

# Platform seminar: Tackling undeclared work supply chains

Bratislava (Hybrid), 20 September 2022

## EXECUTIVE SUMMARY

This Platform seminar explored existing practices, tools and approaches that tackle undeclared work in supply chains, in particular in the construction and services sectors. This hybrid event brought together 71 participants from 20 countries, representing labour and social security inspectorates, various ministries, as well as European level and sectoral social partners, and the European Labour Authority (ELA). Participants reflected on good practices, identified aspects that could be transferred to different settings and explored how the challenges involved could be overcome.

## Development and trends on undeclared work in supply chains



- ▶ Supply chains are based on subcontracting, whereby companies do not directly hire the staff needed for the work, but subcontract other companies. By 'pushing' liabilities and risk further down the subcontracting chain, this can create an environment where undeclared work can take place. This is a particularly common trend in the construction sector.
- ▶ Within some supply chains, the subcontracted de jure independent entities are not de facto independent, and the main contractor dictates and manages the process and price, further creating conditions for undeclared work to take place. These chains might involve letterbox companies that do not perform any economic activity.
- ▶ In addition, workers are at risk where employers are partially or totally non-compliant with mandatory labour standards. In some subcontracting chains, social and economic risks are transferred away from the main contractor.

## Horizontal policy approaches to tackle undeclared work in supply chain



- ▶ During the seminar, trade unions called for more regulation of subcontracting at the EU level (and the implementation/monitoring of existing legislation at the national level), and extending collective bargaining processes, while acknowledging that there are challenges in identifying and organising workers within supply chains.
- ▶ Employer representatives suggested that the contributing factors which prompt undeclared work in supply chains include high tax and contribution burdens, legal uncertainties in tax law and social security provisions, over-regulation of the labour market, bureaucracy, and the low risk of getting caught. Employers' representatives have undertaken various initiatives to help tackle these issues. These include due diligence, training and information sessions, regular joint workshops with prosecutors, participation in a variety of exchange fora of regional authorities, prosecutors etc, joint projects with trade unions, and a competition centre which ensures employers engage in fair competition.
- ▶ Enforcement authorities employ both preventative and deterrence measures, however they sometimes face challenges related to low capacity, as well as challenges specific to supply chains (lack of clarity on who is the employer, monitoring compliance, etc).
- ▶ Member States' experiences provided a range of good practice examples to tackle undeclared work in supply chains. Suggestions included: mandatory registration of all parts of the chain in tax/employment registries (in Finland); requiring joint and several liability across all subcontracted entities for payment of social security and adequate wage levels (in Belgium); certifying the authenticity of an employment or procurement contract (Italy); facilitating exchange of information and building trust along the supply chain (in Denmark); and ensuring correct application of social clauses from the EU Directive on Public Procurement.

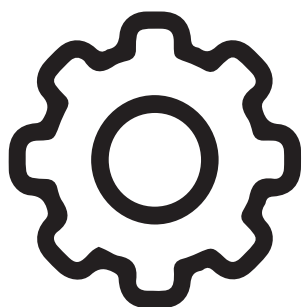
## Tackling undeclared work in construction supply chains



- ▶ Most construction activities involve several companies with different specialisations. As a result, subcontracting in the construction sector has become a widespread phenomenon, raising concerns of possible deterioration of workers' rights.
- ▶ One of the main challenges in tackling undeclared work in construction supply chains, is the lack of clarity on who is the employer. In one example to tackle this issue, Hungary employs a measure of "presuming" the employer status. If the actual employer cannot be identified as a result of the labour inspection, it can be presumed that the employer is: a) the person responsible for coordinating the activity as stipulated in the contract between the parties; b) the person who effectively manages the activity at the workplace; or c) the person in whose territory the work is carried out/performed.

- ▶ Lithuania recently (April 2022) introduced the Transparent Worker's Identification Code, which entails a QR code/ID code, that allows to verify the workers' data and confirm if a particular worker is employed, self-employed or a posted worker. The obligation to have this code is applicable to any person performing construction work on a construction site.
- ▶ Another critical issue in construction supply chains, as identified also by the sectoral trade unions, is related to labour exploitation and safety and health risks. To address some of these challenges, in Spain for example, there is a public registry, which certifies that the companies which operate in the construction sector meet the capacity and quality requirements of occupational risk prevention. The registry helps eliminate subcontracting that is economically unproductive and detrimental to the health and safety of workers.

## Tackling undeclared work in services supply chains



- ▶ Undeclared work in the services sectors follows similar patterns to other sectors. This often involves subcontracting chains, bogus self-employment, and false registration of employees.
- ▶ In the area of postal, parcel and express delivery service providers, some of the key challenges (as identified in Germany), relate to wage splitting, bogus self-employment, undeclared wage payments and inaccurate working time records. Inspections, comprising of interviews and business documents audits, are undertaken to tackle these issues.
- ▶ Preventative measures can also help tackle undeclared work in cleaning sector supply chains. The Dutch authorities for instance, launched campaigns to raise public awareness of their responsibilities in hiring legitimate cleaning companies in order to apply pressure on supply chains, with the aim of changing behaviour.
- ▶ Other challenges in services supply chains include labour exploitation, lack of standard working hours and lack of collective bargaining. Some of the sectoral social partners called for additional investment by enforcement authorities to tackle undeclared work in this sector.
- ▶ Member States also recognise there is more to be done in this area, with some challenges arising from implementing European regulation at national level, complicated inter-institutional arrangements and cross-border cooperation between competent authorities.

## Suggestions to address undeclared work in supply chains



- ▶ To incentivise businesses to be compliant, participants at the seminar recognised that it is important to establish cooperation across the supply chain and employ an integrated approach. Building trust along the supply chains can be established by facilitating contact with subcontractors, certifying contracts, and promoting businesses who adhere to codes of conduct through compliant lists (whitelists) and businesses who do not, through non-compliant lists (blacklists).
- ▶ Participants noted that public procurement processes can be used as powerful tools to set the rules to manage supply chains and prevent undeclared work. 'Blacklisting' business who engage in undeclared work from public procurement, EU funds, etc, as a penalty measure could have a significant impact, even more so than financial sanctions.
- ▶ More targeted, strategic and risk-assessment based inspections are needed. There is also a need for a more efficient use of digital control devices and data sharing across the supply chains. Data sharing between various authorities (labour, tax, social security, occupational health and safety) could also lead to better risk assessments. Additionally, training and education of inspectors on both deterrence and preventative approaches could help enhance the competencies of enforcement authorities.



**Further information:** The seminar was an integral part of a larger mutual learning process among Platform members and observers and provided opportunities for exchange and collaboration. The information from the seminar will be fed into a Learning Resource Paper.