, the Dutch Labour Inspection Authority (Inspectie SZW) was empowered to stop all work activity where an employer was found in breach of anti-pandemic measures.

The long-term effect of the pandemic on policies tackling undeclared work remains unclear, but it has provided a rich testing ground for innovation.

3.3.4 New and innovative policy solutions

Undeclared work increases the risk of labour exploitation among third-country nationals because of the vulnerabilities associated with their migrant and non-EU status. National authorities' interventions alone are not sufficient to detect, address, and tackle such complex phenomena and must instead be accompanied by increased data exchange, access to understandable information for migrant workers, and the use of early prevention measures. Several key challenges exist in limiting undeclared work among third-country nationals, including a lack of available data and resources, and insufficient cooperation between institutions.

A number of recommendations and policy solutions can be reinforced at EU and national level.

Data availability should be prioritised **at EU level** to ensure better qualitative and quantitative information on undeclared work and illegal employment among third-country nationals. Such an approach would support policymakers in designing more effective evidence-based measures for relevant authorities, especially law enforcement. **Information-sharing** (anonymised, metadata) would allow new trends and cases of undeclared work to be detected and assessed across the Member States, identifying the countries that would benefit from reciprocal cooperation, including third countries. Enhanced data availability would also enable joint and cross-border inspections.

The use of digital **verification systems**, such as the free online E-Verify service³⁹ provided by the Department of Homeland Security (DHS) in the United States (US), remains undervalued as a policy measure in the EU. Only the Netherlands has attempted to introduce an online verification system, with France and Finland introducing similar systems for specific sectors, such as construction and hospitality. An OECD overview in 2018 revealed that none of these three systems are as comprehensive, accessible, user-friendly and secure as E-Verify in the US, Australia's Visa Entitlement Verification Online (VEVO) (introduced in 2004) or New Zealand's VisaView (OECD, 2018). It is worth assessing the feasibility of standardising national work permits granted to third-country nationals and the development of a labour verification database accessible by employers throughout the EU.

Third-country nationals must be provided with **access to reliable multilingual information** on their rights and encouraged to coordinate by creating collective groups, supported by trade unions and civil society actors. United Migrant Domestic Workers was organised by Filipina domestic workers in the Netherlands and is affiliated with the trade union FNV, providing a useful example for other countries (Decker and Lebrun, 2019).

Two other key policy solutions are the allocation of **EU funding for innovative projects** and **higher involvement of EU delegations** in third countries. Innovative projects could target third-country nationals working in high-risk sectors (e.g. agriculture) through awareness campaigns, informing them of the benefits of declared work and

³⁹ [E-Verify](#) is a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the US.



possible protection from exploitative labour conditions (Tyldum and Lillevik, 2021). The active involvement of EU delegations could include disseminating and communicating material in local languages, covering employment rights in the EU, for example.

From an **operational and enforcement perspective**, cooperation between authorities (law enforcement, tax, migration, health and safety agencies) and NGOs and social partners should be clearly defined and ensure full application of the EU labour and social acquis for all workers. This also applies to cooperation with government authorities monitoring particularly vulnerable sectors, such as transport, construction, and hospitality. The involvement of practitioners and professionals would guarantee additional expertise and build reciprocal trust with migrant workers. The development of **intra-agency databases**, scaled for data-mining and mass cross-referencing, such as Spain's Anti-Fraud Tool, can have significant value in detecting undeclared work and monitoring compliance in sectors known for hiring a disproportionate number of third-country national workers. On the other hand, mass information databases which pool and cross-reference data raise serious data protection concerns which must be carefully considered to ensure and implement necessary data safeguards. Lastly, **cooperation with NGOs** experienced in developing evidence-based policies for tackling informal economy practices involving migrants can yield innovative and effective policy solutions.

Inspections and sanctions should be better **balanced with prevention strategies**. Such strategies could include incentivising compliance of TWAs and private employment agencies in high-risk sectors by offering easier ways to register third-country nationals. Simplified tax and administrative systems and coherent labour regulations should be designed to mitigate potential risks for employers hiring third-country nationals and to offset obstacles for job creation in the formal sector (OECD, 2018). Finally, **monitoring recruitment on the internet** should be considered, together with appropriate fines and sanctions for employers, private employment agencies, or private individuals violating the law.

At **national level**, legal migration pathways should be created for individuals with low-skills engaging in sectors with high workforce demand. These opportunities should be accompanied by increased access to training, skills validation and qualification recognition procedures, as well as sector-based work permits or visas. This would avoid the creation of single-employer permits and reduce the risk of coercion into engagement in undeclared work. FRA has called for work and residence permits to be decoupled from a single employer, with workers instead allowed to obtain a new residence permit with another employer on completion of their employment. Temporary migration programmes could be evaluated, with the active support and involvement of trade unions and workers' organisations (the Platform, 2021a). Granting a temporary work permit to third-country nationals whose residence permit applications are under consideration could also enable them to work legally while their documents are being examined (Decker and Lebrun, 2019).

The need to **modernise formal institutions** is especially important for third-country national workers, given their higher levels of distrust of government bodies. Law enforcement agencies should strive for a **user-centred and services-oriented approach** to informing, monitoring and regularising workers from third countries. Emphasis should be placed on developing convenient and user-friendly tools (whether information or part of a registration system for third-country nationals) that are based on workers' most common needs. In short, the formal labour market needs to be more accessible to third-country national workers. In the context of infractions procedures, authorities need to ensure that workers from third countries receive the same fair treatment as EU mobile or cross-border workers.



4.0 Country case studies

The following section presents the experiences of six Member States with different types of undeclared work, based on in-depth interviews with Platform members and desktop research into recent trends. It provides specific recommendations to ELA from a national point of view.

4.1 Bulgaria

4.1.1 Legal and institutional framework

Bulgarian law does not explicitly define undeclared work. However, the Bulgarian Labour Code specifically sanctions partially declared (under-declared) payments, labour relations without a written contract, failure to register a contract with the National Revenue Agency (NRA), undeclared overwork payments and non-payment of wages or social security contributions.⁴⁰ Access to Bulgaria's labour market by third-country nationals is regulated by the Law on Labour Migration and Labour Mobility, which contains a variety of conditions, depending on the duration, type and sector of employment (Ministry of Labour and Social Affairs, 2021; Staneva, 2021). In March 2021, a new regulation was introduced, requiring that the country where a worker is posted be declared to the NRA even if it is an EU Member State (previously required only for third countries). All third-country national workers must be registered with the National Employment Agency (NEA).

The GLI EA is the primary body responsible for overall monitoring and compliance with labour legislation (Dimitrova, 2020). It cooperates extensively with the NRA on tax fraud and with the National Social Security Institute (NSSI) on social security contributions, as well as with the police, the NEA, and Regional Health Inspectorates (RHIs) (GLI EA, 2021a).

In its annual reports, GLI EA provides information on compliance by EU and third-country national workers, their employers, and TWAs that post Bulgarian and foreign workers in the rest of the EU. This includes data on the economic sectors covered by inspections and the types of breaches identified. However, precise information on the nationalities of foreign workers is not included and only one statistic differentiates between EU movers and third-country nationals (sanctions for not having the required work permit). The Bulgarian Industrial Capital Association (BICA) provides detailed annual reports on levels of undeclared work in Bulgaria, disaggregated by sector and type of non-compliance. These reports do not consider cross-border undeclared work, however (BICA, 2020).

4.1.2 Trends, sectors and employment pathways

GLI EA and BICA estimates show that undeclared work accounted for up to one-third of Bulgaria's economy in 2019 and 2020, although levels have gradually been decreasing in recent years. In the international context, Bulgaria is mainly a sending country, with Germany, Belgium and France being the top three destination countries. Undeclared work by third-country nationals in Bulgaria is considered to account for a small proportion of undeclared work and is not prioritised by GLI EA. According to inspectors, cases of cross-border undeclared work in Bulgaria by third-country nationals are rare because the law requires full transparency as a condition for

⁴⁰ Amendments implementing higher sanctions against past offenders were introduced in Bulgaria's Labour Code (State Gazette No. 26/1.4.1986) as recently as January 2020 (See Articles 61-63 and Articles 414-415 Labour Code).



receiving residence and work permits. Additionally, most third-country national migrants only pass through Bulgaria and do not stay in the country.

Nevertheless, Bulgaria is increasingly receiving third-country workers – primarily seasonal workers – from Turkey, Ukraine and Moldova, who sometimes engage in undeclared work. One of the sectors mostly affected by this trend is hospitality, especially hotels and restaurants in resorts. Another vulnerable sector is construction, where posted workers have been found to avoid taxes by not declaring, or only partially declaring (under-declaring), their remuneration. Data from private employment agencies provided to the NRA shows a gradual increase in blue card requests for highly qualified workers from third countries.

In 2020, cases of cross-border undeclared work were found in the transport sector, which has a long-running practice of registering companies in South-Eastern Bulgaria and then hiring drivers from the former Yugoslav states. This enables companies to operate in the rest of the EU without work permits for their drivers, while not conducting any actual activity in Bulgaria. In 2020, there were also cases of undeclared posting of foreign workers related to an Italian company active on the construction site of the Balkan Stream gas pipeline. Large infrastructure and construction projects are known to be affected by undeclared work, including cross-border undeclared work, and are frequent targets of GLI EA inspections.

A total of 131 inspections were conducted by GLI EA in 2020, specifically targeting compliance with the employment of foreign workers (GLI EA, 2021a, p.17). The inspections covered 8 257 foreign workers, a decrease of 15% compared to the 9 666 workers inspected in 2019, which was largely attributed to the COVID-19 pandemic. Most of the foreign workers covered by inspections in 2020 were employed in personal services (childcare, elderly care, and cleaning), construction, and hospitality, although precise data are not publicly available. A total of 867 offences were found, of which 245 were directly related to work by foreigners. Of these, 104 concerned recruiting foreign workers without work authorisation or without registration with the NEA, 10 related to recruiting third-country nationals without authorised access to Bulgaria's labour market, and five concerned illegally residing foreign workers (four of whom were employed in hotels) (GLI EA, 2021a, p.8).

According to GLI EA, data for 2020 confirm a trend from recent years whereby foreign workers are increasingly employed without work permits and without the required registration with the NEA. There are growing numbers of cases of third-country workers posted to the rest of the EU by Bulgarian employers, without the necessary residence and work authorisations, and without the workers ever setting foot in Bulgaria. This trend is tracked using the IMI system and through cooperation with receiving countries (including consultation with their registries) (GLI EA, 2021a).

Difficulties persist in investigating TWAs owned by foreign individuals no longer residing in Bulgaria. They leave behind letterbox companies with no staff, or with employees who are not authorised to deal with inspectors. Nevertheless, the agencies hold a valid licence to provide services related to temporary employment. Identifying TWAs and the workers they assign to employers in the rest of the EU poses another challenge. Outside of cooperating with the authorities of the receiving countries and consulting their registries for posted or foreign workers, GLI EA has no tools to monitor the posting or sending of workers.

The COVID-19 pandemic increased transparency and decreased overall levels of undeclared labour in Bulgaria. This is especially true in sectors that were disproportionately affected by the pandemic, notably hospitality (hotel, restaurant, tourism). Companies began paying benefits, as they would otherwise not be able to access government aid. According to inspectors, an increasing number of young workers are becoming politically and socially conscious, declaring their wages and paying social security benefits in a bid to contribute to improving the quality of government services. More people declaring their wages has also led to an increase in the average work wage.



4.1.3 Policy approaches

GLI EA is focused outwards and cooperates extensively with countries that receive most workers from Bulgaria. A good example is the cooperation between the French and Bulgarian Labour Authorities, which actively work together to help seasonal workers posted from Bulgaria to France in the agricultural sector. The agencies collaborate on information campaigns, and Bulgarian labour inspectors are frequently invited to France to participate in inspections and raise awareness among Bulgarian workers. Recently, however, Bulgarian workers have begun to rely less on third-party private employment agencies, effectively eliminating the middle-man between workers and employers. This increases workers' vulnerability, as they are usually unable to familiarise themselves with the legal frameworks of the countries in which they work.

GLI EA actively cooperates with the Berlin Advisory Centre for Migration and Fair Work (BEMA) to support the labour rights of Bulgarian workers in Germany. In 2021, in the framework of the Eurodetachment project, GLI EA and BEMA produced information materials (brochure) based on the story of a Bulgarian worker in Germany who was able to receive her unpaid wage thanks to the actions of the two organisations (GLI EA, 2021b). The materials sought to inform Bulgarians posted to work in Germany of their rights and direct them to reputable consultation centres (such as BEMA).

As part of the Rights for All Seasons campaign (led by ELA with support from the European Commission), GLI EA surveyed workers and businesses (anonymously) about their motivation for declared and undeclared work (Bulgarian Chamber, 2020). Responses were received from over 3 750 workers and 1 050 employers and the results were presented to representatives from the Ministry of Labour and Social Affairs, NRA, NSSI, NEA, social partners and the media. The primary motive given by workers for declaring work was the opportunity to benefit from State support, while employers cited avoiding sanctions as their primary motivation. About one-third of employees and over 40% of employers cited lack of consequences as the main reason behind undeclared work. Both workers and employers claimed they would be much more motivated to declare work if they knew that their taxes and social security contributions were used to improve social services such as healthcare and education.

As part of the EU Week of Action for the Fair Work campaign in 2020, inspectors from GLI EA took part in online meetings in 56 schools, answering questions from over 2 000 students in their final two years of secondary school (GLI EA, 2020a). The inspectors demonstrated how workers can use [the online tool 'Wage in an envelope'](#) to calculate how much in benefits workers lose over their lifetime when declaring only part of their actual wage.

In 2020, GLI EA piloted an innovative method of online self-inspection for employers. A total of 104 questionnaires were developed, together with software to exchange the surveys with GLI EA and automatically process the results (GLI EA, 2020b). Some 500 companies took part in the pilot, with over 60% stating that they eliminated irregularities as a result of the survey. According to GLI EA, this type of innovative solution compensates for the lack of operational capacity at national and EU level by focusing efforts on creating a culture of prevention and compliance.

Cooperation between GLI EA and NEA continues to intensify in light of the increasing number of cases of non-compliance by third-country nationals. GLI EA inspections related to third-country nationals are substantially guided by NEA information on rejected work permit applications.

According to GLI EA, there is a significant need to provide labour authorities throughout the EU with access to national databases on posted workers, tax, social security, etc. There is also a need for labour authorities to make information for foreign workers more accessible and to overcome language barriers, including through information days and campaigns.



4.2 Greece

4.2.1 Legal and institutional framework

There is no explicit definition of undeclared work in Greek law. In practice, it contains comprehensive legal prohibitions on different forms of undeclared labour activities, and tasks the Hellenic Labour Inspectorate (SEPE) with identifying and sanctioning undeclared work. The United Body of Social Insurance (EFKA) is responsible for social security fraud, while the Ministry of Finance handles tax-related breaches (the Platform, 2017f, p.74).

In terms of their operational and technical activities, SEPE and EFKA use the same definition for undeclared work, i.e. any legal labour activity that is not declared to the authorities, with the aim of avoiding taxes, social security contributions or labour law requirements. SEPE's website has a special section on undeclared work in English, which contains its definitions of under-declared work, fully undeclared work and bogus self-employment (SEPE, n.d.).

4.2.2 Trends, sectors and employment pathways

Labour inspectors estimate that workers' participation in undeclared work is limited. In the context of international labour mobility, Greece is both a sending and a receiving country. The top EU-27 countries sending most workers to Greece are Germany, Cyprus, Bulgaria and Italy, while most Greek citizens go to Germany, Cyprus, Bulgaria and Sweden. Most non-EU citizens working in Greece come from the UK and Switzerland, but there are also significant numbers of workers from Albania, Egypt and Bangladesh.

Levels of cross-border undeclared work in Greece tend to increase in the summer due to migrant inflows to the hotel, retail and catering (HORECA) sector. Higher levels of non-compliance are typical during harvesting seasons, when workers come from nearby countries, especially Bulgaria and Albania. Cross-border undeclared work is also widely associated with third-country nationals and refugees from Asia and other regions.

According to inspectors, short-term EU-27 movers (or cross-border workers) are the most problematic type of EU mobile workers in Greece, accounting for over half of all cases of undeclared work by EU-27 movers. This is followed by longer-term EU-27 movers. By contrast, EU posted workers and workers in the road transport sector are estimated to account for a fairly small share of all cases.

Most EU-27 movers are estimated to be engaged in either under-declared or fully undeclared work, with lower bogus self-employment. Agriculture, hospitality and personal services are most affected by under-declared work by EU-27 movers. For fully undeclared work, the top three sectors are construction, agriculture and hospitality. For bogus self-employment, the most affected sectors are construction, personal services, and specialised fields, such as insurance and legal practice.

Inspectors estimate that, in absolute numbers, legally residing third-country nationals who have the same labour rights as EU citizens are the largest non-compliant group. They are followed by legally residing third-country nationals with restricted work authorisations (such as minors and pensioners). Third-country nationals without a valid work permit or who are residing irregularly in Greece are estimated to account for the smallest proportion of undeclared workers.

Like EU-27 movers, most third-country nationals engaging in undeclared work in Greece are believed to be involved in either under-declared or fully undeclared work, with bogus self-employment the least prevalent form. Both under-declared and fully undeclared work primarily affect construction, agriculture, hospitality, and specific food sector fields, such as fishing and animal husbandry. Third-country nationals engaged in bogus self-



employment most often work in construction (including architects and mechanics), as taxi drivers, or in the tourist sector.

4.2.3 Policy measures

A recent policy development in tackling (cross-border) undeclared work was the adoption of Law 4554/2018 and its consequent amendments in Law 4635/2019, which updated the sanctions regime against undeclared work (the Platform, 2017f, p.79) and changed numerous regulations for both individual and collective labour contracts (Zepos and Yannopoulos, 2019). The Law maintained the fine of EUR 10 500 per employee found to be fully undeclared but removed an arbitrary pre-condition that required undeclared employees to have been working for at least three months.

According to inspectors, one of the effects of the EUR 10 500 fine (first introduced in 2013) for fully undeclared work was a gradual shift to under-declared work. This led the government to increase the fine for under-declared work from EUR 1 500 to EUR 2 500. Following the amendments in 2018-2019, the EUR 10 500 fine per fully undeclared worker can now be reduced to EUR 2 000 if the employer hires the workers under a full-time contract lasting no less than 12 months. This form of supply-side incentivisation should help to transform undeclared into declared work (the Platform, 2020f). For seasonal workers, the initial fine can be reduced to EUR 5 000 on the condition that the workers are hired for a minimum of three months. Once the employer has signalled their intention to officially hire the workers, special conditions apply: the employer cannot convert part-time contracts to full-time contracts, employees that resign or are fired must be replaced within 15 days, and the total number of workers cannot be reduced below the number of workers on the day of the inspection, including undeclared employees.

The updated sanctions regime also introduced higher sanctions for repeat offenders. If a sanctioned employer is found to continue their non-compliance, the fine is doubled to EUR 21 000, and then tripled to EUR 31 500. There is no possibility for reduced sanctions for repeat offenders (the Platform, 2020f). Other important measures introduced in Law 4635/2019 include the development of a digital registration system for employers that have been sanctioned for undeclared work (Zepos and Yannopoulos, 2019). Once registered, employers can no longer benefit from advantageous social security arrangements with the government. The Law also obliges all employers to register their employees with individual labour contracts in an information system (ERGANI) managed by the Ministry of Labour and Social Affairs.

In response to the COVID-19 pandemic, the government adapted its regulations on workers from third countries in 2020. The borders were closed, but third-country nationals with residence permits or who worked in healthcare were exempted from this restriction. Changes extended the stay of third-country seasonal workers already in the country and introduced an expedited procedure to recruit more seasonal workers. Ministerial decisions extended the legal status of third-country residents until December 2020 (OECD, 2020).

The IMI remains the main tool to detect undeclared work through information exchange. SEPE maintains a regional office in each of Greece's 13 regions (*periféries*), with access to the IMI. When dealing with cases involving cross-border work, inspectors can request information from the IMI system (e.g., past offences, data from other countries) from the relevant regional office.

A primary challenge in developing measures specifically for cross-border undeclared work (rather than undeclared work in general) is that there is no centralised (digital) database. Workers or employers without a tax number in Greece submit the necessary documents via email to the relevant regional or municipal office, which makes retrieval and verification difficult. Nor is there any register for non-Greek workers, whose social security numbers, although provided, are not stored digitally. These factors also hinder the development of efficient risk assessment systems. Another difficulty is collecting information on private employment agencies and bogus companies based outside Greece.



4.3 The Netherlands

4.3.1 Legal and institutional framework

The Netherlands has no legal definition of cross-border undeclared work or its different forms. Nevertheless, the existing legal framework explicitly prohibits the non-payment of taxes and social security contributions, and the use of false employment documents. The Dutch Terms of Employment of Posted Workers in the European Union Act (WagwEU) of 2020 requires that workers from outside the EU/EEA must be posted and must have a work permit (TWV) or a combined residence and work permit (GVVA) as pre-conditions for working legally in the Netherlands.⁴¹ The latest amendments to the Allocation of Workforce Through Intermediaries Act (Waadi) obliges all private employment agencies to register in the Dutch commercial register.⁴²

In practice, the Dutch Labour Inspection Authority, Inspectie SZW,⁴³ uses the term 'undeclared work' to refer to any work that does not contribute to the tax or social security system. In line with the definition provided by the European Commission,⁴⁴ the Inspectie SZW does not include unlawful activities within the term of undeclared work. It does not disaggregate its reporting data by Dutch, EU citizens or third-country nationals. Inspectie SZW accepts complaints in relation to working conditions, payment below the minimum wage, and fraud in work and income. However, compliance with individual or collective contracts of employment is ensured through the law (Inspectie SZW, 2021a).

4.3.2 Trends, sectors and employment pathways

According to the Dutch Platform members, the proportion of workers participating in undeclared work (including undeclared cross-border work) is relatively small. In 2021, the Netherlands remains chiefly a receiving country, with Poland, Belgium, Germany, Romania and Bulgaria the top five EU/EEA sending countries. Ukraine, Belarus and countries from Central Asia, especially Uzbekistan and Tajikistan, were the top non-EU/EEA sending countries to the Netherlands.

EU mobile or cross-border workers are most commonly involved in under-declared work (including partially declared short-term or permanent labour contracts) in construction, transport, and distribution. For bogus self-employment, the most common sectors are construction, agriculture and transport, while for fully undeclared work, they are agriculture, hospitality and personal services. By comparison, third-country nationals are predominantly engaged in under-declared work in construction, transport and distribution. Quantitative data are not available on levels of participation of EU mobile, cross-border workers or third-country nationals in undeclared work in general or in specific economic sectors. In its annual reports, Inspectie SZW categorises inspections and investigations under three pillars: i) health and safety, ii) the Major Accidents (Risks) Decree of 1999 (*Besluit risico's zware ongevallen* – Brzo), and iii) fair work. In 2020, 15 462 inspections or investigations were conducted, of which 12 053 related to health and safety, 597 to Brzo, and 2 812 to fair work (Inspectie SZW, 2021b).

⁴¹ *WagwEU (Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie)* transposes Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers (Government.nl (2020); [Employment Conditions of Posted Workers in the European Union Act](#)).

⁴² See Chamber of Commerce (*Kamer van Koophandel*) (n.d.). [Hiring or lending out workers](#).

⁴³ In July 2021, it was announced that from January 2022, Inspectie SZW will be known as the 'Netherlands Labour Authority', with the abbreviation NLA to be used in both English and Dutch publications. The change was reportedly brought about by the introduction of ELA. The change seeks to clarify the role of the Dutch agency in the international context, as well as its position vis-à-vis ELA.

⁴⁴ The European Commission defines undeclared work as 'any paid activities that are lawful as regards their nature but not declared to public authorities' (European Commission, 2007b, p.2).

Complaints received by the Inspectie SZW are categorised by the legal act to which they relate. In 2020, Inspectie SZW received some 15 300 complaints, a two-fold increase compared to 2019. However, half of all complaints related to COVID-19, thus the comparable increase from 2019 was just 2%. Notably, 34% of all complaints related to the Minimum Wage Act, 25% to the Foreign Nationals Employment Act, and 4% to the Working Hours Act.

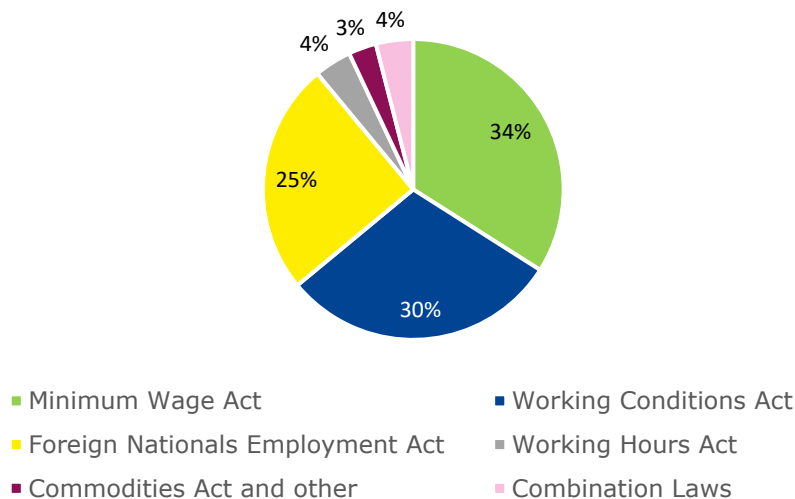
Table 1. Number of inspections by Inspectie SZW, 2020

Field of inspection	2019	2020
Health and safety	9 104	12 053
Brzo (Major Accident Risks Decree)	343	597
Fair work	2 297	2 812

Source: Inspectie SZW (2021b). [Jaarverslag SZW 2020](#).

Like the other country case studies, the COVID-19 pandemic drew public authorities' attention to cases of cross-border undeclared work in the Netherlands. Inspectie SZW considers non-Dutch workers involved in undeclared work more likely to be working in poor conditions and far more vulnerable not only to COVID-19, but also to the social and economic consequences of the pandemic. Of the 15 300 complaints it received in 2020, half were related to COVID-19 and approximately 1 590 (20%) concerned EU mobile workers or third-country nationals (Inspectie SZW, 2021b, p.27).

Figure 5. Complaints and signals received by Inspectie SZW, 2020, by legal act (excluding COVID-19-related)



Source: Inspectie SZW (2021b). [Jaarverslag SZW 2020](#).

The Dutch labour inspectors interviewed estimated that over half of all foreign workers are employed through TWAs. These agencies are often found to abuse existing legislation so as to avoid taxes or pay the lowest possible wages to workers. A fundamental challenge in investigating TWAs is the fact that many are based outside the Netherlands and gathering information is difficult. Dutch inspectors do not have authority outside the country and need to rely on potentially much slower paths of investigation, such as using IMI or resorting to concerted and joint inspections.



4.3.3 Policy measures

In December 2020, Inspectie SZW was authorised to stop all working activity of employers failing to comply with COVID-19 measures. As a result, it conducted inspections in sectors that were otherwise not identified as vulnerable. Another effect of the pandemic was the development of remote and digital inspection methods (Inspectie SZW, 2021c). In September 2020, the Collaboration Platform for Migrant Workers and COVID-19 was established, which reviewed the living, working and transport conditions of non-Dutch workers, conducted preventive company visits, and facilitated cross-border cooperation (Inspectie SZW, 2021c). In 2021, inspections have continued to focus on sectors and groups of workers identified as particularly vulnerable in the context of COVID-19, including those in construction, agriculture and the meat processing sector (Inspectie SZW, 2020). Inspections were intensified in relation to third-country nationals, who tend to be employed in 'essential' or 'frontline' professions where remote work is not an option.

In recognition of the disproportionate effect of the pandemic on migrant workers, the government established the Migrant Worker Protection Taskforce in May 2020, consisting of employees from several ministries, Inspectie SZW, regional safety authorities and the public prosecutor. The Taskforce found that the Dutch labour laws were written with an independent, well-informed Dutch employee in mind, but were not suitable for migrant workers, who are typically less informed, due to language barriers and smaller social networks. It concluded that migrant workers are highly dependent on private employment agencies, which act as gatekeepers to healthcare, social security and other basic services. The Taskforce produced two sets of recommendations to address abuses of migrant workers in the Netherlands (Ministry of Social Affairs, 2020; Rijksoverheid, 2020), including recommending that access to healthcare, social security and other basic services be separated from private employment agencies. It also recommended the introduction of obligatory certification for private employment agencies active in the Netherlands, including agencies based abroad, as well as obligatory registration of migrant workers by the government. As well as preventing abuses, such developments would facilitate data collection on labour mobility trends and enable more effective risk assessment systems.

4.4 Poland

4.4.1 Legal and institutional framework

Polish law does not contain an explicit definition of (cross-border) undeclared work but defines the offences of 'illegal employment or other illegally paid work' and 'illegal performance of work by a foreign person' (Article 2(1) points 13 and 14 of the Law on employment promotion and labour market institutions). 'Illegal employment or other illegally paid work' is defined as employment of a worker without a written contract, failure to register an employee for social security purposes, and undeclared work by regularly employed or self-employed workers registered as unemployed. 'Illegal performance of work by a foreign person' concerns work by foreign workers or the employment of foreign workers without a valid residence or work permit, or whose work goes beyond the conditions of their residence or work permits.⁴⁵ With certain exceptions, employers that hire non-EU/EEA nationals must obtain a valid work permit from the relevant provincial governor (Voivodeship Office), which can be issued for a maximum of three years, with a possibility for an extension (CMS, 2020).

The National Labour Inspectorate (PIP) is the primary institution responsible for tackling (cross-border) undeclared work, while the Social Insurance Institution (ZUS) and the National Revenue Administration (KAS) deal with social security and tax aspects of undeclared work, respectively (the Platform, 2017f).⁴⁶ PIP reporting provides

⁴⁵ Journal of Laws of 2004, No 99, item 1001. [Law of 20 April 2004 on promotion of employment and labour market institutions.](#)

⁴⁶ Journal of Laws of 2007, No 89, item 589. [Law of 13 April 2007 on National Labour Inspectorate.](#)

substantial disaggregation of data on non-Polish workers, including nationality, sectors of employment, and levels of undeclared work by sector and geographical distribution. This is the most detailed information on cross-border undeclared work in all six case study countries.

4.4.2 Trends, sectors and employment pathways

While Poland is chiefly a sending country, it receives a continuous influx of third-country nationals from bordering countries, especially Ukraine and Belarus, as well as from Georgia and Moldova. In 2019, of 8 348 inspections covering 43 382 foreign workers from 122 countries (including EU/EEA countries), Ukrainians accounted for 84% (36 213) of all foreign workers from outside EU/EEA countries (compared to 83% or 33 660 in 2018, and 86% or 39 399 in 2017) (PIP, 2020). In the course of 1 705 inspections, PIP detected 5 947 illegally employed workers, 4 937 of whom were Ukrainian, suggesting that 83% of all illegally employed foreign workers identified in Poland in 2019 were Ukrainian (PIP, 2020, p.128). Polish labour inspectors noted, however, that Ukrainian workers are overrepresented in the foreign workforce and do not have a higher proclivity for undeclared work than other third-country nationals.

According to inspectors, third-country nationals engage in undeclared work either due to lack of information and language barriers, or intentionally (to earn as much as possible). Some employers consider the bureaucratic process of registration too burdensome when flexible work relations are required, while others seek to keep their costs down. Inspectors noted that the current migration laws on third-country nationals are overly complicated and there are issues with workers' timely access to information.

The inspections were conducted in sectors known for recruiting third-country nationals – 25% of all foreign workers worked in construction, 21% in manufacturing, and 18% in personal services. Of the 5 947 illegally employed third-country nationals, 34% were in construction, 23% in personal services, and 18% in manufacturing (PIP, 2020, pp.129-132). Of all illegally employed persons identified, 12% were employed in micro-enterprises (up to nine employees), 16% in small enterprises (10-49 employees), 11% in medium-sized enterprises (50-249 employees) and 5% in large enterprises.

Table 2. Number of foreign workers covered by inspections in Poland and found to be illegally employed, 2019

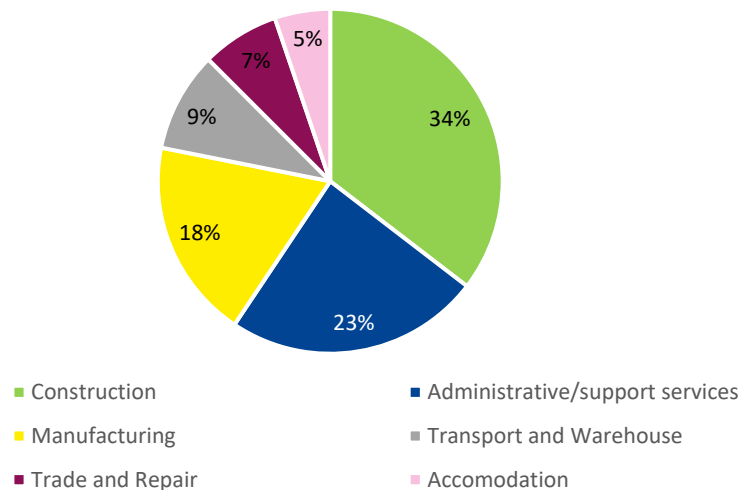
Country of origin	Workers covered by inspection	Illegally employed workers	Share of all detected illegally employed workers (%)	Share of illegally employed of those inspected (%)
Ukraine	36 213	4 937	83%	14%
Belarus	2 762	403	7%	15%
Georgia	777	228	4%	29%
Philippines	226	131	2%	58%
Moldova	675	54	1%	8%
Others	2 729	194	3%	7%

Source: PIP (2020). [Report on the activities of the National Labour Inspectorate 2019](#), p.127.

Labour inspectors confirmed that undeclared work by EU movers or cross-border workers is not a significant issue, and inspections of the legality of employment of foreign workers do not target companies known for hiring EU citizens. Legally residing third-country nationals with short-term work permits account for the majority of cross-border undeclared work in Poland and form a sizable portion of all undeclared work in the country. Legally residing third-country nationals with valid work permits are estimated to account for a small proportion of all cases of undeclared work.

The most common violations of work authorisation by third-country nationals relate to the conditions stated in the 'Declaration of intention to entrust work to a foreigner'. The Declaration refers to temporary work permits allowing citizens from the six Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine) to work for a maximum of six months over the course of 12 subsequent months (Ministry of Family and Social Policy, 2021). The permit can only be issued based on written confirmation by an employer or accompanied by a Polish or Schengen visa.

Figure 6. Share of illegally employed foreign workers in Poland, by sector, 2019



Source: PIP (2020). [Report on the activities of the National Labour Inspectorate 2019](#), p.263.

Inspectors estimate that up to one-third of cases of undeclared work by third-country nationals relate to partially undeclared (under-declared) work. Fully undeclared work and bogus self-employment among third-country nationals are estimated to account for far fewer cases of undeclared work.

TWAs – often run by Ukrainian nationals – are one path to undeclared work. Some operate virtual offices designed to avoid inspections and post workers abroad without conducting any actual activity in Poland. The employees of these virtual offices are not authorised to represent the TWA, which makes investigations very challenging (PIP, 2020).

In 2019, PIP inspected 33 private employment agencies recruiting third-country nationals to work in Poland, covering over 1 300 foreign workers, of whom 724 were from Ukraine and 529 from Belarus (PIP, 2020, pp.138-141). The inspections revealed irregularities in 30 (91%) private employment agencies. Breaches included lack of registration with the regional office (4), lack/incorrect content of placement contracts (12 private employment agencies, covering 69 foreigners) and lack of documentation on where workers were employed (3 agencies, covering 39 workers).

TWAs were particularly affected by the COVID-19 pandemic. Overall levels of undeclared work decreased due to the lower number of workers from third countries, but irregularities continued to be detected. In response to the pandemic, residence and work permits were extended by the government until the end of the emergency situation, which has continued into 2021.

4.4.3 Policy measures

PIP cooperates with other authorities and services, in particular the Polish Border Guard, regional authorities, regional labour offices and the ZUS. Information exchange with the different authorities underpins targeted



inspections, which are generally effective. PIP and the Border Guard (which has insights into migration workforce flows) work closely, compare and contrast data, and hold annual meetings to exchange experiences and identify trends. Cooperation with the Border Guard also focuses on common interpretations of labour and migration laws, including foreign laws, with help from central authorities. The regional authorities issue work permits and notify PIP of any suspicious trends, such as receiving a large number of requests in a short period of time. In 2019, PIP conducted 70 inspections at the request of the Border Guard, 226 joint inspections with the Border Guard, and sent 970 notifications of cases of illegal work by foreign nationals to the Border Guard.

TWAs and private employment agencies must register at the relevant regional authority. To be eligible for registration, the entity cannot have a criminal record, nor be subject to bankruptcy or liquidation, nor have any arrears in relation to tax, social security, healthcare or employee benefits. Since 1 January 2018, such agencies have been required to have office space which should not be run as a virtual office. Agencies must report their activities, particularly the number of hired employees, to the regional authority annually. TWAs must also include their registration number in documents, announcements and offers, and must clearly label job adverts as 'temporary work' (Accace, 2021).

Preventive measures include a hotline in Polish, Ukrainian and Russian, where workers can ask for information on labour regulations or submit anonymous complaints that may result in an on-site inspection. Calls to the hotline have been increasing (PIP, 2020).

Inspectors suggested that TWAs should only be registered if they have not been sanctioned for violating the rights of temporary workers, including third-country nationals involved in temporary work.

4.5 Portugal

4.5.1 Legal and institutional framework

Portugal's legal framework does not contain explicit definitions of undeclared work or its different forms. The Labour Code (Law 7/2009) requires third-country nationals to have a valid residence and work permit (Portuguese Immigration and Border Service (SEF), 2020). Law 107/2009 (and amendments in 2013 and 2017) establishes a sanctions regime for labour and social security offences and explicitly prohibits bogus self-employment and the non-declaration of workers for the purposes of avoiding social security payments. Both the Authority for Working Conditions (ACT) and the Institute of Social Security (ISS) can initiate infraction proceedings where such breaches are found (the Platform, 2017f).

In its annual reports, ACT provides information on its activities on undeclared work, irregular work and (irregular) posting of workers (ACT, 2019). It defines undeclared work as fully or partially undeclared work, including the concealment of employment contracts, bogus internships, false volunteering, and false provision of services. Irregular work refers to breaches of the legal provisions on fixed-term employment contracts and temporary employment contracts. Following the transposition of Directive 2014/67/EU, Portugal's Labour Code has obliged employers to declare posted workers to ACT since 2020 (ACT, 2019).

4.5.2 Trends, sectors and employment pathways

Portugal is chiefly a sending country, and, accordingly, ACT's annual reports contain more information on Portuguese workers in other countries than on non-Portuguese workers in Portugal (ACT, 2019). Inspectors confirmed that as of 2018, France, Spain and Belgium remain the top three EU/EEA destinations for Portuguese workers. Portugal receives some workers from Spain, Germany and Italy, as well as from Morocco, the Philippines and island countries in South-East Asia in general.



In 2018, ACT registered a total of 71 380 employment contracts of foreign workers, 31 160 of which were in Lisbon and 9 929 in Faro (ACT, 2019). ACT conducted 38 287 on-site inspections in 2018, covering some 399 836 Portuguese workers and only 2 082 foreign workers (0.5% of all workers inspected) (ACT, 2019). A total of 2 858 new employment contracts for foreign workers were registered and 1 306 were terminated in 2018 (ACT, 2019). No further data are available on non-Portuguese workers, such as levels of non-compliance, nationality or sector of employment.

Inspectors estimate that workers' (regardless of nationality) participation in undeclared work, as a share of all active workers, is relatively small. EU-27 movers (including active movers and mobile, cross-border and posted workers) and third-country nationals (regardless of their legal status) account for an insignificant share of undeclared work. EU mobile or cross-border workers engaged in under-declared work are most often found in construction, manufacturing and personal services, while those engaged in fully undeclared work are most often found in construction, agriculture, and the hospitality sector, especially restaurants. Bogus self-employment EU workers typically work in construction and agriculture, while third-country nationals involved in undeclared work (whether partially undeclared, fully undeclared or bogus self-employment) are most often found in construction and agriculture.

The emergence of TWA is a significant problematic trend, with many known for abusing legal uncertainties in order to avoid taxes and underpay employees. They often target people willing to work for lower wages, which makes third-country nationals particularly vulnerable. Seasonal work and short-term contracts are difficult for ACT to investigate due to the short timeframe for monitoring and ensuring compliance. Another worrying trend relates to online ride-sharing and food delivery services, such as Uber and Glovo, which are known for circumventing government regulations in order to lower their prices (Lima do Ó, 2021).

The COVID-19 pandemic highlighted particularly striking cases of cross-border undeclared work, especially work involving third-country nationals. In April and May 2021, the municipality of Odemira turned into a national news sensation when a large network for irregular immigration and labour was exposed. It was revealed that undeclared third-country nationals were living and working in shocking conditions, ranging from sharing a single room with 15 or 20 other workers to having no place to live. According to the mayor of Odemira, of 13 000 agricultural workers in the municipality, some 6 000 lacked standard living conditions (Martins, 2021). Other irregularities included small supermarkets (200m²) with 30 to 40 employees, and beverage-selling spaces with 10 times the usual number of workers, as such businesses were a front for illegal activities (Donn, 2021). The workers came predominantly from Asia (especially Nepal, India, Bangladesh and the Philippines) and did not speak either English or Portuguese.

4.5.3 Policy measures

The media spotlight on the Odemira case put cross-border undeclared work on the political agenda, resulting in additional financial and human resources provided to authorities. A new law was adopted at the end of April 2021, requiring companies employing more than 10 workers in agricultural farms and construction sites to register their workers daily. The new law refers to this regime as 'exceptional and temporary' (Presidency of the Council of Ministers, 2021).

The government introduced numerous support mechanisms for companies seriously affected by the COVID-19 pandemic, including job retention schemes (ISS, 2021). In June 2020, ACT and ISS conducted nationwide inspections of companies benefiting from the mechanism. Over 400 inspectors covered around 2 100 companies, employing over 16 000 workers, and found some 350 infractions, including cases of undeclared workers and active workers supposed to be in layoff (Noticias, 2020).

In recognition of the issues posed by online ride-sharing and food delivery services, the government, in collaboration with academics, civil society and social partners, began to develop the so-called Green Book on the



Future of Work in 2021 (Government.pt, 2021). The Green Book contains guidelines for addressing the multitude of challenges posed by the digital revolution and automation of the labour market, including in social security, remuneration, and employment relations. One of its aims is to provide innovative solutions to labour-related issues in a digital economy (including undeclared work) in a holistic framework that takes account of the wide variety of socioeconomic and technological influences.

Cooperation between ACT and other government bodies is an essential element of tackling cross-border undeclared work. Cooperation with ISS is especially important in monitoring private employment agencies, which often fail to disclose either employment contracts or social security. ACT also relies on cooperation with SEF to check the legal status of foreign workers, and with police authorities for information on documentation irregularities and underpayments. Information exchange with other institutions can be challenging, with communications and queries to the Ministry of Finance still submitted on paper, for example.

In 2020-2021, ACT was involved in numerous communication campaigns on cross-border undeclared work, including the EU4FairWork campaign, the ELA-led Rights for all Seasons campaign, and the Growing up in Safety – Education for Prevention campaign (ACT, 2019). Its 33 regional offices collaborate with the Agency for Employment to engage and educate workers on the negative consequences of undeclared work.

4.6 Spain

4.6.1 Legal and institutional framework

Spain's national legal system does not contain definitions for undeclared work or cross-border undeclared work. Nevertheless, employers are obliged to register labour contracts with the Social Security Treasury and to pay monthly social security contributions. Self-employed workers are similarly required to register with the Social Security Treasury. All workers are legally obliged to declare their work-related income to the Tax Agency. While the Spanish Labour Authority (ITSS) has primary responsibility for identifying and addressing undeclared work, the Social Security Treasury and the Tax Agency are responsible for collecting social security contributions and taxes, respectively (ITSS, 2020).

The ITSS collects data on undeclared work by non-Spanish nationals, based on a definition that includes lack of social security registration or contribution, increases of over 50% in declared working time in part-time contracts, bogus self-employment, and lack of a valid work permit (ITSS, 2020). It differentiates between Spanish and other workers and provides data for affected economic sectors but does not disaggregate the data by type of labour mobility (i.e., EU mobile or cross-border workers, third-country nationals).

4.6.2 Trends, sectors and employment pathways

Of the 18 767 100 average annual workers registered with the Social Security Treasury in 2020, nearly 11% (approximately two million) were foreign citizens (2% decrease compared to 2019) (ITSS, 2021). Of 10 375 inspections related to non-Spanish workers in 2020, 4 040 found infringements such as undeclared work (ITSS, 2021).

Among inspections related to non-Spanish workers, 3 257 (28%) were in the commerce sector (wholesale and retail trade), followed by hospitality with 3 152 (27%), construction with 1 214 (10%), agriculture with 1 113 (9%), and professional services with 1 061 (9%). In terms of effectivity (defined by ITSS as inspections that resulted in uncovered infractions), 1 340 (43%) found infractions in the hospitality sector, 710 (22%) in commerce, 409 (34%) in construction, 326 (31%) in professional services, and 780 (70%) in agriculture (ITSS, 2021). Therefore, 2020

data suggest that agriculture, hospitality, construction and professional services are the sectors most affected by cross-border undeclared work, with commerce something of a less-affected outlier.

The ITSS also tracks bogus self-employment. In 2020, of 1 328 inspections of self-employed non-Spanish workers, 209 lacked a work permit (ITSS, 2021).

Figure 7. Share of ITSS inspections of foreign workers, by sector (2020)

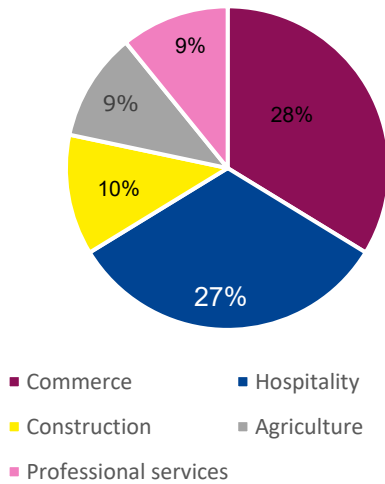
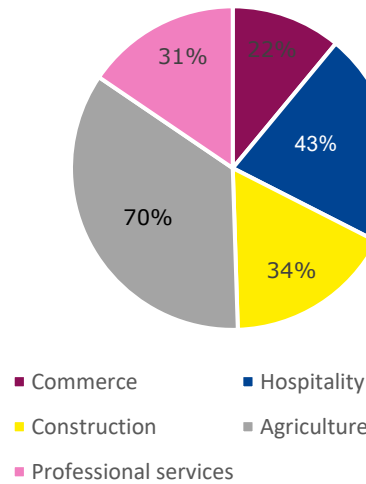


Figure 8. Share of ITSS inspections of foreign workers that resulted in infractions, by sector



Source: European Union / ITSS (2021)

The ITSS also collects data on the geographical distribution of its inspections of non-Spanish workers across Spain's 17 Autonomous Communities. Over one-third (40%) of inspections were conducted in Cataluña, followed by Valencia with 14%, Madrid with 13%, Andalucía with 6% and Galicia with 4% (ITSS, 2021).

According to inspectors, there is irregular use of the Posted Workers Directive to retain the benefits from the country of origin and have posted employees work regularly instead of on a temporary basis. These companies establish letterbox offices in the countries of origin, where they execute only administrative work and have no real activity.

4.6.3 Policy measures

ITSS activities for tackling undeclared work in 2021-2023 fall under the Strategic Plan for ITSS for 2021-2023. The general aim of the Strategic Plan was to safeguard labour rights and improve the overall quality of employment and working conditions.

Its strategic objectives are integrated into four key actions:

- ▶ Improving the quality of employment, guaranteeing workers' rights, tackling precariousness and fraud in labour and social security matters and the effective equality between men and women;
- ▶ Strengthening the capacity of the Labour and Social Security Inspectorate;
- ▶ Strengthening and modernising the Labour and Social Security Inspectorate System to improve the quality of services provided to the public;
- ▶ Promoting decent work and strengthening international cooperation in the fight against fraud.



The Spanish Platform members confirmed that the Anti-Fraud Tool Unit remains an essential instrument enabling the effective functioning of the ITSS. Introduced in 2015, it uses data-mining and the mass cross-reference of data between different government databases. It allows the Inspectorate to identify and control known and emerging patterns of undeclared work and labour fraud. The Inspectorate use the Anti-Fraud Tool to detect fraud and to monitor companies' compliance. Entities that continue to be non-compliant can be subject to further inspections and sanctions. The Tool also serves as the basis for ITSS's planning of inspection campaigns each year (ITSS, 2020).

ITSS plans for 2020-2021 were significantly undermined by COVID-19, as on-site inspections decreased significantly from the onset of the pandemic. It caused ITSS to redirect its efforts toward temporary workers in the food and agriculture sector, who were considered most at-risk of infection and other consequences of the pandemic. ITSS also adjusted its investigation methods by increasing remote communication with employers and workers via email or phone. Another difficulty caused by COVID-19 was that some sending countries, such as Morocco, closed their borders in mid-2020, which prevented temporary workers from returning to their home country after their contracts expired.

5.0 Recommendations

The following section summarises the report's key recommendations for authorities at national and at EU level.

Enforcement authorities

- ▶ Address the need for common definitions of types of undeclared work and data collection practices for cross-border undeclared work by adopting an agreed typology, such as that proposed by the Platform. Collect data more rigorously on inflows and outflows of workers in relation to potential undeclared work;
- ▶ Introduce more effective and comprehensive risk assessment and early prevention measures that aim to consistently transform undeclared work into declared work. These would ideally derive from Platform best practices and use comparable EU data as a starting point;
- ▶ After careful assessment of needs and risks including robust data protection safeguards, deploy new technologies such as data-mining to develop common tools and databases that facilitate concerted and joint inspections, joint risk assessments, and information exchange between Member States' authorities;
- ▶ Increase inter-agency cooperation with enforcement authorities in the fields of labour, social security and taxation, through well-planned annual agreements, and taking stock of Platform-identified good practices;
- ▶ Enhance engagement with social partners through cooperation agreements that clearly establish their responsibilities in respect of different types of cross-border undeclared work;
- ▶ Improve accessibility of effective complaints mechanisms through which irregular migrants can file a complaint to competent authorities in case of illegal employment or exploitation. These mechanisms could also ensure that irregular migrants who are victims of crime are not denied access to justice;
- ▶ Establish safe reporting policies or protocols and complaint mechanisms for irregular migrant workers to engage with law enforcement without risking their migration status affecting the exercise of their rights;
- ▶ Conduct policy assessments on preventive approaches and quantify the effects of different preventive measures on non-compliance;
- ▶ Continue the transition to a holistic approach that combines deterrence and prevention measures to tackle undeclared work.



EU level

- ▶ Increase information exchange between countries and institutions and make it more user-friendly, especially for the purposes of risk analysis. Develop digital databases or registration systems that cover all labour mobility across the EU and integrate employment, social security and tax data. Address the differences in policy motivation between sending and receiving countries and the non-disclosure of information needed to tackle cross-border undeclared work;
- ▶ Create a platform that informs users about applicable legislation, sanctions and authorities in each Member State and provides guidance on acceptable evidence;
- ▶ Encourage the standardisation of work and visa permits issued by national governments to better promote decent and declared work and examine the feasibility of developing an EU-wide online status verification system for third-country nationals seeking to work in the EU;
- ▶ Encourage Member States to deploy effective data collection and strategies to target and sanction cross-border violations (e.g. using the ESSI to improve action against social security infringements, list the circumstances and types of undeclared work that incur cross-border sanctions);
- ▶ Encourage data collection practices by national enforcement authorities that disaggregate by type of labour mobility and differentiate between EU citizens and third-country nationals. Provide solutions and pathways to collect data on companies that operate transnationally and for which collecting information on procedures and operations is difficult at the national level;
- ▶ Include in future studies on undeclared work, and in the EU mobility and Eurobarometer reports, data and analysis of first-time work permits for third-country nationals, as these could be an important source of informality that subsequently impacts intra-EU flows;
- ▶ Fill in and regularly update analytical gaps, in particular in sectoral data and analyses of undeclared and under-declared work risks, based on inspections and new research. Differentiate between short-term and long-term mobility trends in order to avoid inspection bias and improve risk analysis;
- ▶ Support concerted and joint inspections addressing different types of undeclared work in specific high-risk sectors (e.g. personal services, agriculture) or focusing on specific practices (e.g. FTWAs and different forms of fraudulent arrangements across borders). Formulate lessons and follow up with specific recommendations on information exchange and/or capacity-building;
- ▶ Address significant discrepancies between national enforcement authorities in terms of operational capacity, resources and available tools by providing the necessary financial and capacity-building support focused on EU-wide needs assessment;
- ▶ EU bodies should take a norm-setting role and support preventive approaches by national authorities and social partners based on education, awareness-raising, and communication campaigns. EU institutions are in an appropriate position to formulate and promote common norms throughout the EU. They should help national stakeholders to synchronise norms held by employers and workers with those envisaged by national and EU law, and support activities to that end. Ultimately, the goal should be to address the root causes of different types of cross-border undeclared work.



References

- Accace (2021). Labour Law and Employment in Poland – 2021 Guide. Available at: <https://accace.com/labour-law-and-employment-in-poland/>
- Alho, R. J. and Helander, M. J. (2016). 'Foreign seasonal farm workers. Strategies at the margins of the Finnish Welfare State: informal networks and weak ties'. *Nordic Journal of Migration Research*, 6(3), 148-57.
- Axelsson, L. and Hedberg, C. (2018). 'Emerging topologies of transnational employment: "Posting" Thai workers in Sweden's wild berry industry beyond regulatory reach'. *Geoforum*, 89, 1-10.
- Authority for Working Conditions (ACT) (2019). Labour Inspection Activity Report 2018. Available at: [https://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio_AI_2018_FINAL.pdf](https://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio_AI_2018_FINAL.pdf)
- Barbulescu, R. (2019). *Migrant integration in a changing Europe: immigrants, European citizens, and co-ethnics in Italy and Spain*. University of Notre Dame Press.
- Bulgarian Industrial Capital Association (2020). Composite index 'Economy of Light'. Available at: <https://bica-bg.org/%d0%ba%d0%be%d0%bc%d0%bf%d0%be%d0%b7%d0%b8%d1%82%d0%b5%d0%bd-%d0%b8%d0%bd%d0%b4%d0%b5%d0%ba%d1%81-%d0%b8%d0%ba%d0%be%d0%bd%d0%be%d0%bc%d0%b8%d0%ba%d0%b0-%d0%bd%d0%b0-%d1%81%d0%b2%d0%b5%d1%82%d0%bb/2019-%d0%b3%d0%be%d0%b4/>
- Cameron McKena (CMS) (2020). Labour Law in Poland. Available at: <https://cms.law/en/int/expert-guides/cms-expert-guide-to-labour-law-in-central-eastern-europe/poland>
- Cappelen, C. and Muriaas, R.L. (2018). 'Polish labour migrants and undeclared work in Norway'. *Scandinavian Political Studies*, 41(2).
- Chamber of Commerce (*Kamer van Koophandel*). (n.d.). Hiring or lending out workers. Available at: <https://www.kvk.nl/inschrijven-en-wijzigen/inschrijven-bij-de-kamer-van-koophandel/in--of-uitlenen-van-arbeidskrachten/>.
- Chudžíková A. and Bargerová, Z. (2018). Victims of labour exploitation or 'illegal' migrants? Ukrainian workers' labour rights protection in Slovakia. Centre for the Research of Ethnicity and Culture, CVEK. Available at: http://www.cvek.sk/wp-content/uploads/2018/02/WEB_EN.pdf
- Clark, I. and Colling, T. (2016). 'New insights into informal migrant employment: hand car washes in a mid-sized English city'. *Economic and Industrial Democracy*, 4(3), 755-775.
- Danaj, S. (2019). Posting of third-country nationals: mapping the trend in the construction sector. Con3Post research project. Available at: <https://www.euro.centre.org/projects/detail/3346>
- Decker, A. and Lebrun, J. (2019). Time for an overhaul: status of migrant female domestic workers. ETUI research paper. Available at: https://www.etui.org/sites/default/files/Hesamag_20_EN_22-24.pdf
- Dimitrova, D. (2020). 'Grey economy – actual measures for counteraction in the Labour Code'. *Law and Business in Contemporary Society*, 3, 270-277. Available at: <https://mpira.ub.uni-muenchen.de/104626/>
- Donn, N. (2021). PJ investigates illegal immigration and slave labour in Odemira. Available at: <https://www.portugalresident.com/pj-investigates-illegal-immigration-and-slave-labour-in-odemira/>



- European Commission (2007a). Special Eurobarometer 284 – Undeclared work in the European Union. Available at: <https://europa.eu/eurobarometer/surveys/detail/618>
- European Commission (2007b). Stepping up the fight against undeclared work. COM(2007) 628.
- European Commission (2020a). Special Eurobarometer 498 – Undeclared work in the European Union. Available at: http://www.bollettinoadapt.it/wp-content/uploads/2020/02/KE0320032ENN.en_.pdf
- European Commission (2020b). What works when tackling undeclared work? Realities in Member States. Available at: <https://ec.europa.eu/social/main.jsp?langId=en&catId=1299&furtherNews=yes&newsId=9740>
- European Commission (2021a). Annual report on intra-EU labour mobility 2020. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23293&langId=en>
- European Commission (2021b). Intra-EU Mobility of Seasonal Workers. Available at: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8400&>
- European Commission (2021c). Employment and social developments in Europe 2021. Available at: <https://op.europa.eu/en/publication-detail/-/publication/e823d46f-e518-11eb-a1a5-01aa75ed71a1/language-en>
- European Labour Authority (ELA) (2021). ELA's tools and procedures for concerted and joint inspections. Available at: <https://www.ela.europa.eu/en/concerted-and-joint-inspections>.
- European Migration Network (EMN) (2017). Illegal employment of third-country nationals in the European Union. Available at: https://ec.europa.eu/home-affairs/sites/default/files/00_eu_illegal_employment_synthesis_report_final_en_0.pdf
- European Migration Network (EMN) (2018). Glossary. Available at: https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-glossary_en
- European Migration Network (EMN) (2020a). Inform #3 – Maintaining labour migration in essential sectors in times of pandemic (COVID-19). Available at: <https://ec.europa.eu/migrant-integration/librarydoc/inform-3-maintaining-labour-migration-in-essential-sectors-in-times-of-pandemic-covid-19>
- European Migration Network (EMN) (2020b). Inform #4 – Impact of COVID-19 on remittances in EU and OECD countries. Available at: <https://www.oecd.org/els/mig/EMN-OECD-Inform-01122020.pdf>
- European Migration Network (EMN) (2020c). Inform #1 – EU and OECD Member State responses to managing residence permits and migrant unemployment during the COVID-19 pandemic. Available at: <https://ec.europa.eu/migrant-integration/?action=media.download&uuid=42EB6680-0C22-41F8-0176A7FFC9A0BF28>
- European Migration Network (EMN) (2020d). Inform #2 – Impact of COVID-19 on international students in EU and OECD Member States. Available at: https://ec.europa.eu/home-affairs/sites/default/files/00_eu_inform2_students_final_en.pdf
- European Migration Network (EMN) (2021a). Attracting and protecting the rights of seasonal workers in the EU and United Kingdom. Available at: https://ec.europa.eu/home-affairs/sites/default/files/docs/pages/00_eu_seasonal_workers_study_synthesis_report_en_1.pdf
- European Migration Network (EMN) (2021b). The impact of COVID-19 on the migration area in EU and OECD countries. Available at: <https://www.oecd.org/migration/mig/00-eu-emn-covid19-umbrella-inform-en.pdf>
- European Parliament and the Council of the European Union (2016). Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D0344>.
- European Platform tackling undeclared work (2016). Developing a holistic approach for tackling undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=17242&langId=en>



- European Platform tackling undeclared work (2017a). Tools and approaches for tackling undeclared work in the construction sector. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18825&langId=en>
- European Platform tackling undeclared work (2017b). Good practice fiche – Benelux cross-border cooperation in detecting and tackling social fraud and error – pilot project in the construction sector. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18526&langId=en>
- European Platform tackling undeclared work (2017c). Tackling undeclared work in the construction industry: A learning resource. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18132&langId=en>
- European Platform tackling undeclared work (2017d). Data-mining for more efficient enforcement. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18746&langId=en>
- European Platform tackling undeclared work (2017e). National and bilateral agreements and memoranda of understanding to tackle undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18041&langId=en>
- European Platform tackling undeclared work (2017f). Member State Factsheets. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18723&langId=en>.
- European Platform tackling undeclared work (2018a). Risk assessments for more efficient inspections. Available at: <https://ec.europa.eu/social/BlobServlet?docId=19924&langId=en>
- European Platform tackling undeclared work (2018b). Developing an approach for tackling letterbox companies. Available at: <https://ec.europa.eu/social/BlobServlet?docId=18961&langId=en>
- European Platform tackling undeclared work (2018c). Information tools and approaches to reach out to workers and companies in the fight against undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=19894&langId=en>
- European Platform tackling undeclared work (2018d). Evasion of taxes and social security contributions. Available at: <https://ec.europa.eu/social/BlobServlet?docId=20207&langId=en>
- European Platform tackling undeclared work (2018e). Tackling undeclared work in the agricultural sector. Available at: <https://ec.europa.eu/social/BlobServlet?docId=20424&langId=en>
- European Platform tackling undeclared work (2018f). Case studies on cross-border cooperation. Available at: <https://ec.europa.eu/social/BlobServlet?docId=19080&langId=en>
- European Platform tackling undeclared work (2018g). Toolkit on risk assessments for more efficient inspections as a means to tackle undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=20862&langId=en>
- European Platform tackling undeclared work (2019a). Cross-border actions tackling undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21877&langId=en>
- European Platform tackling undeclared work (2019b). Tackling undeclared work across Europe – effective solutions for policymakers. Available at: <https://ec.europa.eu/social/BlobServlet?docId=2244221430&langId=en>
- European Platform tackling undeclared work (2019c). Tackling undeclared work in the agricultural sector: a learning resource. Available at: <https://ec.europa.eu/social/BlobServlet?docId=20885&langId=en>
- European Platform tackling undeclared work (2019d). Practitioners' toolkit: cross-border concerted and joint inspections. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22252&langId=en>
- European Platform tackling undeclared work (2019e). Good practice fiche – Poland: improving cooperation through coordinated cross-border activities with the Netherlands to prevent labour exploitation. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21818&langId=en>
- European Platform tackling undeclared work (2019f). Good practice fiche – Spain: joint inspection with Portugal



on tackling undeclared work on fishing vessels and compliance with the Maritime Labour Convention. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21479&langId=en>

European Platform tackling undeclared work (2019g). Good practice fiche – Belgium: cross-border cooperation on minimum wage violations. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21423&langId=en>.

European Platform tackling undeclared work (2019h). Social partners and their key role in tackling undeclared work: 12 success stories. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22264&langId=en>

European Platform tackling undeclared work (2019i). Preventive approaches for tackling undeclared work, focusing upon tax rebates and notification letters. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21461&langId=en>

European Platform tackling undeclared work (2020a). Tackling undeclared work in the collaborative economy and bogus self-employment. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23096&langId=en>

European Platform tackling undeclared work (2020b). Tackling undeclared work in the tourism sector. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22868&langId=en>

European Platform tackling undeclared work (2020c). Tools and approaches to tackle fraudulent temporary agency work prompting undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23628&langId=en>

European Platform tackling undeclared work (2020d). Tackling undeclared work in the air transport sector, with a special focus on bogus self-employment of aircrews: a learning resource. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23097&langId=en>

European Platform tackling undeclared work (2020e). Cross-border sanctions in the area of undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23574&langId=en>

European Platform tackling undeclared work (2020f). New framework for undeclared work fines. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22206&langId=en>

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

European Platform tackling undeclared work (2021b). Enhanced learning resource paper: cross-border sanctions in the area of undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23574&langId=en>

European Platform tackling undeclared work (2021c). Tools and approaches to tackle fraudulent temporary agency work prompting undeclared work. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23627&langId=en>

European Union Agency for Fundamental Rights (FRA) (2019). Protecting migrant workers from exploitation in the EU: workers' perspectives. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf

Friberg, J. H. and Eldring, L. (2013). 'Labour migrants from Central and Eastern Europe in the Nordic Countries: patterns of migration, working conditions and recruitment practices'. *TemaNord Series 570*. Copenhagen: Nordic Council of Ministers.

General Labour Inspectorate Executive Agency (GLI EA) (2020a). The online meetings with future workers was part of the European campaign for declared work. Available at: <https://www.gli.government.bg/bg/node/9650>

General Labour Inspectorate Executive Agency (GLI EA) (2020b). Over 60% of employers who took part in testing the innovative method stated that they took action to improve work conditions. Available at: <https://www.gli.government.bg/bg/node/11456>



General Labour Inspectorate Executive Agency (GLI EA) (2021a). Annual report on the activity of GLI EA. Available at: <https://www.gli.government.bg/bg/node/11432>

General Labour Inspectorate Executive Agency (GLI EA) (2021b). A Bulgarian woman received her wage as a result of the joint actions of the Agency and German partners. Available at: <https://www.gli.government.bg/bg/node/11614>

Government.nl. (2020). Employment conditions of posted workers in the European Union Act. Available at: <https://wetten.overheid.nl/BWBR0038054/2020-03-01>

Government of Portugal (2021). Green Book on the Future of Work. Available at: <https://www.portugal.gov.pt/pt/gc22/comunicacao/documento?i=livro-verde-sobre-o-futuro-do-trabalho>

Hellenic Labour Inspectorate (SEPE) (n.d.). Undeclared work. Available at: <https://www.sepe.gov.gr/en/labour-relations/undeclared-work/features-and-policy-measures/>

Inspectie SZW (2020). *Jaarplan Inspectie SZW 2021*. Available at: <https://www.inspectieszw.nl/publicaties/jaarplannen/2020/11/11/jaarplan-2021>

Inspectie SZW (2021a). Complaints, tips and reports. Available at: <https://www.inspectoreszw.nl/contact/complaints-tips-notifications-and-reports>

Inspectie SZW (2021b). *Jaarverslag SZW 2020*. Available at: <https://www.inspectieszw.nl/publicaties/jaarverslagen/2021/05/12/jaarverslag-2020>

Inspectie SZW (2021c). *Inspectie SZW in coronatijd in 2020*. Available at: <https://www.inspectieszw.nl/jaarverslag-2020/vraag-en-antwoord/inspectie-szw-in-coronatijd-in-2020>

Inspección de Trabajo y Seguridad Social (ITSS) (2018). National Plan for Decent Work 2018-2020. Available at: https://www.mites.gob.es/ficheros/ministerio/plandirector/National_Plan_for_Decent_work.pdf

Inspección de Trabajo y Seguridad Social (ITSS) (2020). Annual report on employment inspections and social security of 2019 fiscal year. Available at: https://www.mites.gob.es/itss/web/Que_hacemos/Estadisticas/index.html

Inspección de Trabajo y Seguridad Social (ITSS) (2021). Annual report on employment inspections and social security of 2020 fiscal year. Available at: https://www.mites.gob.es/itss/ITSS/ITSS_Descargas/Que_hacemos/Memorias/Memoria_2020.pdf

Institute for Social Security (ISS) (2021). Simplified layoff (extraordinary measure to support the maintenance of employment contracts). Available at: <https://www.seg-social.pt/covid-19-entidade-empregadora-layoff-simplificado>

International Labour Organization (ILO), World Bank and International Monetary Fund (IMF). (2016). *Towards a framework for fair and effective integration of migrants into the labour market*. Report for G20. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_559139.pdf

Journal of Laws of 2004, No 99, item 1001. Law of 20 April 2004 on promotion of employment and labour market institutions. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=68870&p_lang=en

Journal of Laws of 2007, No 89, item 589. Law of 13 April 2007 on National Labour Inspectorate. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78032

Juul, K. (2017). 'Migration, transit and the informal: homeless West-African migrants in Copenhagen'. *European Journal of Homelessness*, 11(1), 131-151.

Karabchuk, T. and Soboleva, N. (2020). 'Temporary employment, informal work and subjective well-being across



Europe: does labour legislation matter?' *Journal of Happiness Studies*, 21(5), 1879-1901.

Kilhoffer, Z., De Groen, W.P., Lenaerts, K., Smits, I., Hauben, H., Waeyaert, W., Giacumacatos, E., Lhernould, J-P. and Robin-Olivier, S. (2020). Study to gather evidence on the working conditions of platform workers. Available at: <https://ec.europa.eu/social/BlobServlet?docId=22450&langId=en>

Kriuchkova, P., Sleznov, F., Fomchenko, D., Laikam, V., and Zakharchenkov, I. (2020). 'Methods of statistical estimation of circular migration and formal and informal employment in the Moscow agglomeration based on the integration of various data sources'. *Statistical Journal of the IAOS*, 32(2), 535-547.

Lima do Ó, J. (2021). *Os mecanismos de controle e intensificação do trabalho por meio das tarifas nas plataformas em Portugal*. Available at: <https://www.migalhas.com.br/depeso/349538/os-mecanismos-de-controle-e-intensificacao-do-trabalho-em-portugal>

Marchese, M. (2021). In Italy, the institutionalised exploitation of migrant care workers has been exacerbated by the pandemic. Available at: <https://www.equaltimes.org/in-italy-the-institutionalised?lang=en#.YT5V2J0zaUI>

Martins, P. (2021). All eyes on Odemira. Available at: <https://www.theportugalnews.com/news/2021-05-07/all-eyes-on-odemira/59694>

Ministry of Labour and Social Affairs (2021). Work by non-nationals – legal framework. Available at: <https://www.az.government.bg/pages/zaetost-na-chuzhdenci-normativna-uredba/>

Ministry of Family and Social Policy (2021). Declarations on entrusting work to a foreigner. Available at: https://wupgdansk.praca.gov.pl/en/web/lang/dla-bezrobotnych-i-poszukujacych-pracy/dla-cudzoziemcow/oswiadczenia-o-powierzeniu/?p_auth=o3fgDYPN&p_p_id=101_INSTANCE_WHKJNgEx0ewG&p_p_lifecycle=1&p_p_state=exclusive&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&101_INSTANCE_WHKJNgEx0ewG_struts_action=%2Fasset_publisher%2Fexport_journal_article&101_INSTANCE_WHKJNgEx0ewG_groupId=9432723&101_INSTANCE_WHKJNgEx0ewG_articleId=10217655&101_INSTANCE_WHKJNgEx0ewG_targetExtension=pdf#:~:text=The declaration of entrusting work to a foreigner entitles to,understandable for the foreigner before

Ministry of Labour and Social Policy (2018). Agreement approving the Strategic Plan of the Labour and Social Security Inspection for the period 2018-2020. Available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-5329

Ministry of Labour and Social Policy (2019). National Plan for Decent Work 2018-2019-2020. Executive Summary and First Outcomes. Available at: https://www.mites.gob.es/ficheros/ministerio/plandirector/National_Plan_for_decent_work_Executive_Summary_and_first_outcomes.pdf

Ministry of Social Affairs and Employment (2020). First recommendations of the Working Group on the Protection of Migrant Workers under the guidance of Emile Roemer. Available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2020/06/11/eerste-aanbevelingen-aanjaagteam-bescherming-arbeidsmigranten/Aanbevelingen.pdf>

Multicultural Centre Prague (n.d.). Towards stronger transnational labour inspection cooperation (STRONGLAB). Available at: <https://migrationonline.cz/en/about/project/stronglab>

Nagin, S.D. (2013). 'Deterrence in the twenty-first century'. *Crime and Justice*, 42(1), 199-263.

National Labour Inspectorate (PIP) (2020). Report on the activities of the National Labour Inspectorate 2019. Available at: <https://www.pip.gov.pl/pl/f/v/229168/Sprawozdanie%202019.pdf>

Notícias ao minuto (2020). ACT and Social Security conducted lay-off inspections. 350 actions adopted. Available at: <https://www.noticiasao minuto.com/economia/1517325/act-e-seg-social-realizaram-inspecao-ao-lay-off>



[off-adotadas-350-acoers](#)

- Organisation for Economic Co-operation and Development (OECD) (2018). Addressing the illegal employment of foreign workers. Available at: <https://www.oecd.org/els/mig/IMO-2018-chap4.pdf>
- Organisation for Economic Co-operation and Development (OECD) (2020). International Migration Outlook 2020 – Greece. Available at: <https://www.oecd-ilibrary.org/sites/2d808a82-en/index.html?itemId=/content/component/2d808a82-en>
- Palumbo, L. and Corrado, A (Ed.) (2020). Are agri-food workers only exploited in Southern Europe? Case Studies on Migrant Labour in Germany, the Netherlands, and Sweden. Open Society Foundation. Available at: <https://www.opensocietyfoundations.org/uploads/d953836c-8b9a-4cb5-bd48-0060f17cf5b5/are-agrifood-workers-only-exploited-in-southern-europe-20200715-report.pdf>
- Portuguese Immigration and Border Service (SEF) (2020). Working in Portugal. Available at: <https://imigrante.sef.pt/en/solicitar/trabalhar/>
- Presidency of the Council of Ministers (2021). Decree-Law No. 29-A/2021. Available at: <https://dre.pt/web/guest/home/-/dre/162450400/details/maximized>
- Rijksoverheid (2020). No second-class citizens. Recommendations to combat abuses among labour migrants in the Netherlands. Available at: <https://www.rijksoverheid.nl/documenten/rapporten/2020/10/30/tweede-advies-aanjaagteam-bescherming-arbeidsmigranten>
- Rye, J. F. and Scott, S. (2018). 'International labour migration and food production in rural Europe: a review of the evidence'. *Sociologia Ruralis*, 58(4), 928-952.
- Sabaté-Dalmau, M. (2018). 'Undocumented migration, informal economic work and peripheral multilingualism: challenges to neoliberal regimes?' *Language and Intercultural Communication*, 18(4), 362-376.
- Sasenkuvich, O. (2018). "But I liked it, I liked it": Revealing agentive aspects of women's engagement in informal economy on the EU external borders'. *European Journal of Women's Studies*, 26(2), 117-131.
- Staneva, I. (2021). Amendments to the Foreigners in the Republic of Bulgaria Act and the Labour Migration and Labor Mobility Act. Available at: <https://drp-legal.com/news/newsletter/>
- Tamin, J., Samuel, O., Suraya, A., Ebuenyi, I. D., Naicker, N., and Rajput-Ray, M. (2021). 'Vulnerable workers and COVID-19: insights from a survey of members of the international commission for occupational health'. *International Journal of Environmental Research and Public Health*, 18(1), 346.
- Targarona Rifa, N. and Donà, G. (2021). 'Forced unemployment or undocumented work: The burden of the prohibition to work for asylum seekers in the UK'. *Journal of Refugee Studies*, 34 (2), 2052-2073. Available at: <https://repository.uel.ac.uk/item/88xvv>
- Terziev, P. and Mineva, D. (2020). 'Boundaries of cross-border undeclared work in the European Union'. *Journal of Economic Boundaries and Transformation*, 1(1), 75-86.
- Trafikstyrelsen (2015). *Report on social dumping/rule shopping in aviation*. Copenhagen: Danish Transport Authority. Available at: <https://www.trm.dk/en/publications/2015/report-on-social-dumping-in-aviation/>
- Triandafyllidou, A. and Bartolini, L. (2020). 'Irregular migration and irregular work: a chicken and egg dilemma'. In S. Spencer and A. Triandafyllidou (Eds.) (2020). *Migrants with Irregular Status in Europe*. Cham: Springer, pp. 139-163.
- Tyldum, G. (2020). 'Surveying migrant populations with respondent-driven sampling. Experiences from surveys of East-West migration in Europe'. *International Journal of Social Research Methodology*, 24(3), 341-353.



- Tyldum, G. and Lillevik, R. (2021). 'Migration policies and irregular migration into Europe: A review of the current knowledge base'. *Fafopaper* 02.
- Urzi, D. and Williams, C.C. (2017). 'Beyond post-national citizenship: an evaluation of the experiences of Tunisian and Romanian migrants working in the agricultural sector in Sicily'. *Citizenship Studies*, 21(1), 136-150.
- van Nierop, P., Schönenberg, L. and Terziev, P. (2021). *Counteracting undeclared work and labour exploitation of third-country national workers*. Available at: <https://ec.europa.eu/social/BlobServlet?docId=23573&langId=en>.
- Williams, C.C. (2020a). A handbook of preventative approaches towards undeclared work. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736967.
- Williams, C.C. (2020b). Developing a holistic integrated strategic approach towards undeclared work – a toolkit. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3730934.
- Williams, C.C. and Horodnic, I.A. (2020). *Trends in the undeclared economy and policy approaches: evidence from the 2007, 2013 and 2019 Eurobarometer surveys*. Brussels: European Commission. Available at: <https://op.europa.eu/en/publication-detail/-/publication/9ae2e0d4-4f06-11eb-b59f-01aa75ed71a1>
- Zepos and Yannopoulos (2019). Recent reforms in employment legislation introduced by Law 4635/2019. Available at: <https://zeyya.com/newsletters/recent-reforms-employment-legislation-introduced-law-46352019>.



Annex 1: Overview of interviews

A total of eight interviews were carried out with 10 labour inspectors from national enforcement authorities and one legal advisor from an EU-level social partner. All interviews were conducted remotely via videoconferencing. Interviewees were asked to complete a short questionnaire prior to the interview (see Annex 2). The interviews served as the basis for the country case studies and informed the study in general.

Member State / social partner	Institution	Date conducted
The Netherlands	Inspectie SZW	7 July 2021
The Netherlands	Inspectie SZW	7 July 2021
Bulgaria	GLI EA	7 July 2021
Greece	SEPE	15 July 2021
Greece	SEPE	15 July 2021
Greece	SEPE	15 July 2021
European Trade Union Confederation (ETUC)		15 July 2021
Spain	ITSS	22 July 2021
Spain	ITSS	22 July 2021
Poland	PIP	23 July 2021
Portugal	ACT	6 August 2021
European Federation of Building and Woodworkers (EFBWW)		23 August 2021



Annex 2: Survey questionnaire

Part I: Closed questions

Please answer the six questions below to the best of your knowledge and experience. In case you have no concrete measurement of the issues regarded in the Part I questions, we would like to kindly ask for your best assessment, based on your experience.

1. In your experience, what is the level of participation of workers in undeclared work in your country in terms of share from all active citizens?
☐0% ☐1-5% ☐5-10% ☐10-20% ☐20-30% ☐30-50% ☐50-100%

2. In your experience, is your country mostly sending or mostly receiving country in terms of EU mobile and/or cross-border workers? Could you name the top three EU/EEA countries and top three third countries from which your country receives the most workers or to which it sends the most workers?

	Top three EU/EEA countries:	Top three third countries:
a. Mostly sending	(i) _____; (ii) _____; (iii) _____.	(i) _____; (ii) _____; (iii) _____.
b. Mostly receiving	(i) _____; (ii) _____; (iii) _____.	(i) _____; (ii) _____; (iii) _____.

3. In your experience, what is the level of participation of EU mobile or cross-border workers in undeclared work in your country in terms of share from all cases of undeclared work?

a. Mobile workers (EU-27 movers; usually long-term)	<input type="checkbox"/> 0% <input type="checkbox"/> 1-5% <input type="checkbox"/> 5-10% <input type="checkbox"/> 10-20% <input type="checkbox"/> 20-30% <input type="checkbox"/> 30-50% <input type="checkbox"/> 50-100%
b. Cross-border workers (EU-27 movers; usually short term)	<input type="checkbox"/> 0% <input type="checkbox"/> 1-5% <input type="checkbox"/> 5-10% <input type="checkbox"/> 10-20% <input type="checkbox"/> 20-30% <input type="checkbox"/> 30-50% <input type="checkbox"/> 50-100%
c. Posted workers (cross-border workers; usually short term)	<input type="checkbox"/> 0% <input type="checkbox"/> 1-5% <input type="checkbox"/> 5-10% <input type="checkbox"/> 10-20% <input type="checkbox"/> 20-30% <input type="checkbox"/> 30-50% <input type="checkbox"/> 50-100%
d. Workers in the road transport sector (cross-border workers; usually short-term)	<input type="checkbox"/> 0% <input type="checkbox"/> 1-5% <input type="checkbox"/> 5-10% <input type="checkbox"/> 10-20% <input type="checkbox"/> 20-30% <input type="checkbox"/> 30-50% <input type="checkbox"/> 50-100%

4. In your experience, what is the level of participation of third-country nationals in undeclared work in your country in terms of share from all cases of undeclared work?

a. Legally residing third-country nationals with a fully flexible work authorisation (i.e. they have all the rights as EU citizens)	<input type="checkbox"/> 0% <input type="checkbox"/> 1-5% <input type="checkbox"/> 5-10% <input type="checkbox"/> 10-20% <input type="checkbox"/> 20-30% <input type="checkbox"/> 30-50% <input type="checkbox"/> 50-100%
b. Legally residing third-country nationals with a restricted work authorisation (they have limited access to the labour market, such as limited working time, specific employer, etc.)	<input type="checkbox"/> 0% <input type="checkbox"/> 1-5% <input type="checkbox"/> 5-10% <input type="checkbox"/> 10-20% <input type="checkbox"/> 20-30% <input type="checkbox"/> 30-50% <input type="checkbox"/> 50-100%
c. Legally residing third-country nationals without a right to work/irregularly staying third-country nationals	<input type="checkbox"/> 0% <input type="checkbox"/> 1-5% <input type="checkbox"/> 5-10% <input type="checkbox"/> 10-20% <input type="checkbox"/> 20-30% <input type="checkbox"/> 30-50% <input type="checkbox"/> 50-100%

5. In your experience, what is the share of the different types of undeclared work in all cases of undeclared work among EU mobile or cross-border workers in your country?



- a. Under-declared work (partially declared short-term or permanent labour contract) ☐ less than 10% ☐ between 10% - 30% ☐ between 30% - 50% ☐ more than 50%
- b. Bogus self-employed ☐ less than 10% ☐ between 10% - 30% ☐ between 30% - 50% ☐ more than 50%
- c. Fully undeclared work (unregistered employment/self-employment) ☐ less than 10% ☐ between 10% - 30% ☐ between 30% - 50% ☐ more than 50%
6. In your experience, what is the share of the different types of undeclared work in all cases of undeclared work among third-country nationals in your country?
- a. Under-declared work (partially declared short-term or permanent labour contract) ☐ less than 10% ☐ between 10% - 30% ☐ between 30% - 50% ☐ more than 50%
- b. Bogus self-employed ☐ less than 10% ☐ between 10% - 30% ☐ between 30% - 50% ☐ more than 50%
- c. Fully undeclared work (unregistered employment/self-employment) ☐ less than 10% ☐ between 10% - 30% ☐ between 30% - 50% ☐ more than 50%
7. In your experience, what are the three most common sectors in which EU mobile or cross-border workers are involved in undeclared work in your country? (*Please pick only the top three for each category*):
- a. Under-declared work (partially declared short-term or permanent labour contract)
- ☐ Construction
- ☐ Agriculture
- ☐ Transport
- ☐ Hospitality (hotel/restaurant/tourism)
- ☐ Personal services (childcare/elderly/cleaning)
- ☐ Other: please specify
- b. Bogus self-employment
- ☐ Construction
- ☐ Agriculture
- ☐ Transport
- ☐ Hospitality (hotel/restaurant/tourism)
- ☐ Personal services (childcare/elderly/cleaning)
- ☐ Other: please specify
- c. Fully undeclared work (unregistered employment/self-employment)
- ☐ Construction
- ☐ Agriculture
- ☐ Transport
- ☐ Hospitality (hotel/restaurant/tourism)
- ☐ Personal services (childcare/elderly/cleaning)
- ☐ Other: please specify



8. In your experience, what are the three most common sectors in which third-country nationals are involved in undeclared work in your country? (*Please pick only the top three for each category*):
- a. Under-declared work (partially declared short term or permanent labour contract)
- ☐ Construction
 - ☐ Agriculture
 - ☐ Transport
 - ☐ Hospitality (hotel/restaurant/tourism)
 - ☐ Personal services (childcare/elderly/cleaning)
 - ☐ Other: please specify
- b. Bogus self-employment
- ☐ Construction
 - ☐ Agriculture
 - ☐ Transport
 - ☐ Hospitality (hotel/restaurant/tourism)
 - ☐ Personal services (childcare/elderly/cleaning)
 - ☐ Other: please specify
- c. Fully undeclared work (unregistered employment/self-employment)
- ☐ Construction
 - ☐ Agriculture
 - ☐ Transport
 - ☐ Hospitality (hotel/restaurant/tourism)
 - ☐ Personal services (childcare/elderly/cleaning)
 - ☐ Other: please specify