

COVID-19's impact on enforcement authorities' work and priorities

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discussion**

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1.0 Introduction

The eleventh meeting in plenary of the European Platform tackling undeclared work (the Platform) was held in Bratislava on 21-22 October 2021 as a hybrid meeting both onsite as well as online. The first day of this meeting was a thematic day dedicated to examining COVID-19's impact on enforcement authorities' work and priorities.

This thematic day took forward previous discussions on this issue. In 2020, at the start of the COVID-19 pandemic, the Platform held two webinars on the impacts of COVID-19.¹ In early 2021, there was also a webinar on combating fraud in the short-term financial support schemes² and from June to September 2021, a pilot Peer Learning Dialogue (hereafter PLD) was held on the lessons learned from the COVID-19 pandemic for the organisation of inspections and inspectorates, with seven countries represented (Greece, Ireland, Latvia, Norway, Portugal, Spain and Sweden).³

This report summarises the presentations and discussions at the thematic day.

The next section reports the presentations in the opening session setting the scene and addressing the changes in the labour market and the operations of enforcement authorities. This is then followed in the third and fourth sections by a report of the presentations (detailing the outcomes of the PLD) and the discussions that took place in four workshops, as follows:

The third section reports discussion of the lessons learned from the COVID-19 pandemic for the organisation of inspections, including a workshop on the use of alternative types of inspection to the physical inspection to detect and prevent undeclared work as well as a parallel workshop on changes in the planning and conduct of physical workplace inspections to detect and prevent undeclared work.

The fourth section then reports discussion of the lessons learned from the COVID-19 pandemic for the organisation of inspectorates, covering both a workshop on changes in ways inspectorates operate when tackling undeclared work and the new skills and competencies required by inspectorates, as well as a parallel workshop on teleworking and other changes in the world of work and their implications for inspectorates. The fifth and final section summarises the key learning outcomes in terms of the practical recommendations on the way forward.

2.0 Impacts of Covid-19 on undeclared work and enforcement authorities

The opening session began with a presentation by **Phillippe Marcadent** (ILO) on the **impacts of COVID-19 on the informal economy from a global perspective**. Globally, 6 out of 10 workers and 8 out of 10 enterprises are in the informal economy, although this ranges from 89 % of workers in sub-Saharan Africa to 14 % of workers with their main employment in the informal economy in Northern, Southern and Western Europe. In 2015, the ILO adopted Recommendation 204⁴ to facilitate transition to formality (which dovetails with the Platform's objective of transforming undeclared work into declared work). The ILO adopts this objective because workers in the informal economy are twice as likely as formal workers to be poor, are highly exposed to decent work deficits, including a

¹ Williams, C.C. (2020) *Tackling undeclared work: impact and responses to the coronavirus pandemic – internal Platform document*, European Platform tackling undeclared work

² Williams C. (2021a). *COVID 19: combating fraud in short-term financial support schemes*, European Platform tackling undeclared work.

³ Williams, C.C. (2021c) *The lessons learned from the COVID-19 pandemic for the organisation of inspections and inspectorates*, European Platform tackling undeclared work.

⁴ <https://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25res.pdf>

lack of social protection coverage (no guaranteed access to health care and no income support when stopping to work) and have low employability in decent work, with over half of workers in the informal economy having no education or only primary education, compared with 12.8 % among workers in the formal economy. Enterprises in the informal economy, meanwhile, have low productivity, low rates of savings and investment, and negligible capital accumulation, which make them particularly vulnerable to shocks.

Indeed, the presentation revealed that informal workers have been more adversely affected by the COVID-19 pandemic globally than formal workers. Examining the median change in formal and informal employment across 15 countries⁵ between 2019-Q2 and 2020-Q2, there had been a 20.7 % decline in the number of informal employees but only a 10 % decline in formal employees, and a 21.3 % decline in informal independent own-account workers but only a 18.8 % decline in formal independent own-account workers.

Informal workers also witnessed a significant 75.6% fall in their median monthly earnings (in 2016 PPP\$) in the first months of the pandemic in the advanced G20 countries and the proportion of informal workers in relative poverty increased by 50.9 percentage points from 29.5 % of all informal workers prior to the pandemic to 80.4 % of all informal workers during the first months of the pandemic.

This lesser impact on declared workers is hardly surprising because governments responded swiftly to protect workers, support jobs and income, and stimulate the economy and employment, using short-term financial support schemes,⁶ but this was only available to workers and economic units operating in the declared economy, not those previously operating in the undeclared economy.

However, it is also because informal workers were more prevalent in the sectors that were hardest hit by the pandemic, namely wholesale and retail trade, manufacturing, real estate and accommodation and food services. Moreover, 39% of women in informal employment were in these hardest hit sectors compared with only 29% of men in informal employment, meaning that women in informal employment were harder hit than men in informal employment.

Examining the distribution of informality across contractual types in the developed G20 countries, it was revealed that the proportion in permanent full-time employment working informally is low (14.8 %) compared with non-standard forms of employment, with 71.8% of temporary workers working informally, 80.7 % of temporary part-time employees, 70.8 % of temporary full-time workers, 66.1% of part-time employees and 17.7 % of permanent part-time employees. The intimation is that the contractual arrangements used during the recovery period will influence the rate of informality that will be witnessed.

This theme was continued in the presentation by **Dragoş Adăscăliţei** (Eurofound) on “**COVID-19: implications for employment and working life**”.⁷ Focusing upon the European Union, it was highlighted that many of the trends identified at the global level by the first speaker were being replicated at the EU level. By Q2 2020, there had been a historic drop of some 5 million jobs lost in the EU compared with a year earlier, although there was a rebound over the year so that by the end of 2020 the net job loss was 3.7 million jobs.

Akin to the global situation, some sectors have been hit harder than others. In the EU, the largest falls in jobs have been in accommodation and food service activities, administration and support services, and arts, entertainment and recreation. Conversely, jobs in knowledge-intensive services grew during the crisis as these sectors rushed

⁵ Argentina, Brazil, Chile, Costa Rica, Ecuador, Georgia, Mexico, North Macedonia, Occupied Palestinian Territory, Peru, Philippines, Serbia, South Africa, United States, Viet Nam

⁶ IMF (2020). Policy responses for COVID-19. <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>

⁷ Eurofound and European Commission Joint Research Centre (2021), *What just happened? COVID-19 lockdowns and change in the labour market*, Publications Office of the European Union, Luxembourg.

to transform or digitalise work processes in response to social distancing measures and higher levels of remote work.

Temporary workers were also disproportionately affected by the crisis, accounting for over three-quarters of net job losses in the EU27 during 2020. In terms of demographic groups, low-paid women and younger workers were the biggest losers, suffering the sharpest employment declines during the early most severe period of the pandemic. In other words, the most vulnerable workers in the pre-pandemic labour market experienced the worst socio-economic consequences during the crisis.

Assessing the extent to which remote working served as a buffer during the crisis, preserving jobs that might otherwise have been lost, across the EU27, the proportion of employees usually teleworking tripled in 2020 compared with 2019, reaching 10.8 % of all employees. Again, however, there were wide variations in the proportion usually teleworking ranging from 22.4 % of all employees in Finland to just 1.1% in Bulgaria.

The overall conclusion was that the impact of COVID-19 has been wide-ranging and heterogeneous. However, given that the sectors and occupations where undeclared work was most prevalent have been those that were most impacted by the pandemic, and that there has been a growth in non-standard employment and telework, there is potential for the growth of undeclared work in the recovery period. It will be therefore critical in the recovery phase to provide support for vulnerable workers.

This will require a smooth transition away from the employment retention schemes developed in response to the pandemic, and largely funded by a €100 billion ‘Support to mitigate Unemployment Risks in an Emergency’ (SURE) programme.⁸ These preserved jobs during the period of the pandemic by giving businesses financial support to temporarily reduce the hours of employees or suspend their employment, with government funding covering the hours not worked. However, and as the next speaker highlighted, these schemes have also been subject to abuse.

Nathalie Mortelé (Belgium) presented findings on **the abuse of short-term financial support schemes** in Belgium. Until now, little evidence has been available in EU member states on the extent of the abuse of the short-term financial support schemes. This presentation began to fill that gap.

In Belgium, short-term economic support measures were introduced for affected businesses and workers, including the self-employed. Flexible financial support schemes have been offered firstly for temporary unemployment, even if, for example, it has still been possible to work on certain days. Between 03/2000 and 09/2021, 174 845 employers and 1 674 559 employees took advantage of the scheme. From 13/03/2020 until 31/8/2021, 166 investigations were closed, 30 351 infringements were identified and there were 7 992 employers with infringements. To identify undeclared work, data matching and mining have been used, as well as complaints reported via the fair competition contact point and administrative controls. The major types of infringement identified have been: employees continuing to work in the company; activities carried out by interim agents and/or subcontractors (whether self-employed or not), and activities continued even though the employer declared that they were closed.

A second short-term financial support scheme has been a “bridging right” for self-employed persons from compulsory closed sectors and those witnessing a significant drop in turnover due to the pandemic regardless of the sector in which they operate, and those in quarantine or requiring childcare. In the first semester of 2021, 2 196 investigations were linked to this “bridging right”, of which 820 had a positive result. The estimated direct revenue is EUR 2 809 847.

A third abuse of the short-term financial support concerns compensation for the payment of social contributions. The possibility of deferring payment of social contributions was offered during the first lockdown period both for

⁸ European Commission 2020. *COVID 19- Economic package – multiannual financial framework 2014-2020*. Brussels: European Commission.

those obliged to close and those with a loss of turnover or decrease in wages amounting to 65%. 12 384 employers were involved, of which 61.5% were obliged to close and 38.5% reported a significant (65%) decrease in turnover and or reduction in wages. To identify potential abuse, complaints were investigated, orders from Labour Auditors, police services, data matching, and data exchange with the tax administration (VAT declarations/turnover figures). The controls used were inspection visits, written warnings and deadlines, and the transmission of findings relating to possible irregularities to other competent services. The types of abuse identified were that: the enterprise had been closed, but at the time of the check the activities had resumed; the enterprise has never been closed; the enterprise has been partially closed, but activity continued, either with temporary unemployed or with undeclared workers/illegals; and the enterprise has never been closed, and also no significant loss of turnover or decrease in the wage mass.

According to the draft audit report of the Court of Auditors, “Aid to enterprises and individuals in the context of the COVID-19 crisis”, the finding is that there is a need for a public inventory, coordination, complex regulation, control and data sharing, and monitoring and evaluation. The recommendations in relation to social fraud, including undeclared work, are that ex-post controls should be deepened, possible gaps in the controls identified and addressed, a coordinated approach adopted with a role for SIIS, and an overall evaluation of measures undertaken (including the lessons from an evaluation of individual support measures) to help planning for future crises.

The next steps for SIIS and the social inspectorates in relation to COVID aid fraud is for the SIIS strategic plan to adopt a risk-oriented and evidence-based approach; invest in technological developments, digitalisation & standardisation of processes (including data matching and mining, and data exchange), and strengthen cooperation. The Action Plan for combating social fraud 2022 will thus include some new specific actions, namely optimizing coordination and collaboration to address COVID aid fraud and conducting an impact study of COVID-19 and the development of a roadmap for further crises.

The wider adoption of technological developments to tackle undeclared work was addressed in the presentation by **Juan Chacaltana (ILO)** and **Vicky Leung (ILO)** on **“E-formalisation: applying new technologies in enforcement authorities to facilitate the transition to formality”**. “E-formalization” refers to the application of new technologies in public initiatives, programmes and policies to facilitate the transition to formality. When tackling undeclared work, the lockdown and physical distancing measures resulting from the COVID-19 pandemic has resulted in a decrease in onsite workplace inspections in Europe and the greater use of e-initiatives as a complement to the traditional onsite workplace inspection. Therefore, the COVID-19 pandemic has made e-formalization more relevant and pertinent, accelerating the trend towards the use of innovative, information-intensive and connectivity-based e-initiatives for tackling undeclared work. Indeed, reviewing the association between the adoption of digital technologies and the prevalence of undeclared work, those European countries with a low level of adoption of digital technologies, measured by the Digital Economy and Society Index (DESI), have significantly larger undeclared economies (Williams, 2021b).

Given this, the diverse array of e-initiatives being pursued in Europe were presented, along with good practice examples across European countries. Reporting the findings of an ILO report on “E-formalisation in Europe”,⁹ it was shown that these e-initiatives are being applied across the full spectrum of policy approaches and measures used for tackling undeclared work, namely:

- *Improving the risks of detection* – E-initiatives include: the development of e-registers of workers and businesses; advanced data mining tools to detect and prevent undeclared work (e.g., MiningWatch, Belgium); smart ID cards; electronic complaint reporting tools; data-driven notification (“nudge”) letters, and certified cash registers (e.g., Belgium, Hungary, Slovenia, Sweden).

⁹ Williams, C.C. (2021b) *E-formalisation in Europe*, ILO, Geneva. https://www.ilo.org/employment/areas/e-formality/WCMS_823279/lang--en/index.htm

- ▶ *Sanctions* – E-initiatives include: new sanction systems to facilitate formalization only made possible due to the existence of e-registers; online compliance lists, and non-compliance “naming and shaming” lists.
- ▶ *Improving the ease and benefits of operating declared*, using:
 - ▷ Supply-side incentives to make it easier and/or more beneficial for businesses and workers to operate in the formal economy. E-initiatives include: making declared work easier using online e-registration of businesses and workers; pre-filling tax returns; using entrepreneurial accounts to simplify tax payments (e.g., Estonia); online tax calculators (e.g., Finland), and online tax behaviour rating tools.
 - ▷ Demand-side incentives targeting customers with rewards for using formal goods and services. E-initiatives include: receipt lotteries (e.g., Romania); initiatives to incentivise electronic payments and deter and limit cash payments (e.g., Greece); and social label e-initiatives to encourage the purchase of declared goods and services.
- ▶ *Education and awareness raising* – E-initiatives include: e-announced advisory inspections; smart cards and apps to inform workers of their rights; use of Facebook messenger to provide advice and support; apps to allow citizens to evaluate the impact of their participation in the informal economy, and an array of online videos, virtual reality films, interactive games and quizzes to inform either suppliers or purchasers of the benefits of declared work or costs of undeclared work.
- ▶ *Modernizing formal institutions* – E-initiatives include e-services to make governments more customer-friendly and easily approachable so as improve trust in government and prevent participation in undeclared work by enhancing perceptions of procedural and redistributive justice and fairness across government.

The lessons learned from this evaluation of the use of e-initiatives were that: it is possible to scale-up and transfer such e-initiatives to other countries; there is a need to introduce more widely the ‘once only principle’ (i.e., citizens, workers and employers only providing information once to government institutions); the need to consider privacy and data protection issues when introducing e-initiatives; the recognition that many of these e-initiatives could be public-private partnership initiatives; the need for social dialogue and inclusion of social partners in decision-making on e-services; and that technology is the present and the future but does not replace the fundamentals of the transition to formality.

Widening the debate on the future of work beyond technological developments, **Magnus Falk (Sweden)** gave a presentation on **“Work today and in the future: challenges and opportunities identified by the Nordic labour inspectorates”**. This presentation reported the findings of a document commissioned by the Nordic Director Generals at the labour inspectorates to better prepare the labour inspectorates for the future of work. The report was authored by the Nordic Future Work Group and published in September 2020.¹⁰ The focus upon occupational safety and health and labour inspection is not common in future of work studies and analyses.

Some of the main factors affecting the changes in work include: rapidly evolving technologies and might stretch our biological limits leading to serious health and safety consequences; constant surveillance leading to new ways to monitor the performance of work from distance and performance evaluations that affect for example salaries; more complex employer-worker relationships, including the organisation of work and control over work, working-time, work procedures etc. are being transferred from the supervisors to individual workers, and even risk assessment transferred to workers; climate change and the associated OSH risks must be profiled and addressed; non-communicable diseases which will pose significant OSH challenges as we move towards a more automated and digitalised work-life; and working from home leading to isolation, lack of guidance from the supervisor and

¹⁰ Mattila-Wiro, P., Samant, Y., Husberg, W., Falk, M., Knudsen, A, Saemundsson, E. (2020) *Work today and in the future: perspectives on Occupational Safety and Health challenges and opportunities for the Nordic labour inspectorates*, Ministry of Social Affairs and Health, Helsinki. Available at: <http://urn.fi/URN:ISBN:978-952-00-7172-1>

long working hours. Especially alarming are the many risks the technological and organisational changes cause to the psychological well-being of workers.

These changes in the world of work result in the need for specific changes in labour inspectorates, including: the inclusion of environmental and climate change's impacts in risk-assessments wherever relevant; the need to design interventions for protecting and promoting the health of workers to prevent musculoskeletal and psychosocial disorders including non-communicable diseases; the need for more know-how on assessing the mental stress experienced by employees; more cooperation with designers of artificial intelligence, robotics and smart wearables and more OSH experts and labour inspectors who are specialised in artificial intelligence and digitalization; a review of national OSH legislation to assess if it meets the challenges of the future of work; safeguarding of worker privacy and data protection by limiting unnecessary worker surveillance, tracking, and monitoring; and ensuring the implementation of workplace policies to maintain an adequate work-life balance in order to enhance the well-being of workers. Focus will be required on risk assessments of women, migrants, the elderly and young in vulnerable working situations, and the risk of violence, harassment and threats at work included in the risk assessments, especially for the service and care sectors and other sectors in which women are the majority.

On tackling undeclared work, the conclusion was that these changes in the world of work are causing an accelerating exploitation of people and other problems like tax fraud and bogus self-employment, and that labour inspectorates have a key role to play in combating these issues. This requires the training of inspectors in detecting signs of undeclared work and how to forward the information to relevant authorities, and the greater use of risk-based approaches to target the sectors and companies in which undeclared work and OSH risks are most prevalent.

The presentation concluded that the Platform fulfilled an important task in facilitating knowledge exchange and capacity building across countries, and that more 'strategic analysis' is needed in the future by the Platform (e.g., of certain risk sectors, and tackling undeclared work in cross-border situations using quick and precise information exchange). The report of The Nordic Future of Work group is an example on how important it is to include the whole spectrum of challenges for labour inspectorates and that undeclared work is not an isolated issue.

In the resultant discussion of these presentations, participants drew out the need for (i) a holistic approach to be adopted when tackling undeclared work in the recovery period; (ii) greater involvement of tax authorities and social partners and (iii) recognition that tackling undeclared work and tackling other issues (e.g., OSH matters) are inextricably inter-related, and that this needs to be more explicitly recognised.

3.0 Future organisation of inspections

Since early January 2020 when a new strain of coronavirus (SARS-CoV-2) producing a respiratory disease (COVID-19) began spreading across the globe, there has been the closure of businesses and the introduction of health measures to restrict movement and the spread of the virus. This has led in labour inspectorates to:

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

Each of these issues was discussed in individual parallel workshops.

3.1 Workshop 1: Changes in the planning and conduct of physical workplace inspections during the COVID-19 pandemic

During the pandemic, there have been changes in the way labour inspectorates plan and conduct physical workplace inspections to detect and prevent undeclared work.¹¹ These changes include:

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

To commence the workshop on this issue, **Pedro Costa (Portugal)** reported the following findings of the 2021 Peer Learning Dialogue (PLD) involving seven countries:

- ▶ The perception of the PLD participants was that physical inspections will reappear as the predominant form of inspection once the pandemic is over and that remote inspections can be time-consuming because more paperwork is often required.
- ▶ Nevertheless, the pandemic has made labour inspectorates focus upon whether a physical inspection is always necessary, or some alternative type of inspection could instead occur. This change could continue in the future. Risk assessment to plan when a physical inspection should occur has become more normal and could continue in the future.
- ▶ There is a shared understanding among inspectors that physical inspections are necessary and effective. However, there is a need to collect evidence on the value of physical onsite inspections in tackling undeclared work. Therefore, what evidence could be collected (e.g., by sector) to show the value of physical onsite inspections compared with other alternative types of inspection (e.g., desktop)? PLD participants agreed on the importance of collecting such evidence. It was concluded that a future activity would be useful on “Evaluating the effectiveness of onsite inspections in detecting and preventing undeclared work”.
- ▶ Using apps for inspectors to access databases to get real-time data during on onsite inspections could continue and be further developed in the future, including for the purpose of joint and concerted cross-border inspections.
- ▶ Hygiene issues related to use of pool cars (where used), including cleaning them after using them for inspections, could continue in the future.
- ▶ Contact and time spent in the workplace could continue to be less. Physical distancing has led to recognition of the value of spending less time in the workplace. For example, inspectors could do more not onsite, and make greater use of short quick unannounced inspections, such as the ‘streetscape’ approach of inspecting all premises in a defined area (such as a city street, industrial estate, or businesses park) currently being used in Ireland.
- ▶ During onsite physical inspection, rather than use only paper-based questionnaires to employees, one could also give employees a hyperlink to the questionnaire for them to complete and return.

¹¹ See Williams, C.C. (2020) *Tackling undeclared work: impact and responses to the coronavirus pandemic – internal Platform document*, European Platform tackling undeclared work.

- ▶ Enforcement authorities could experiment more with digital recording of inspections that can be watched again afterwards for visual clues in responses.
- ▶ Use of PPE could continue in future (e.g., masks or ear plugs used in the past and newer forms adopted recently).
- ▶ There is a need to develop soft skills of inspectors such as appropriate communication skills (e.g., language skills, ability to create trust with and listen to workers).

This presentation was then followed by a discussion of four questions:

- ▶ Have your authorities undertaken greater risk assessment since the pandemic began of whether a physical inspection is necessary? If so, should this continue in the future?
- ▶ What other changes have you made to planning and conducting physical inspections which should continue in the future (e.g., hygiene, contact and time spent in workplace, digital recording)?
- ▶ Are physical inspections vital and effective compared with alternative types of inspection, and if so, how can it be proven?
- ▶ Is it worthwhile ELA holding events on: (1) “Lessons learned from the COVID-19 pandemic for the organisation of onsite inspections” and/or (2) “Evaluating the effectiveness of onsite inspections in detecting and preventing undeclared work”?

Have your authorities undertaken greater risk assessment since the pandemic began of whether a physical inspection is necessary? If so, should this continue in the future?

On the issue of whether authorities had undertaken greater risk assessment since the pandemic began of whether a physical inspection is always necessary, and whether this should continue in the future, the conclusion was that this had occurred. However, even though there has been greater risk assessment, there has been a need to balance the safety of inspectors but also a need to show with physical inspections that legislation is being enforced. There was widespread agreement on the importance of physical inspections.

What other changes have you made to planning and conducting physical inspections which should continue in the future (e.g., hygiene, contact and time spent in workplace, digital recording)?

On what other changes had been made to planning and conducting physical inspections which should continue in the future, a wide array of issues were noted, including retaining new hygiene standards (e.g., cleaning inspectorate cars after usage), reducing contact and time spent in workplace, and digital recording of inspections.

Are physical inspections vital and effective compared with alternative types of inspection, and if so, how can it be proven? Is it worthwhile ELA holding events on: (1) “Lessons learned from the COVID-19 pandemic for the organisation of onsite inspections” and/or (2) “Evaluating the effectiveness of onsite inspections in detecting and preventing undeclared work”?

The view of participants was that physical inspections are vital and effective compared with alternative types of inspection, but that there was a need for an evaluation of the effectiveness of onsite and physical inspections when tackling undeclared work compared with other types of inspection and other measures, such as notification letters. There was also a view that labour inspectorates need to constantly evaluate their work and adapt to new tools, such as artificial intelligence and data mining. The issue of getting the balance right between physical inspections and other tools to detect and prevent undeclared work was discussed, as was the issue of when there needs to be physical contact with employees and employers, which was particularly felt to be the case when workers are potentially in a vulnerable situation. In addition, the full involvement of inspectors in the field in evaluating the value of onsite inspections was discussed as well as how social partners could be involved in both onsite inspections and alternatives to the onsite inspection, such as risk assessments and reporting violations to the authorities.

The workshop concluded that it could be worthwhile considering holding future events on:

- (1) “Lessons learned from the COVID-19 pandemic for the organisation of onsite inspections” and
- (2) “Evaluating the effectiveness of onsite inspections in detecting and preventing undeclared work”?

3.2 Workshop 2: Adopting alternative types of inspection to the physical inspection

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

- ▶ remote inspections via telephone;
- ▶ remote inspections via video conference;
- ▶ postal and documentary inspections (i.e., desk-based inspection from office, including through cross-referencing of information or databases), and
- ▶ observation inspections (although these can be seen as a form of physical inspection).

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

Therefore, the crisis has raised issues of how inspections are conducted, that need to be taken forward in the recovery period to identify alternatives and complementary initiatives to the physical on-site inspection at the national and cross-border operational level. This desire was voiced at the 2020 webinars to differing degrees by many Platform representatives (e.g., **Belgium, Greece, Ireland, Portugal, Spain, Sweden**).

However, the debate and discussion within and across enforcement authorities on these alternatives to the physical workplace inspection is **when they should be used and for what purpose**. There is also a need for evidence to be collected in enforcement authorities on the effectiveness of these alternative types of inspection compared with the physical inspection to detect and prevent undeclared work.

To commence the workshop on this issue, **John Kelly (Ireland)** reported the following findings from the 2021 pilot Peer Learning Dialogue (PLD) involving seven countries:

- ▶ The value of electronic registers/databases and data mining in enabling risk assessment to occur to determine inspection targets was recognised. The pandemic had revealed the importance and value of labour inspectorates using digital technologies to undertake their functions (e.g., to conduct risk assessment to select businesses for inspection, and provide information and advice).
- ▶ Where the strategic objective of a labour inspectorate is the number of onsite inspections conducted, this could be changed. This is in recognition that there are numerous types of inspection (e.g., announced and unannounced onsite, desktop/documentary inspections). A PLD participant suggested that labour inspectorates' key performance indicators (KPIs) on inspections could include not only the number of physical inspections (perhaps disaggregated) but also the number of desktop inspections, number of notification letters, etc. These should also measure the number of changes that resulted (e.g., the number of labour relations legitimised) and a 'test, learn and adapt' approach should be adopted to measure efficiency and effectiveness, so that enforcement is based also on quality-oriented KPIs as well as quantity-oriented KPIs.
- ▶ Physical inspections are essential for perceived risky/non-compliant businesses (e.g., for working time violations and other forms of undeclared work).
- ▶ If the risk assessment is that the organisation is compliant, then inspectorates could use desktop/documentary/postal inspections more often. This is the case for example, with large entities like municipalities and known established entities/companies. However, using desktop inspections with small/unknown entities was viewed by some PLD participants as creating more work and a more time-consuming process because of the time required to obtain and verify (potentially fraudulent) documents. The cost/benefit of the exercise seems of little utility with regards to potentially non-compliant businesses/entities.
- ▶ If desktop inspections (i.e., documentary and/or postal inspections undertaken from the office) are used to inspect potentially non-compliant businesses, then this will require inspectorates to identify which complaints regarding labour law issues (payments, salaries, firing etc.) can be solved with document exchange and asking opinions from both parties in written form and without a need to physically visit the company. And which complaints cannot in their country. Evidence from PLD participants suggest that largely (although not exclusively) due to the pandemic, countries have been using desktop inspections. Sharing learning on where this fits with the traditional role of inspections, the situations where this could be used, and when it works and when it does not, requires careful consideration. PLD participants had various views. Some thought that it was only relevant in relation to larger compliant organisations. PLD participants also asserted that one of the major drawbacks with desktop inspections is the lack of a worker perspective. Given that obtaining the worker perspective is difficult even in physical inspections, it was asserted that this could be even more of a challenge when conducting desktop inspections. An additional issue, therefore, is whether this worker perspective can be explicitly built into the design of the desktop inspection process. There was also a perception that desktop inspection was not in many contexts effective at uncovering undeclared work. A conclusion was that if desktop inspection is used, it is necessary to conduct a risk assessment of the business first. This issue of when a desktop inspection could be used (if at all), and where it works and when it does not, could be part of a future activity on "Evaluating Complementary Inspection Types to Onsite Inspections".
- ▶ Labour inspectorates could make greater use of combining onsite and other forms of inspection, such as desktop inspections (e.g., initial meetings with compliant businesses at a distance, then physical inspection, and follow-up meetings at distance). Indeed, the experience of Norway was that they had been conducting desktop OSH inspections for many years but had serious concerns regarding the utility of desktop inspections via-a-vis undeclared work. They agreed that there might be added value of desktop inspections in inspectorates as they can be cost beneficial in terms of planned inspections with regards to compliant businesses. However, their experience suggests that desktop intervention may not be an effective intervention in terms of tackling undeclared work. Desktop inspections might serve the purpose of initial screening and as part of the process

but are insufficient on their own. That is, desktop inspections may be a means to an end, but are not an end in themselves. It is essential that onsite inspections follow.

- ▶ Before taking a decision on whether to adopt physical or non-physical inspections, an evaluation of their effectiveness is required by inspectorates. For example, what is the comparative cost of documentary inspections compared with physical inspections (i.e., how many an inspector can resolve per week compared with resolving via onsite inspections)? What is the strike/success rate of documentary inspections at resolving complaints compared with the success rate of using physical visits? Reviewing the evidence in their countries, PLD participants suggest that, although there is a shared view that physical inspections are more effective, concrete evidence that this is the case could be gathered, mapping in which types of cases and for what purposes physical inspections are particularly useful, including how they can be effectively combined with other inspection methods. ITSS in Spain, for example, has performed non-physical inspections for many years. It was highlighted that evaluating the effectiveness of physical vs non-physical inspection depends on the specific target (subject, type of company, etc.) and must be determined case by case and should be evaluated ex-ante as well as ex-post. PLD participants pointed to the empirical evidence on physical OSH inspections which indicates the value of onsite inspections as opposed to other forms of intervention, especially the classic study designed by UCLA, Harvard and Boston University on the positive impact of random physical inspections on OSH in the USA.¹² In 2020, similarly, the Norwegian labour inspectorate designed a randomized controlled study in collaboration with their National Institute for OSH, where physical inspections and digital guidance are being compared to assess the impact on OSH compliance in home-based care, with the results expected by 2022/23. Therefore, there are methodological lessons to be learned from OSH when designing evaluation methods for comparing the impact of physical inspections with other types of intervention on detecting and preventing undeclared work. Designing a methodology and conducting evaluations could be a part of a future activity on “Evaluating Complementary Inspection Types to Onsite Inspections” or the core part of a separate activity on “Evaluating the effectiveness of onsite inspections in preventing undeclared work”.
- ▶ There is a need to consider the impact on inspectors of a shift towards more postal/desktop/documentary inspections, such as the need for competencies in using digital tools and whether technicians might be used to do these desktop inspections. The skills and competencies inspectors require need to be identified. In addition, career pathways need to be identified. Likewise, the feasibility of using non-inspector technicians to do desktop inspections can trigger many questions: What are the challenges (e.g., whether non-inspectors have power in law to send out letters to businesses)? What skills and competencies would be required by these non-inspector technicians? How could a pilot experiment be conducted on this issue? Is it possible to develop a career path (e.g., from working in the call centre, to doing desktop inspections and then physical inspections)? How can input from workers be included in a desktop inspection? Discussion of these questions could be part of a future activity on “Evaluating Complementary Inspection Types to Onsite Inspections”.

This presentation was then followed by a discussion of four questions:

- ▶ Is an objective of your inspectorate to conduct a specific number of physical inspections and is it necessary to change this?
- ▶ When and for what purpose could alternative types of inspection to the physical on-site inspection be used?

¹² Levine, D.I., Toffel, M and Johnson, M. (2012) Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss, *Science* Vol 336, Issue 6083, pp. 907-911, <https://www.science.org/doi/abs/10.1126/science.1215191>

- ▶ Do your authorities combine onsite and other forms of inspection when inspecting a business (e.g., desk-top for initial meeting with compliant business, then physical inspection, and follow-up meeting at a distance)? Is this a way forward?
- ▶ Have your authorities evaluated the benefits and/or effectiveness of different forms of inspection (e.g., the strike/success rate of documentary inspections at resolving complaints compared with physical visits)? Is better evidence required?
- ▶ Could technicians be used for desk-top/documentary/postal inspections, with inspectors only doing the physical inspections? Is it possible to develop a career path (e.g., from working in the call centre, then doing desk-top inspections and then physical inspections) in your country?
- ▶ Is it worthwhile ELA holding an event on “Complementary Inspection Types to Onsite Inspections”?

Is an objective of your inspectorate to conduct a specific number of physical inspections and is it necessary to change this?

On the issue of whether some inspectorates have an objective of conducting a specific number of physical inspections and whether it is necessary to change or complement this target, the finding of a workshop vote was that some inspectorates are not doing only onsite inspections and that the actual number of physical inspections was still relevant. Therefore, this needs to be recognised in the key performance indicators (KPIs) of such inspectorates.

When and for what purpose could alternative types of inspection to the physical on-site inspection be used? Do your authorities combine onsite and other forms of inspection when inspecting a business (e.g., desk-top for initial meeting with compliant business, then physical inspection, and follow-up meeting at a distance)? Is this a way forward?

Examining when and for what purpose alternative types of inspection to the physical onsite inspection could be used, the workshop discussion displayed that there was considerable heterogeneity concerning the circumstances and purposes in different authorities. **Norway**, for example, considered that alternative types of inspection were not useful *per se*, especially in relation to tackling undeclared work, but could be used in addition to, not instead of, onsite inspections. **Spain** had used desk-top inspections to tackle social security issues for many years, including prior to the pandemic, as had **Greece**, particularly in relation to the mediation of labour law issues (e.g., salaries, firing of staff). So too had the tax authority in **Slovenia** used desktop inspections for tax audits for many years, although they asserted the continuing need for onsite visits in some cases. In **Ireland**, desktop inspections were viewed as useful for some compliant businesses, but it was questioned whether resources should be allocated to desktop inspections of largely compliant businesses rather than to onsite inspections of potentially non-compliant businesses. **Belgium**, meanwhile, wondered whether more could be seen from a remote inspection using data mining than can be seen onsite during an inspection. Indeed, a 2021 survey conducted among inspectors in **Sweden** had revealed that although some three-quarters of inspectors surveyed thought that the quality of desk-top inspections was not the same compared with on-site inspection, some two-thirds of inspectors thought that desk-top inspections had led to enough facts to be able to make demands according to the goal of the inspection.

Many authorities, therefore, saw the value in combining onsite and other forms of inspection when inspecting a business. For those doing so, one of the common approaches was to use a desk-top inspection for an initial analysis, or an initial meeting with a compliant business, then a physical inspection, and this was sometimes followed-up by a meeting at a distance. On whether this is a way forward, the workshop concluded that these are

not alternatives to the onsite inspection. As **ETUC** stated, and workshop participants unanimously agreed, they cannot replace onsite inspections, but they can **complement** onsite inspections.¹³

During this discussion, it was also identified that there were many additional tools being adopted that can complement and/or improve onsite inspections, such as data matching and mining, and notification letters to name but two discussed. There was also mention that there is the growth of big data and that the use and interrogation of social media has been under-explored. Therefore, a future event on social media analysis and the use of social media in tackling undeclared work might be an innovative way forward.

Have your authorities evaluated the benefits and/or effectiveness of different forms of inspection (e.g., the strike/success rate of documentary inspections at resolving complaints compared with physical visits)? Is better evidence required?

Discussing whether authorities have evaluated the benefits and/or effectiveness of different forms of inspection (e.g., the strike/success rate of documentary inspections at resolving complaints compared with physical visits), the conclusion was that little evidence was available on this issue. On whether better evidence is required, the discussion concluded that it would be useful to review the evidence available to justify the near universal assumption of labour inspectors that onsite inspections are the most effective method and to discuss how an evidence-base could be collected. The unanimous view of participants was that a better evidence-base is required.

Could technicians be used for desk-top/documentary/postal inspections, with inspectors only doing the physical inspections? Is it possible to develop a career path (e.g., from working in the call centre, then doing desk-top inspections and then physical inspections) in your country?

Discussing the issue of whether technicians could be used for desk-top/documentary/postal inspections, with inspectors only doing the physical inspections, and whether it is possible to develop a career path (e.g., from working in the call centre, to doing desk-top inspections and then physical inspections) in their countries, the participants felt that this could be explored further, especially in terms of the barriers and challenges involved in moving in this direction (e.g., legal barriers, the knowledge and competencies required by technicians). Overall, the majority thought that this was a division of labour that could potentially be adopted in inspectorates.

Is it worthwhile ELA holding an event on “Complementary Inspection Types to Onsite Inspections”?

The conclusion of the workshop was that it was unanimously agreed to be worthwhile holding an event on “Complementary Inspection Types to Onsite Inspections”. This could be a mutual learning and capacity building event that discusses data on the effectiveness of various types of inspection and different combinations, and presents ‘good practice’ cases (e.g., on how to do desk-top inspections and telephone inspections) that are potentially transferable to other countries.

¹³ ETUC also pointed to the fact that the past decade has resulted in a fall in the total number and resources of labour inspections in 17 Member States. In other words, it is particularly important that the aim of alternative tools is not to further reduce the number of physical inspections, but to help inspectorates better target these physical inspections. See e.g. <https://www.etuc.org/en/pressrelease/huge-fall-labour-inspections-raises-covid-risk>

4.0 Future organisation of inspectorates

Since the pandemic began, there have been not only changes in the organisation of inspections. There have also been:

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

Each of these issues was discussed in individual parallel workshops.

4.1 Workshop 3: Changes in ways inspectorates work and new skills and competencies required by inspectorates

Beyond the changes in how inspections are conducted, there have been changes in the ways inspectorates operate during the pandemic.¹⁴ These strategic, operational and human resource management changes have included:

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

Cecilia Mobach (Sweden) opened the workshop by presenting the reflections on this topic of the seven countries involved in the 2021 Peer Learning Dialogue. These were:

- ▶ Most staff in most inspectorates want a return to pre-pandemic normality across most functions. However, there are opportunities for some changes from lessons that have been learned during the pandemic.
- ▶ There has been greater recognition of the value of using data analysis to detect and prevent labour law violations during the pandemic. This could continue to be prioritised for further investment after the pandemic and will require: (i) the growth of staff with the necessary data analytical skills and (ii) ensuring that processes exist for inspectors to provide feedback when developing the predictive models so that they become more effective.
- ▶ There is also a need to look at greater data sharing at the national level. The pandemic has intensified the need for this.

¹⁴ See Williams, C.C. (2020) *Tackling undeclared work: impact and responses to the coronavirus pandemic – internal Platform document*, European Platform tackling undeclared work.

- ▶ Given the shift towards greater use of data analysis, a next step for the future could be to start to consider whether national Employment Registers can be merged to create a pan-EU Employment Register, which would facilitate the direct user-friendly quick access to information and would help detect and prevent undeclared work at the EU and cross-border level.
- ▶ Greater resource could continue to be dedicated to distance-oriented digital solutions when tackling undeclared work, in line with [Digital Compass 2030](#). These include: the use of social media and websites for both information distribution as well as complaint reporting; and the continuing use and development of mobile apps for distance consulting. The use of social media both for information distribution and complaint reporting, and sharing of good practice (e.g., [“Know your rights” in Norway](#)), could be the subject of a future Platform work programme activity (e.g., channels most effectively used for targeting different groups).
- ▶ Greater home-based working by inspectorate staff could continue. Management and control systems need refining and developing to enable this to continue.
- ▶ Greater use of virtual staff meetings could continue in inspectorates. However, some office-based meetings will remain necessary for building social capital between team members.
- ▶ There has been greater understanding developed of managing staff at a distance in inspectorates.
- ▶ The investment in online training of staff by inspectorates could continue in the post-pandemic period. This is effective because it reduces the need for travel from local and regional inspectorates to a central location to receive training. All training could be video recorded for use in the future.
- ▶ The pandemic has displayed the value of joined-up action via task forces and cross-government coordination and cooperation on strategy, operations and data mining, sharing and analysis. This impetus could continue in the post-pandemic period in the realm of tackling undeclared work.
- ▶ There have been fewer visits of customers to inspectorates with information after inspections and approaches to the inspectorates by email and phone had increased. This could continue to be dealt with via digital means in the post-pandemic period.
- ▶ The pandemic resulted in providing remote electronic access to resources for inspectorate staff (e.g., inspection case management databases; other databases) both in the field and when working from home. This could continue in the post-pandemic period. Learning could be shared such as via a Platform seminar/thematic review workshop on “E-formalisation: digital solutions to prevent undeclared work” to identify further Member State good practices.
- ▶ The result of all these changes is that inspectorate staff require new competencies and skills, especially ‘soft skills’. To extend the “train the trainers” approach in joint and concerted inspections being pursued by ELA, an international training programme for labour inspectors could be developed within ELA. The PLD participants have developed the following very provisional list of topics and ideas on the skills and competencies that could be developed in in the future such a training programme and some delivery methods for achieving this:
 - ▷ Training in (1) ‘content-specific’ skills such as why tackle undeclared work, practical aspects of doing inspections, training in cross-border inspections (to train cross-border inspectors), training in OSH for undeclared work inspectors, training in the use of social media, developing harmony in common principles for inspections in EU, improving data sharing intra- and inter-nationally (including training on the use of Internal Market Information System), learning better how other inspectorates operate, communications training, technology training, understanding data better and using data systems, use of AI in inspections, developing shared views and common training on specific topics (especially on trafficking in human beings), and (2) developing human capital ‘soft skills’ such as empathy, oral communication skills, adaptability, emotional intelligence, resilience, handling cultural differences (inter-

cultural communication), training in conflict resolution, mediation, people management, and interviewing employers and employees.

- ▷ Training learning formats and delivery methods could include: a digitally delivered distance learning course in modules; in small groups online; in-person training delivered in Member States using the train the trainer model; keeping diaries to collect material, routines, scenarios; training in “mirroring”; role-play sessions where the inspector takes the role of the employer and/or employee during an inspection; case studies examination, etc.

This presentation was then followed by a discussion of three questions:

- ▶ Given the trend towards greater data analysis, what do you think about the feasibility of merging national Employment Registers to create a pan-EU Employment Register to detect and prevent undeclared work? What are the major challenges that will need to be overcome?
- ▶ In line with Digital Compass 2030, what e-government solutions have your authority adopted to detect and prevent undeclared work? Should a Platform event be organised on “E-formalisation: digital solutions to prevent undeclared work”?
- ▶ Are you supportive of the PLD proposal that the ELA could consider the development of an international training programme for labour inspectors? Do you agree with the topics, skills and competencies proposed for such a programme suggested by the PLD group? Can you suggest additional topics and training this programme could provide?

Given the trend towards greater data analysis, what do you think about the feasibility of merging national Employment Registers to create a pan-EU Employment Register to detect and prevent undeclared work? What are the major challenges that will need to be overcome?

On the trend towards greater data analysis, and whether it might be feasible to merge national Employment Registers to create a pan-EU Employment Register to detect and prevent undeclared work, discussion took place of the challenges involved. Besides the challenges involved in merging databases on a pan-EU level, participants recognised that the key issue was more perhaps about **gaining access to other countries databases**. To do so, the major method currently used is the Internal Market Information (IMI) system where a question is asked, and then a person in the host country goes to the local register and responds. At the other end of the spectrum of methods of gaining access to other countries data/databases is a fully integrated pan-European employment register. However, in between these two extremes are many additional ways of gaining access to other countries data and databases and the workshop started to identify these methods and the various challenges involved. The consensus was that the challenges involved in developing these other methods of gaining access to other countries data and databases were far less than the challenges involved in developing a full functioning pan-European employment register.

Other means of gaining access to other countries data and employment registers which were discussed included (i) developing the current IMI system so that the requesting country can go directly to the other country’s databases to extract the required data; and (ii) developing bilateral and multilateral agreements for nominated individuals to have access to other countries employment registers and other databases.

To make further progress on this issue, one option identified during the workshop is to undertake a ‘gap analysis’ of what exists for sharing cross-national data and what is lacking. Once this has been completed, it can be discussed how this gap could be filled. To start to do this, a study and/or event could be undertaken on “cross-national data sharing”, identifying the current gaps in access to data on a cross-border level and how these could be filled.

However, it was recognised that at present there are considerable problems with even developing greater intra-national data sharing, so the challenges involved in doing so cross-nationally are likely to be even greater. Indeed, arising from this workshop discussion on cross-national data sharing, it was also considered that more attention could be paid to **improving intra-national data sharing**, especially given the trend towards the greater use of data in detecting and preventing undeclared work in enforcement authorities. Given the growing importance of data-driven detection and prevention of undeclared work, and its growth in importance during the pandemic, an event on intra-national data sharing and analysis to tackle undeclared work would be a way forward. This could explore the challenges involved in intra-national data sharing and analysis and identify good practices potentially transferable to other countries.

In line with Digital Compass 2030, what e-government solutions have your authority adopted to detect and prevent undeclared work? Should a Platform event be organised on “E-formalisation: digital solutions to prevent undeclared work”?

On the second issue discussed of **e-initiatives**, it was highlighted by the chair how on 9 March 2021, the Commission presented a vision and avenues for Europe’s digital transformation by 2030.¹⁵ Digital Compass 2030 includes the development of accessible and human-centric digital public services and administration and by 2030, 100% online provision of key public services for European citizens and businesses.¹⁶ Following on from the earlier talk by Vicky Leung and Juan Chacaltana (ILO), there was unanimous agreement from all participants in the workshop that this could be evaluated in much greater depth. For example, a study by the Platform on this issue could be followed by a seminar/thematic review workshop on “E-services: digital solutions to prevent undeclared work”. This would enable both ELA, enforcement authorities and social partners to discuss how they can respond to the Digital Compass 2030 agenda in the field of tackling undeclared work.

Are you supportive of the PLD proposal that the ELA could consider the development of an international training programme for labour inspectors? Do you agree with the topics, skills and competencies proposed for such a programme suggested by the PLD group? Can you suggest additional topics and training this programme could provide?

The workshop participants were also unanimously supportive of the development of an **international training programme for labour inspectors**. There was broad agreement on the topics, skills and competencies proposed for such a programme suggested by the PLD group. However, there were also additional topics and training suggested for this programme, such as the development of strategic management competencies and skills. One starting point, it was suggested during the workshop, would be for a training needs analysis (TNA) to be conducted to identify what might be included in such a programme.

An additional spinoff from this workshop discussion of an international training programme for labour inspectors was a recognition that with the increasing organisation of cross-border concerted and joint inspections (CJIs), there could be an event organised to enable reflection on the **lessons learned from cross-border concerted and joint inspections (CJIs)** so far conducted and the development of a ‘knowledge bank’ of good practice case studies.

¹⁵ https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030_en

¹⁶ European Commission (2021). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2030 Digital Compass: the European way for the Digital Decade*, COM/2021/118 final, European Commission Brussels.

Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52021DC0118>

4.2 Workshop 4: Teleworking and other changes in the world of work and their implications for inspectorates

The pandemic has resulted in the growth of teleworking and other changes in the world of work that have implications for inspectorates when tackling undeclared work, especially labour law violations.¹⁷ Often, labour law has been undeveloped in relation to clarifying the responsibilities of employers and rights of employees in relation to teleworking, and there are sometimes issues that arise around the inspection of workplaces when this becomes home-based. The result has been the call for updating legislation and regulations to make clearer the responsibilities of employers and rights of workers in relation to teleworking, so that labour law is clear and violations can be detected. Beyond teleworking, including home-based working, there are other changes in the world of work which have implications for undeclared work. These include: (1) the continuing growth of digital labour platforms and (2) the issue of conducting inspections in households which has again come to the fore during the pandemic, especially in relation to personal and household services.

Almudena Núñez-García Bada (Spain) presented the reflections on this topic of the seven countries involved in the 2021 Peer Learning Dialogue. These were:

- ▶ With the growth of teleworking, there is a need for the Platform to share learning on how employers' responsibilities and workers' rights have been clarified in Member States. Unless these are clarified, then labour inspectors will be unable to follow-up on potentially 'exploitative' working conditions. This could range from employers at an individual-business level clarifying their responsibilities in their corporate social responsibility strategies (CSRs), through collective agreements at the sectoral level, to mandatory legislation (e.g., **Spain**). Moreover, the applicable law is the place where the teleworker is working from so this is a cross-national issue. This could be examined in a future activity in the work programme of the Platform to share learning and explore the feasibility of cross-border cooperation, including joint and concerted actions.
- ▶ The long-standing issue of labour inspectors being largely unable to conduct inspections in households has come to the fore during the pandemic. The Inspections Working Group could share learning on how this has, and could be, resolved.

Evidence gathered during the PLD suggests that some countries (e.g., Ireland) have good practices on this issue and that sharing learning would be valuable. The PLD learned how in 2007 in **Ireland**, the Labour Relations Commission (now the Workplace Relations Commission), in consultation with representatives of the Social Partners, produced a Code of Practice for Protecting Persons Employed in Other People's Homes (2007)¹⁸ which sets out the rights of persons employed in private homes. To carry out inspections of workers employed as domestic workers, predominately (but not exclusively) in private homes, a procedure has been developed. *The Pre-inspection requirements* include:

- ▶ pre-appointment check of databases to establish if employer is registered as an employer;
- ▶ establish initial contact via standard appointment letter and enclose code of practice on 'Employment in Other Peoples Homes'; and note that the inspection policy on two people to enter private homes will not apply for the purposes of these inspections.

Where there is an indication of risk, a request may be approved for more than one Inspector in those circumstances.

¹⁷ ILO (2020). *COVID-19 and the world of work: updated estimates and analysis*. Geneva: ILO.

¹⁸ S.I. No. 239/2007 - Industrial Relations Act 1990 (Code of Practice for Protecting Persons Employed in Other Peoples Homes) (Declaration) Order 2007 <http://www.irishstatutebook.ie/eli/2007/si/239/made/en/print>

For the conduct of the inspection: inspections are to be conducted under normal case management procedures. However, the following extra issues should be dealt with:

- ▶ Inspectors to be particularly vigilant regarding revealing the source of the inspection and the policy of not commenting on the reason for inspection;
- ▶ If an employer does not want inspection in a private home, alternative arrangements must be agreed (employer must be advised of legal position regarding ban on entering homes without permission);
- ▶ Interview with employee is mandatory. Employees should also be told that if they are aware of other workers with employment issues, they can contact Inspection Services;
- ▶ Obligation to communicate to employer regarding the legal responsibilities when employing someone;
- ▶ Obligation to provide Written Terms and Conditions as provided for in Terms of Employment (Information) Act clearly setting out working hours and pay rates etc.;
- ▶ Inspector may need to explain the legislation to the employer and employee, to assist in communication and act as mediator between employer and employee to communicate and deal with issues involving misunderstandings;
- ▶ If language is an issue, to engage an interpreter; for non-EEA domestic workers who may be employed with a work permit (this will not be common as permits are not generally issued for domestic work), check that the employer is adhering to the agreed terms as laid out in the Work Permit application (i.e. job description/hours of work/rates of pay/ employment location, etc.).

General points highlighted for inspectors include:

- ▶ These inspections may take longer than normally is the case as employers may not have administrative skills;
- ▶ Inspectors should be aware of indicators of trafficking and procedures in cases where it is suspected;
- ▶ As single inspector inspections, inspectors must be aware of potentially dangerous situations and ensure other colleagues know the location and times of inspections; and inspectors should have multi lingual cards which will enable clear communication with non-English speaking employers and employees.
- ▶ With the pandemic, an inter-related issue that might be considered alongside conducting inspections in households is teleworking. It is possible that there will be inspections on teleworking in the future in **Sweden**. If so, inspections will be carried out on how employers work with the systematic work environment management, including the work environment when teleworking (but there will be no inspections of households). The long-standing issue of conducting inspections in households might therefore be expanded in any future activity to include how employers manage the work environment of home-based working/teleworking.
- ▶ The use of digital labour platforms as a means of sourcing opportunities for engaging in undeclared work appears to be growing. Immediately prior to the pandemic, the [2019 Eurobarometer survey on undeclared work](#) revealed that 11% of all undeclared work was sourced from digital labour platforms. There is also the issue of bogus self-employment which appears to a growing issue. How these two issues can be addressed by inspectorates requires mutual learning at the Platform level.

This presentation was then followed by a discussion of four questions:

- ▶ With the growth of teleworking, has there been greater clarification of employers' responsibilities and workers' rights in your country?
- ▶ Unless these are clarified, labour inspectors will be unable to address potentially 'exploitative' working conditions in relation to teleworking. To share learning, would it be useful to hold a Platform event on "Improving the regulation of teleworking"?

- ▶ How is the issue of conducting inspections in households addressed in your country? Would it be useful for the Platform to share learning on how this has, and could be, resolved?
- ▶ The issue of undeclared work and bogus self-employment on digital labour platforms has received much attention by the Platform. What is now required to take this further forward?

With the growth of teleworking, has there been greater clarification of employers' responsibilities and workers' rights in your country? Unless these are clarified, labour inspectors will be unable to address potentially 'exploitative' working conditions in relation to teleworking. To share learning, would it be useful to hold a Platform event on "Improving the regulation of teleworking"?

On the first issue of the growth of teleworking, and whether there has been greater clarification of employers' responsibilities and workers' rights in participants' countries, the workshop found that there were different experiences across Member States. Some member states, such as **Spain**, had developed legislation to clarify employers' responsibilities and workers' rights. Royal Decree Law 28/2020, passed in October 2020, provides new legislation setting out employers' responsibilities and workers' rights, enabling enforcement authorities to rely on labour laws as a framework during inspections in terms of judging whether violations are taking place. Others had made less progress on this issue. Unless employers' responsibilities and workers' rights are clarified, the workshop noted that labour inspectors would be unable to respond to potentially 'exploitative' working conditions in relation to teleworking. To share learning, therefore, it was felt to be useful to hold a Platform event on "**Improving the regulation of teleworking**". The workshop discussion highlighted the need for a definition of telework, including the need for a legal definition of teleworking, and a definition of the place of work and the status of a worker. There are also issues for labour inspectorates regarding equality of treatment between teleworkers and non-teleworkers, OSH control, working hours, social security contributions and the controls exercised by companies on the employees and the provision of working equipment.

How is the issue of conducting inspections in households addressed in your country? Would it be useful for the Platform to share learning on how this has, and could be, resolved?

The issue of conducting inspections in households has been a long-standing challenge for labour inspectorates. In some countries, such inspections have not been undertaken. In others, however, innovative solutions had been found. Until now, however, the workshop revealed that there had been no sharing of learning on how this has, and could be, resolved. This issue had come more to the fore in recent years, not least due to the need to tackle undeclared work in the personal and household services (PHS) sector. An event on **labour inspection in the PHS sector**, therefore, was considered a useful activity to share learning on this issue. Such an event might also consider complementary tools that can be used, such as desktop inspections and the use of e-initiatives such as to register working time.

The issue of undeclared work and bogus self-employment on digital labour platforms has received much attention by the Platform. What is now required to take this further forward?

The Platform had in the past four years conducted numerous events on the issue of undeclared work and bogus self-employment on digital platforms. Some discussion took place on how this could be taken further forward in a future event on **(i) the use of digital platforms as a source of undeclared work and (ii) bogus self-employment**. The workshop discussion recognised that both were growing in importance and that if undeclared work was to be tackled, these issues would need to remain on the agenda of the Platform work programme. Possible issues for future discussion include: the implications of any future Commission legislative proposal/directive for labour inspectorates; the relationship between telework, bogus self-employment and digital labour platforms; and the resultant changes in the concept of a worker and workplace.

5.0 Key learning outcomes: Practical recommendations

This concluding section reports the key learning outcomes from the thematic discussion day on COVID-19's impact on enforcement authorities' work and priorities. Three general calls often repeated by participants throughout the day were the need for: (i) a holistic approach to be adopted when tackling undeclared work in the recovery period; (ii) greater working together of labour inspectorates with tax authorities and other institutions, both at a national and cross border level, to facilitate a joined-up approach at the level of strategy, operations and data collection, sharing and analysis, and (iii) recognition that tackling undeclared work is often inextricably tied to related issues (e.g., OSH matters). Several activities are planned in the 2022 Platform work programme to respond to these general calls from participants, namely a:

- ▶ Survey based on common assessment framework to measure progress of inspectorates towards a holistic approach (2022-Q1), linked to the March 2022 Platform plenary on "Operationalising holistic approaches to tackling undeclared work" (2022-Q1).
- ▶ Study on Developing KPIs measuring the effectiveness of labour inspectorates (2022-Q2), linked to the October 2022 Platform plenary on "Measuring the effectiveness of policy approaches and performance of enforcement authorities" (2022-Q4).
- ▶ Webinar on developing a common assessment framework for measuring the progress of Member States towards a holistic approach (2022-Q4).

Beyond these calls, Table 1 summarises the specific practical recommendations for future demand-driven events proposed by the PLD1 and qualified and accepted by the participants in the meeting.

Table 1. Practical Recommendations: Possible Follow-Up Activities

| Follow-up activities | Adopting alternative types of inspection | Planning and conduct of physical workplace | Inspectorates work and new skills required | Teleworking and other changes in the world of work |
|---|--|--|--|--|
| Event on "Complementary inspection types to onsite inspections": discuss data on effectiveness of various types/combinations and 'good practice' cases | ■ | ■ | | |
| Seminars/TRWs on "Evaluating the effectiveness of onsite inspections in preventing undeclared work"/ "Lessons from pandemic for organisation of onsite inspections" | | ■ | | |
| Seminar/TRW on "Data matters: improving data sharing and data analysis to tackle undeclared work" | ■ | | ■ | |

| | | | | |
|---|---|--|---|---|
| Event/PLD on social media analysis and use of social media | ■ | | ■ | |
| Investigate improving cross-border access to data, including development of pan-EU Employment Register | | | ■ | |
| Study on range of e-services to tackle undeclared work followed by Platform seminar/TRW on “E-services: digital solutions to tackle undeclared work” to identify further good practices | | | ■ | |
| Event to consider the development of a training programme (e.g., TNA) | | | ■ | |
| PLD on lessons from cross-border CJIs | | | ■ | |
| Seminar on “Improving the regulation of teleworking” to share learning | | | | ■ |
| Event on labour inspection in the PHS sector | | | | ■ |
| Seminar/TRW on (i) use of digital labour platforms to source undeclared work and (ii) bogus self-employment | | | | ■ |

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