



Innovative approaches to tackle undeclared work in the road transport sector

Report from the Platform webinar

29 November 2022



European Platform
tackling undeclared work



EUROPEAN LABOUR AUTHORITY

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1.0 Introduction

The European Platform tackling undeclared work (hereafter ‘the Platform’) held a webinar on “Innovative approaches to tackle undeclared work in the road transport sector” on 29 November 2022 with 65 participants from 25 countries, representing labour inspectorates, other enforcement authorities such as police, social partners, the European Labour Authority (hereafter ELA), the ILO, and other stakeholders.

The aim of the webinar was to disseminate lessons learned from the previous Platform events to a wider audience, namely from a peer learning dialogue on ‘Approaches tackling undeclared work in transport of goods by light commercial vehicles (LCV)’ (May-June 2022); the thematic review workshop on ‘Tackling under-declared employment through innovative approaches’ (October 2022); as well as from the Platform seminar on ‘Tackling undeclared work in the road transport industry’ (June 2018), with a specific focus on liability legislation, due diligence and innovative tools to track undeclared work in subcontracting chains.

The webinar was structured into two main sessions:

- ▶ Showcasing selected examples of inspiring approaches to tackle undeclared work in the road transport sector; and
- ▶ A panel discussion on the impact of the measures on tackling undeclared work in the road transport cooperation.

Following an introduction by ELA on the aims of the event, an independent expert presented an overview of forms and drivers of under-declared work in road transport, as well as insights from previous Platform events about deterrence and preventative measures to tackle undeclared work in local and international road transport. Following the introduction to the topic, examples of successful approaches to tackle undeclared work in subcontracting chains in the transport industry were presented by Germany, the Netherlands, and a social partner.

2.0 Long subcontracting chains as a driver of undeclared work in road transport

During 2022, road transport has been a priority thematic area for ELA, as a sector highly susceptible to undeclared work. Research has shown that complex subcontracting chains are often a gateway for violation of regulations protecting labour rights and fair competition in the transport sector¹. Such violations can be found both in transport operations involving heavy commercial vehicles and light commercial vehicles, as well as in long-distance haulage and last-mile delivery. Small and medium-sized subcontractors (or even subcontracted bogus firms or letterbox

¹ Bouffartigue, P., Prieto, C., Martinez-Garcia, E., Contrepolis, S., Kirov, V., Vandewattyne, J., & Hausmann, T., (2018). *NETPoste: Transformations and bargaining of work and employment in the European’s postal services. Belgium – Bulgaria – Spain – France – United Kingdom* (NetPoste Final Report). Available at: https://uniglobalunion.org/wp-content/uploads/netposte_rapporteng_ultima.pdf; Harnay, P., (2020). Dépendance économique dans les relations de sous-traitance : quels critères ? Le cas des chauffeurs-livreurs de la messagerie. *Droit et Société*, 104(1), 189–209; Smedt, L. de, & Wispelaere, F. de., (2020). Road freight transport in the EU. In search of a balance between the economic and social dimension of the internal market. A quantitative sectoral analysis. (TransFair Research Report). Leuven: HIVA/KU Leuven. Available at: https://transfair-project.eu/wp-content/uploads/2020/12/1st-TransFair-Report-deSmedt_deWispelaere.pdf; VNB, ITF, & IUF., (2020). The Pandemic of Exploitation in European Trucking. Available at: https://www.itfglobal.org/sites/default/files/node/news/files/VNB_ITF-IUF_Report_FINAL.pdf

companies abroad) can be used as intermediaries to circumvent employer obligations. Long subcontracting chains can contribute to the prevalence of under-declared and undeclared work and make it difficult to hold those companies accountable for non-compliance.

One of the learning points from the previous Platform events was that **last-mile delivery² of parcels** is a particularly problematic area for enforcement authorities. Typically, this involves long supply chains involving principal contractors (often postal services, large online retailers or third-party logistics providers) working with a chain of subcontractors including temporary work agencies, transport service providers operating as subcontractors, and sub-subcontractors as well as those at the bottom of the chain such as self-employed drivers or atypically employed couriers. Formally, the courier is employed by or has a commercial service contract with the first or second-tier service provider. In case of an employment relationship, it is necessary to identify the service provider who is responsible for the employee's compliance with labour and social security obligations. However, first and second-tier service providers have 'economic dependence' on the principal contractor and have little economic leeway to negotiate contract terms that allow for decent employment of couriers. These conditions can lead to circumvention of labour laws and an increase in undeclared work.

Similarly, in **international road transport**, long supply chains typically involve a consignor or client at the top of the chain ordering a transport operation. The consignor hires a freight forwarder to organise the transport operation. In many cases, the freight forwarder is merely responsible for the logistical process of transport and does not own any vehicles or trailers. The freight forwarder contracts a transport operator with its own fleet or a transport operator with subsidiaries or subcontractors based in low-cost EU countries employing the drivers to carry out the transport operation. Companies involved in the chain can have their base of operations established in different countries and can therefore be subject to different labour and social security regulations. These complex chains can help to disguise the driver's formal employer and it becomes difficult to assess, both for authorities and drivers, what rules and entitlements apply to them. These conditions foster undeclared work, and the question emerges of who, then, is responsible and should be held liable for the drivers' correct remuneration and working conditions.

3.0 Innovative approaches to tackle undeclared work in road transport – insights from the webinar

The introduction of liability legislation and due diligence provisions applicable to the road transport sector are promising steps forward in the prevention of undeclared work in this sector. Sector-specific tools and documents providing information about how to identify companies involved in the transport can help to clarify liability claims. During the webinar, three examples of these approaches were presented:

- ▶ Liability legislation for wages and social insurance contributions in Germany;
- ▶ The use of the handheld devices as a key tool to track the delivery process and detect non-compliance with labour and social security legislation;
- ▶ Trade-union-initiated monitoring of companies' due diligence in transport supply chains.

² Last-mile delivery is the final stage of a transportation route that involves moving goods from a transportation hub to a final destination.



Key findings

- ▶ Legislation on client liability for wages, as in Germany, is most effective when it is a **joint and several and unconditional liability**.
- ▶ To improve the effectiveness of liability legislation, there is a need for both **legal support** for workers to claim withheld wages against the main contractor and **cooperation between advisory bodies, trade unions and enforcement authorities** to secure evidence against abusive practices by employers and main contractors.
- ▶ Dutch enforcement authorities successfully use **couriers' handheld devices** to check working and rest times, delivery routes, consignors, and consignees, and to detect infringements related to working hours and pay, as well as wage-related contributions.
- ▶ The Road Transport Due Diligence example takes a **holistic approach** to investigating, monitoring, and remediating violations of economic employers in supply chains.

3.1 Innovative liability legislation in Germany

The presentation from **Germany**, delivered by the Federal Ministry of Labour and Social Affairs, focused on two laws tackling the client's or contractor's liability for wages and social insurance contributions.

First, **client liability for the minimum wage** can be claimed in the context of the minimum wage legislation (§13 *Mindestlohngesetz*) and the employee posting law (§ 14 *Arbeitnehmer-Entsendegesetz*)³. The aim of this legislation is to protect workers from abusive employment practices and to ensure fair competition. The legislation covers both workers employed by a company established in Germany, and posted workers employed by a company established abroad. The basis of liability is the German general minimum wage and, where applicable, the sector-specific minimum wage.

The liability applies when a company passes on his/her own contractual obligation to provide a work or service to a third party. The liability for the minimum wage is a **joint and several liability**. The liability of the client therefore applies to the entire subcontractor chain, i.e., employees of a subcontractor anywhere down the subcontracting chain can assert a claim for payment of the minimum wage against the main contractor. The liability is unconditional: neither the employer, nor the intermediary subcontractor nor the main contractor can reject the worker's wage claim, and the worker can sue them simultaneously.

The wage claim must be asserted by the employee before the labour court in a civil law proceeding. There is no administrative procedure for enforcing a wage claim. To support workers in this endeavour, the counselling service Fair Mobility (*Faire Mobilität*⁴) provides **legal consultation and litigation guidance** in various languages, because workers, especially posted workers, are often not familiar with German law and how to set up a wage claim at court. However, *Faire Mobilität* cannot represent workers in court. Legal representation must be provided privately or by the trade union. *Faire Mobilität* is financed by the German Ministry of Labour and Social Affairs and operated by the German Trade Union Federation.

Being able to hold the main contractor liable and having the possibility to use legal assistance, was considered as an efficient approach to enforce minimum wages - especially for posted workers - in subcontracting chains. As a result of this approach, few cases end up in court, as disputes are often solved beforehand. One obstacle to the

³ https://www.zoll.de/DE/Fachthemen/Arbeit/Mindestarbeitsbedingungen/Haftung-Auftraggebers/haftung-auftraggebers_node.html; https://www.zoll.de/DE/Fachthemen/Arbeit/Mindestarbeitsbedingungen/Klagerecht-Arbeitnehmer/klagerecht-arbeitnehmer_node.html

⁴ <https://www.faire-mobilitaet.de/internationaler-strassentransport>; <https://www.faire-mobilitaet.de/kurier-und-paketdienste>

effectiveness of the law is ensuring workers know about their rights described above. Therefore, raising awareness and information provision is considered an important prerequisite for its effective implementation.

Secondly, in three sectors, construction (2002), meat industry (2017) and courier, express and parcel delivery (CEP, 2020), the so-called **subcontractor liability for social insurance contributions** (*Nachunternehmerhaftung*⁵) was introduced in Germany. The law provides for liability of social security contributions (worker and employer contributions for pension, health, unemployment insurance and accident insurance) against the contractor of the employer. It is enforced by the social administration (for instance the health insurance institution or pension fund). This means it is a public law and it is not privately enforced by the worker.

In contrast to the legal provisions on liability for wages, not every contractor in the subcontracting chain can be held liable for the payment of social security contributions - only the employer's direct contractor. Only in exceptional cases of circumvention can the main contractor or other intermediate subcontractors be held liable. Furthermore, liability only comes into play when the employer has not paid the contributions. As this is a subsidiary liability, the administration must first enforce payment from the employer, and only if this fails, can it turn to the contractor.

The law also includes an exemption from liability through the issuance of a so-called **clearance certificate** (*Unbedenklichkeitsbescheinigung*⁶). In order to relieve main contractors without neglecting the obligations of subcontractors, health insurance funds can issue a clearance certificate to the subcontractor who has so far duly paid the social security contributions. Anyone who concludes a contract with a company that can produce such a certificate is exempt from liability for the social security contributions even if, contrary to expectations, this company does not pay the contributions after all.

A report on the impact of the law in the construction sector concluded that it has prevented a rise in avoidance of payment of social security contributions. So far, there are no official figures on the effectiveness of the law but feedback from trade unions have confirmed an initial positive effect in the CEP sector.

3.2 Innovative tools to uncover undeclared work in subcontracting chains

Another approach to detecting and tracking undeclared work in subcontracting chains in the courier, express and parcel delivery (CEP) sector is the use of innovative control tools. The **Netherlands Labour Authority (NLA)** provided an inspiring example.

In the Dutch CEP industry, four companies, PostNL, DHL, DPD and GLS, dominate 95 % of the market. Their business model (partly) rests on the subcontracting of the delivery process. While couriers are largely properly employed when working directly for these larger companies, abuses - including undeclared work and illegal employment - are widespread in subcontractors: 40 % of cases investigated revealed infringements against labour and/or social security law.

To investigate undeclared work in parcel delivery, the Dutch authorities use an innovative method: Through the **handheld device** used by the courier in the delivery process, the Labour Inspectorate harnesses the main contractors' ability to digitally monitor the movement of parcels, the exact whereabouts of parcels, and exact time of arrival of couriers at the customer. Moreover, the handheld device traces the chain of the parcel which also

⁵ Gesetz zur Einführung einer Nachunternehmerhaftung in der Kurier-, Express- und Paketbranche zum Schutz der Beschäftigten (Paketboten-Schutz-Gesetz) (Available at: <https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/paketboten-schutz-gesetz.html>)

⁶ <https://www.bmas.de/DE/Service/Presse/Meldungen/2019/sozialer-schutz-und-faire-loehne.html?sessionid=62A8ECC0D6655B4085052F3236C75774.delivery1-replication>

determines the courier's direct employer, the employer's contractor, or the client sub-subcontracting to the courier's employer.

Every courier uses a handheld device provided by the client containing all relevant data to optimise the delivery process. If during inspections, after checking with other databases, a suspicion of undeclared work arises, the NLA has the right to access data stored in the device. Companies (clients) are penalised in cases of non-cooperation with fines up to EUR 8 000. The data includes information about timeframes of all deliveries, couriers' trajectories from the sorting centre to the delivery address, customers, transport operators (subcontractors) involved in the delivery of the parcels, and couriers' employment. Based on this information, the inspector can conduct further investigations at the premises of the subcontractor distributing parcels on behalf of the client. The information yielded through the handheld device in combination with billing and revenue data from a (sub)contractor provides a comprehensive picture of the principals' and the subcontractors' business activities. As similar business models and systems of tracking and tracing delivery routes are deployed by parcel delivery companies all over Europe, this tool has the potential to be replicated in other countries.

3.3 Innovative social partner approach for better due diligence

In addition to practical and innovative liability legislation and control instruments for tracking the subcontracting chain, a third approach is to **tighten the due diligence of main contractors or economic employers in the subcontracting chain.**

In **the Netherlands**, FNV's Stichting VNB developed, together with international trade unions, the Road Transport Due Diligence Model (RTDD) that was presented at the webinar.

The approach aims at activating 'economic employer's responsibility through private agreements. An economic employer is defined as a company that has control and management of the employee's labour and benefits from this work, regardless of who the formal employer of the employee is, or who is paying the employee's salary (International Transport Workers' Federation, 2021). The economic employer can be the main contractor, often a multinational corporation (MNC) in a supply chain holding a strong contractual position with its subcontractors. Following the due diligence principle, economic employers have an interest in ensuring that their supply chains are compliant with human rights and labour standards. Due diligence means ensuring that (potential) risks of business activities with contract partners in the supply chain are identified, prevented, mitigated and communicated. Recently, the Road Transport Due Diligence Foundation was asked on behalf of the trade unions International Transport Workers Federation (ITF), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Dutch FNV's Stichting VNB to implement a model of transport supply chain monitoring in Europe.

Under the Road Transport Due Diligence Model (RTDD), economic employers enter into voluntary agreements committing themselves to a set of minimum road transport standards. These minimum standards relate to the compliance with laws, including driving, working and resting hours and health and safety regulations; transparent labour relations, fair wages, equality and respect; and labour and union rights. Accordingly, a reasonable price is required to meet the standards.

The (voluntary) agreements include a process by which union partners monitor economic employers' supply chains for violations and which violations are remedied through intervention by economic employers. Monitoring involves mapping working conditions and labour contracts throughout the supply chain, from the main contractor - often a multinational - to the transport operator and employer of the driver. It also provides for questioning drivers on whether they are complying with agreed standards. In addition, evidence and data are collected based on desktop research and driver interviews, which are summarised in a report on patterns of compliance and non-compliance and given to the principal contractor. Remedial actions are implemented through discussions between the RTDD

Foundation and the MNC based on the submitted report; then the MNC opens a discussion on remedial actions with the transportation service providers, and the RTDD Foundation monitors and reports on the progress of the remedial actions.

4.0 Key learning and practical suggestions

Some key learning and practical suggestions can be drawn from the presentations on combatting undeclared work in transportation supply chains and the subsequent panel discussion on their effectiveness, challenges and transferability.

- ▶ A **comprehensive regulatory framework at EU** and national level is in place to prevent abuse in the transport sector and has been refined recently by the new regulations of the Mobility Package I. Enforcement of this legislation, however, is sometimes complex and cumbersome, and can therefore provide conditions which allow undeclared work to emerge.
- ▶ **Liability legislation and due diligence regulations** must be designed to be easily understood, enforceable, and based on legally-binding standards. The examples presented can help improve enforcement at regulatory and operational level involving enforcement bodies and social partners.
- ▶ In Germany, an important legislation was enacted in response to the proliferation of fraudulent practices in long supply chains, including the transport sector. This tailored legislation proved relevant in holding the beneficiaries of non-compliant business practices liable for withheld wage and social security contributions. The **dual approach of easily enforceable joint and several unconditional liability law and a well-funded counselling institution to provide legal support** to workers seeking to recover their withheld wages, proved to be a successful combination. In addition, procedural instruments that help document certain evidence could improve enforcement.
- ▶ Participants emphasised the need to exploit data stored on the instruments necessary for the delivery process. In the Netherlands, **the handheld device (digital scanner) is a useful source of information to investigate undeclared work**. Moreover, the handheld device is a useful tool to trace the subcontracting chain to find out about the courier's direct employer, the employer's contractor, or the client sub-subcontracting to the courier's employer.
- ▶ Another useful tool for detecting undeclared work is the **tachograph**, which records working and resting times in the vehicle. Until now, light commercial vehicles have not been required to be equipped with a tachograph. From July 1, 2026, a revised version of the rest and driving times and tachograph regulation stipulates that light commercial vehicles used in international freight transport must be equipped with a smart tachograph⁷. Participants agreed that smart tachographs in light commercial vehicles should be used in both cross-border and domestic transport. This would help enforcement authorities to verify working and resting times and ultimately to control undeclared work.
- ▶ Enforcing liability depends not only on effective legislation and inspection tools, but also on looking behind the reasons for long supply chains and how they operate and helping the most vulnerable actors in the transport chain to establish claims. **Worker-based due diligence** monitoring is a complementary approach to top-down

⁷ [Regulation \(EU\) 2020/1054](#) of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs.



supply chains/sustainability issues audits which also complements the responsibilities and competences of public authorities.

- ▶ **Multilingualism** of inspectors, counselling and support institutions and information material is important to reach drivers and provide all kinds of information to prevent undeclared work in road transport.



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