



Tackling undeclared work in supply chains

Learning Resource Paper
Seminar - 20 September 2022



Manuscript completed in October 2022.

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1.0 Introduction

Tackling undeclared work in supply chains has increased in fact with the development of global supply chains, competition and fair-trade legislation, the European Union's social policy and the global movement in workers' rights. This Learning Resource Paper contributes to the complex debate on tackling undeclared work in supply chains by presenting current knowledge and experience shared by Platform members. The executive summary of the event can be found [here](#).

The paper draws on the Platform's previous reports, external studies with similar objectives, and on a background paper,¹ presentations and discussions during the Platform Seminar which took place on 20 September 2022, both at the ELA's premises and online. The hybrid seminar brought together 71 participants, representing organisations from 22 countries, including labour and social security inspectorates and relevant ministries, as well as European level and national social partners, and the European Labour Authority (ELA). Platform members shared their approaches, tools and practices aiming at tackling undeclared work in supply chains. The experiences and learning points summarised in this paper bring together non-sectoral and a sectoral perspective. The particular focus of the later is on the construction and service sectors, which are relevant from the perspective of supply chain activity and undeclared work.

2.0 Understanding and defining supply chains

Due to the rapidly developing globalisation of the economy, the ongoing European integration and intensification of the European Single Market as well as the continued specialisation and rationalisation of business processes, subcontracting has been rapidly growing since the beginning of the 1990s, particularly in the construction sector. Nowadays, companies and organisations tend to assign specialised or labour-intensive tasks to subcontractors to operate more economically. In that regard, supply chains have emerged consisting of many different undertakings concerned with a single specialised task in the context of one bigger project.²

The supply chains and related terms in the realms of undeclared work have no settled definitions. For the purpose of clear understanding, several definitions as defined in the EU and international glossaries are offered in the annexe. However, the meaning of the terms might be different or shift depending on the context (employment and working conditions, business trade sector, public procurement and economy) or actors involved (such as business owners, investors, policymakers, trade unions, etc.).

The (supply) chain forms a hierarchical socio-economic dependency network or triangle based on an intertwined series of commercial and employment contracts. It constitutes a logistical chain (both horizontal and vertical) and an economical and productive value chain. Single specialities or parts of a production process are outsourced to external legal entities, often small firms or even the self-employed – depending on the sector³. The contractual and employment relations between the supply chain actors create a subcontracting chain. Subcontracting is a business practice whereby an investor's or client's principal contractor hires additional individuals or companies called subcontractors to help complete a project. The primary or principal contractor is still in charge and must

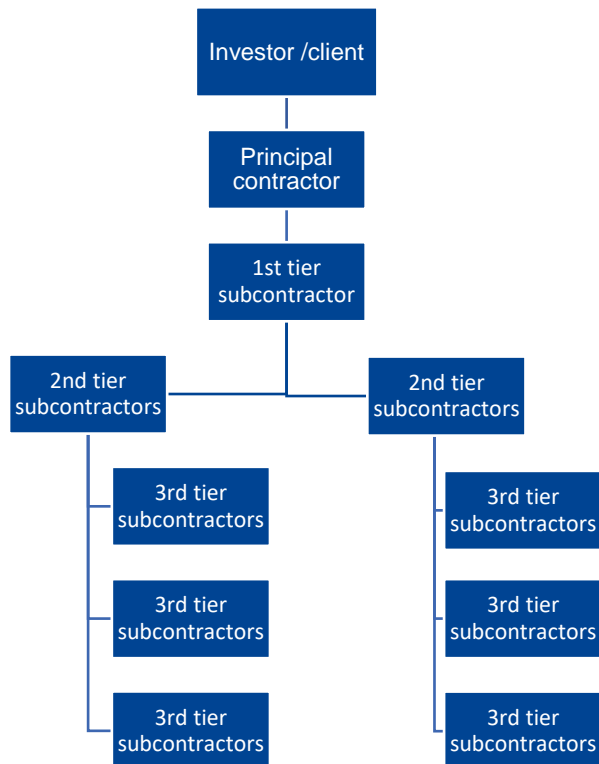
¹ Holubová, B. (2022). Tackling undeclared work in supply chains. Background paper prepared for Platform seminar on September 20, 2022 (unpublished).

² Heinen, A.; Müller, A.; Kessler, B. (2017). Liability in Subcontracting Chains: National Rules and the Need for a European Framework. European Parliament, For the JURI Committee. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596798/IPOL_STU\(2017\)596798_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596798/IPOL_STU(2017)596798_EN.pdf)

³ Cremers, J., & Houwerzijl, M. (2021).

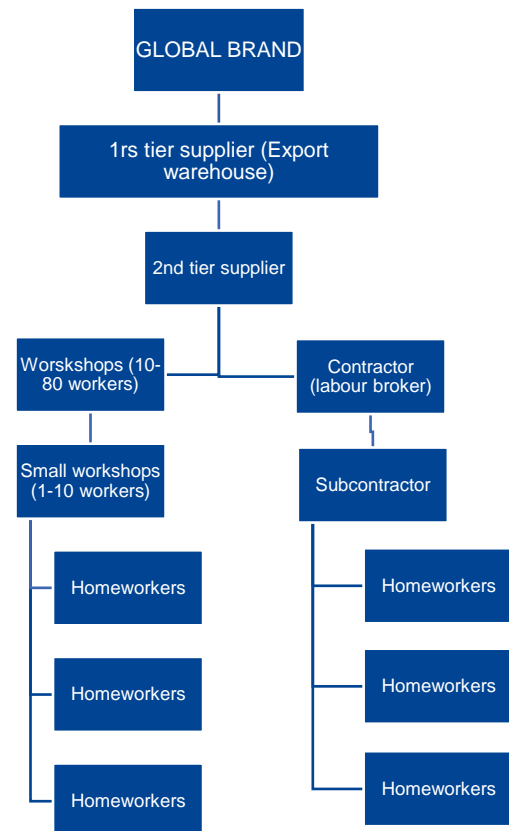
oversee the hiring to ensure the project is executed and completed as specified in the contract. In most sectors, subcontracted companies or individuals may also be foreign companies or workers (see Figure 1).⁴ Particularly in the production sector, a supply chain may comprise local suppliers, manufacturers and outlets or it could be a global supply chain, procuring raw materials and components from different countries and shipping the final product all over the world.⁵ Global supply chains (or global value chains) are typically coordinated by Transnational Corporations with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm's-length suppliers (e.g. garment industry) (see Figure 2).⁶

Figure 1 Subcontracting (supply) chain



Source: Heinen, A.; Müller, A.; Kessler, B. (2017).

Figure 2 Global supply chain



Source: The supply chain in Tirupur, India. Von Broembsen, M. (2022).

Reasons for creating supply chains and respective subcontracting along the chain of production or services can be motivated by different rationales:

- ▶ A search for specialism and knowhow not available in-company;
- ▶ The sourcing of specific tasks that do not belong to the core activity;
- ▶ Efficiency seeking, a (traditionally grown) division of labour, with long-standing partnerships based on mutual trust, routine or historical arrangements;⁷

⁴ Heinen, A.; Müller, A.; Kessler, B. (2017).

⁵ Heinen, A.; Müller, A.; Kessler, B. (2017).

⁶ ETUC (2021). Securing workers' rights in subcontracting chains. Case studies Brussels, September 2021.

https://www.etuc.org/sites/default/files/2021-10/Securing%20workers%20rights_EN_LR.pdf

⁷ Cremers, J., & Houwerzijl, M. (2021).



- ▶ To lower labour cost and increase profit;
- ▶ Take advantage of differences in labour standards and employment conditions;
- ▶ To apply a strategy of dumping social, environmental, and human rights used by companies to reduce social (labour) or environmental costs and thus increase their profits.⁸

Subcontracting has become a predominant business model in sectors such as food and agriculture, the garment industry, road transport and construction.⁹ Moreover, subcontracting could be considered often as permanent solution to deal with peculiar market situations. Subcontracting can concern almost the entire production process.¹⁰

3.0 Tackling undeclared work in supply chains: current knowledge

During the registration process for the seminar, Platform members identified various challenges in supply chains. The variety of responses can be summarised into the broad category of **lack of transparency along the supply chain**. In particular, the lack of transparency concerns the following areas:

- ▶ Little knowledge of who the actual employer is in the chain;
- ▶ Unclear division of responsibilities concerning fair working conditions, declared work and occupational health and safety standards;
- ▶ Presence of foreign workers further complicates information on identifying the employer, often the workers themselves are not aware of who is their direct employer;
- ▶ Supervision of foreign workers along the chain;
- ▶ The quality of working conditions including undeclared work – most undeclared work occurs several layers down the chain;
- ▶ The unclear role of intermediaries, who may be temporary work agencies and are important actors in supply chains;
- ▶ Long administrative procedures, e.g. in obtaining the A1 certificates by the issuing country under a dialogue and conciliation procedure.¹¹

The following sections summarise the current knowledge on approaches to tackling the challenges related to transparency, regulation, and mitigation of undeclared work along supply chains.

⁸ ETUC (2021).

⁹ See the case studies in food and agriculture, garment industry, road transport and construction. Source: ETUC (2021). Securing workers' rights in subcontracting chains. Case studies Brussels, September 2021. https://www.etuc.org/sites/default/files/2021-10/Securing%20workers%20rights_EN_LR.pdf

¹⁰ ETUC (2021). Securing workers' rights in subcontracting chains. Case studies Brussels, September 2021. https://www.etuc.org/sites/default/files/2021-10/Securing%20workers%20rights_EN_LR.pdf

¹¹ The Portable Document A1 (PD A1) certifies the social security legislation which applies to a posted worker and confirms that this person has no obligations to pay contributions in another Member State. It is used in situations where an employed or self-employed person has a connection through their employment or self-employment with more than one EU country. A person is only subject to the legislation of one country at any one time. The A1 is issued by the country to whose legislation they are subject and confirms that they are not subject to the legislation of any other country they are connected with ([Glossary of the European platform tackling undeclared work](#)).



3.1 Regulating supply chains

Tackling undeclared work in supply (subcontracting) chains requires **complex and enforceable regulations**. The European labour law stipulates basic transnational standards of employment and partnership at work in the European Union.¹² In this paper there is no space for a comprehensive analysis of the effectiveness of these regulations.¹³ However, it is important to remember that the EU law sets minimum standards, whereas specific national regulations can go beyond these.

Several EU-level legislative initiatives on unfair trading practices in business-to-business relationships in supply chains exist. For example, to improve farmers' and small and medium-sized businesses' position in the food supply chain, in 2019 the European Parliament and the Council approved [Directive \(EU\) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain](#). The Directive sets out a minimum list of prohibited unfair trading practices between buyers and suppliers in the agricultural and food supply chain and lays down minimum enforcement rules. It also aims to stop larger businesses exploiting small and medium-sized suppliers because of their weaker bargaining position and to avoid the costs of such practices being passed on to primary producers. Unfair trading practices (UTPs) are business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing.

Tackling undeclared work in supply chains, irrespective of the sector, can rely on several overarching principles and related mechanisms that can be applied in specific national measures.

3.2 Supply chain liability

Liability is one of the most essential principles that can be applied to enhance success in tackling undeclared work in supply chains. Liability means legal responsibility for one's acts or omissions. Failure of a person or entity to meet that responsibility leaves them open to a lawsuit for any resulting damages or a court order to perform (as in a breach of contract or violation of statute). To win a case, the suing party (plaintiff) must prove the defendant's legal liability. This requires evidence of the duty to act, the failure to fulfil one's duty and the connection (proximate cause) of that failure to prevent some injury or harm to the plaintiff. Liability also applies to alleged criminal acts in which the defendant may be responsible for their actions which constitute a crime, thus making them subject to conviction and punishment.

In tackling undeclared work, the **supply (chain) liability can be perceived as a deterrence tool**. The supply chain liability is a company's liability for harm caused by its business partners (subcontractors) extending liability to one or more links up in the supply chain.¹⁴ Voluntary industry-led schemes or legislation can hold companies responsible for tracing and providing oversight of their supply chains and are put in place to ensure companies monitor their supply chains to prevent labour, tax and social security violations and, therefore undeclared work.¹⁵

3.3 Public procurement

Public procurement and tender mechanisms can be used as powerful tools to set the rules to manage supply (subcontracting) chains and prevent undeclared work. The role of public procurement for setting standards on

¹² Examples are Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'); Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I); Directive 2006/123/EC of 12 December 2006 on services in the internal market.

¹³ For limits and evaluation of the EU law see for example Cremmers, J (2019), Cremers, J., & Houwerzijl, M. (2021); European Commission (2019).

¹⁴ See more at: <https://corporatefinancelab.org/2016/12/01/supply-chain-liability-a-primer/>

¹⁵ Platform glossary: https://ec.europa.eu/social/main.jsp?catId=1323&langId=en#chapter_C



employment in supply chains is increasing in general with the implementation of the EU Public Procurement Directives, and in particular with the application of social clauses in public procurement. Goods and services purchased via public procurement make up a significant share of the European economy. In 2017, the public purchase of goods and services was estimated to be worth 13.3% of EU GDP.¹⁶

A contractual relationship usually forms a strong basis for promoting change to the practices of suppliers and subcontractors. Some Member States already apply specific conditions when engaging in public procurement. Slovakia, for example, asserts a rule that when an entity is listed in the publicly available register of violators of the ban of illicit employment, the legal entity cannot participate in any public procurement for five years.¹⁷ The use of 'non-compliance lists' which prohibit offenders from applying for public support programmes or public procurement tenders are in use in several Member States and they serve as direct incentives to comply with the national and multinational regulations related to working conditions and undeclared work.

The current EU Public Procurement Directives 2014/23, 2014/24 and 2014/25 also contain some clauses to limit or provide conditions for participation in the procurement and awarding of public procurement tenders and are included in the contracts. The following are examples of such clauses:

- ▶ Rejection (of tenders offers) should be mandatory in cases where the contracting authority has established that the abnormally low price or costs proposed results from non-compliance with mandatory Union law or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions.¹⁸
- ▶ It is also necessary to ensure some transparency in the subcontracting chain, as this gives contracting authorities information on who is present at building sites and what work is being performed.
- ▶ Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour (which is reaffirmed in Article 9 of the 2022/2041 Directive on adequate minimum wages¹⁹).

Despite public procurement representing a major share of government spending, and adequate regulatory and strategic frameworks existing, the uptake of responsible business conduct considerations in public procurement is relatively low. The OECD recently presented an economic argument for governments, policy makers and practitioners on the economic benefits of integrating responsible business conduct (RBC) in public procurement supply chains. Governments should lead by example and cascade responsible supply chain requirements to their suppliers, encouraging them to implement responsible business conduct objectives throughout their supply chains if they wish to conduct business with the public sector. The objectives of the RBC include considerations related to the environment, human rights, labour rights, and others.²⁰

3.4 Due diligence principle

The due diligence principle belongs to the 'soft rules' when tackling undeclared work. Still, it is a common step in complying with labour law standards and human rights, especially in supply chains.

¹⁶ European Commission (2019). Public procurement indicators 2017. At <https://ec.europa.eu/docsroom/documents/38003>

¹⁷ <https://ec.europa.eu/social/BlobServlet?docId=24051&langId=en>

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024>

¹⁹ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2041#:~:text=\(a\)%20adequacy%20of%20statutory%20minimum,2.](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2041#:~:text=(a)%20adequacy%20of%20statutory%20minimum,2.)

²⁰ OECD (2022), "Integrating responsible business conduct in public procurement supply chains: Economic benefits to governments", OECD Public Governance Policy Papers, No. 14, OECD Publishing, Paris, <https://doi.org/10.1787/c5350587-en>.



Due diligence is how a business understands, manages and communicates about risk. This includes the risks it generates for others and the dangers it encounters through its strategic and operational decisions and actions. The OECD defines due diligence for multinational enterprises as:

The process through which enterprises can identify, prevent, mitigate, and account for how they address their actual and potential adverse impacts is an integral part of business decision-making and risk management systems.²¹

Specifically, human rights due diligence is the process through which companies should identify, prevent, mitigate and account for their human rights impacts.

Recently the European Commission set out rules for companies on respecting human rights and the environment in global value chains. The proposed Directive on corporate sustainability due diligence²² aims to foster sustainable and responsible corporate behaviour throughout global value chains. In the draft proposal, the European Parliament emphasises that “voluntary due diligence standards [...] have not achieved significant progress.” Agreement by the European Parliament on this Directive is expected in 2023.^{23, 24}

Voluntary due diligence initiatives for companies regarding their supply chain are already in place. Ethical Trading Initiative Norway (IEH), Ethical Trading Initiative (ETI) and Danish Ethical Trading Initiative (DIEH) (2015) have called for retailers to map their supply chains and perform a due diligence assessment of their direct suppliers, namely the processing companies. This assessment should include the location of the supplier and the subsequent likelihood of manual harvesting, measures in place to respect trade unions and workers’ rights, and the extent to which the supplier can provide product traceability to the farm level.

Another interesting non-EU government policy initiative to facilitate voluntary due diligence by companies has been taken by the **US Department of Labour** which has developed a website and app entitled “Comply Chain: Business Tools for Labour Compliance in Global Supply Chains”.²⁵ The app targets those companies and industry groups seeking to develop robust social compliance systems for global production. Comply Chain provides a practical, step-by-step guide on critical elements of social compliance. In Europe, meanwhile, some multinationals, such as IKEA, have also been considering the development of voluntary due diligence initiatives to cut undeclared work out of their global supply chains as part of their corporate social responsibility (CSR) strategies over the past year or so.²⁶

4.0 Experiences with tackling undeclared work in supply chains

The previous section summarised the current knowledge from secondary sources on various practices for tackling undeclared work in supply chains. The current section further **deepens this knowledge by providing more in-depth evidence and learning points** gathered at the ELA Platform seminar on tackling undeclared work in supply

²¹ Organisation for Economic Co-operation and Development: [OECD guidelines for multinational enterprises](#).

²² European Commission (2022). Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. At <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>

²³ More information at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

²⁴ See also ETUC Position for a European directive on mandatory Human Rights due diligence and responsible business conduct, adopted on 17 December 2019. Available at: <https://www.etuc.org/en/document/etuc-position-european-directive-mandatory-human-rights-due-diligence-and-responsible>

²⁵ See US Dept. of Labour website: <https://www.dol.gov/general/apps/ilab-comply-chain>

²⁶ From personal correspondence of IKEA with Prof Williams who approached him for advice and support on developing such a voluntary due diligence initiative.



chains. Two approaches are used. The first section was dedicated to **Member States' policy approaches** and introduces measures implemented in Finland, Belgium, Italy and Denmark. The second section focused on a **sectoral approach** and summarises best practices to tackle undeclared work in two sectors with widespread supply chains – construction and services.

4.1 General learning resources

The four measures, summarised in this section, represent cases of regulating the supply chain, building trust across all actors in the chain, and developing shared responsibility and liability in the chain. While derived from particular country-specific experiences, these are considered general learning resources because of their transferability to other conditions, countries, or sectors.

Finland introduced the Act on contractors' obligations and liability when work is contracted out (Act 1233/2006). This case resembles a successful regulation of the supply chain. In particular, the Act, in force since 2007, establishes a compulsory tool for companies in cases when:

- ▶ The contractor hires temporary agency workers, regardless of whether the employer of these agency workers is established in Finland or abroad when the employer operates in Finland;
- ▶ Sub-contracting agreements are in place, under conditions specified in the Act, with a subcontracting value of at least 9,000 EUR (excluding VAT).

The Act promotes fair competition between companies and compliance with conditions governing the employment relationship and obliges companies to ensure that their subcontractors and companies outsourcing labour (temporary work agencies) comply with their statutory obligations. The obligations imposed in the Act also aim at implementing minimum conditions for the employment relationships of subcontractors' employees and hired employees (temporary work agencies). The Act establishes the obligation of a subcontractor to submit certain information on its liabilities to the main contractor, namely:

- ▶ The company is entered in the Prepayment registry, the Employment registry and the VAT registry;
- ▶ An extract from the Trade Registry or equivalent information, otherwise obtained from the trade registry directly;
- ▶ A certificate or report of tax payments;
- ▶ A certificate confirming pension insurance payments, payments of pension insurance premiums, or an account that a payment agreement on outstanding pension insurance premiums has been made;
- ▶ Information on the collective agreement or central working conditions applicable to the subcontractor;
- ▶ Account of the organisation of occupational healthcare services;
- ▶ Certificates of statutory employment accident insurance, e.g. in association with construction contracts.

The provided data shall not be older than three months, and failure to comply leads to the payment of a negligence fee. The minimum negligence fee is EUR 2 110, while the maximum is EUR 21 100. The Act further stipulates exemptions to the above rule, as well as instructing on when and under what conditions negligence fees apply.

The above-mentioned information must also be obtained in the case of foreign companies and may be no older than three months. In certain situations, as prescribed under the Act, obtaining this information is unnecessary.



The Finnish case shows that the existence of a proper regulatory framework is important, although it does not solve all challenges related to the supply chain. At the same time, the national legislation should be embedded in EU-level requirements and should not create any obstacles in providing cross-border services. Instead, they aim at facilitating actions that promote a common understanding of rules and benefits, fair business and labour conditions and tackling the abuse of labour. To reach these aims, a political commitment is required, e.g. in Finland, a government resolution on a strategy and an action plan for tackling the grey economy and economic crime for 2020-2023 has been adopted.²⁷ Additional measures and legislation are coupled with this general aim, e.g. assigning tax numbers for construction sites (since 2012) and shipbuilding sites (since 2022). The Parliament's Audit Committee implemented an audit to combat the grey economy in 2015, which showed that the measures taken to combat the grey economy, particularly in the construction sector, were the most significant achievement of the legal framework and adopted measures.

In **Belgium, joint and several liability in subcontracting chains applies in two areas: (a) social contributions, and (b) wages.** In the case of liability for social contributions, the principal/contractor is jointly and severally liable for the payment of the social and/or fiscal debts of their subcontractor. A withholding obligation applies. Direct payment goes from the principal/contractor to the tax authorities when paying the contractor for the work performed. In the case of social debts, 35 % of the invoiced amount is withheld and passed onto the national social security authority. In the case of tax debts, 15 % of the invoiced sum is withheld and passed onto the tax authorities. By fulfilling the withholding obligation, the parties in the supply chain are no longer jointly and severally liable for the social/fiscal debts of the subcontractor. By not fulfilling the withholding obligation, the sanction doubles and must be paid to the national authorities. This practice currently applies to construction, the private security sector and the meat production industry.

The Belgian practice of joint and several liability also plays a preventative role, but also directly fulfils a control and investigation function vis-à-vis the tax administration and the social security authority. The Ministry of Social Affairs and the Ministry of Labour played the role of the legislator in setting up this measure.

In the case of joint liability for wages, the final contractor is made liable for wages to be paid to the workers employed by subcontractors following the law and the collective agreements. The sectors in which this measure applies are determined by a Royal Decree. Since September 2013, the following sectors are covered by this regulation: metal, machine and electrical construction, food industry, cleaning industry, construction industry, upholstery and woodworking industries, agriculture and horticultural sector, electricians, guarding and/or surveillance services. With the exception of the Ministry of Labour, it is the social partners that are involved in securing the applicability of this measure in supply chains. Other stakeholders involved are the Labour Inspectorates and Social Inspectorates. This measure also directly addresses the employment of third country nationals. For example, the social inspectors may inform the contractors or the principal entities, in writing that their direct or indirect subcontractor is employing one or more third-country nationals who are residing illegally.

The lesson from the Belgian case is that joint and several liability is an effective measure against fraud and undeclared work. The knowledge and competence of social inspectors have also increased through the application of this measure. The measure has both a preventive and a deterrent nature vis-à-vis principal entities and contractors. Areas for potential improvement include expanding the scope of the regulation, putting greater focus on prevention and awareness-raising actions and working on a holistic impact measurement.

²⁷Available at:

<https://valtioneuvosto.fi/documents/1410877/16402203/Government+Resolution+on+a+Strategy+and+an+Action+Plan+for+Tackling+the+Grey+Economy+and+Economic+Crime+for+2020-2023/ba2282cd-449f-f2de-a449-9c8d15b0de36/Government+Resolution+on+a+Strategy+and+an+Action+Plan+for+Tackling+the+Grey+Economy+and+Economic+Crime+for+2020-2023.pdf>



The **Italian System of certification of employment and procurement contracts** is a procedure by which the parties of an employment contract or a procurement contract may ask certification bodies to verify the correct qualification of the contracts concluded and the respect of formal and substantial requirements of the law.

The Italian system of certification has multiple purposes: to reduce labour litigation, prevent irregular forms of labour (including undeclared work) and/or abuse and raise the quality standards of the company's organisational processes. Outsourcing part of the production through contracting (and subcontracting chains) is seen as a tool for guaranteeing flexibility to companies but can also be a choice aimed at lowering labour costs. For example, subcontracting part of the production to workers qualified as self-employers and running their own company (with or without employees), could conceal dependent work and therefore be qualified as bogus self-employment. Certification of the employment contracts in such cases allow to qualify the labour relationship in the right way and is especially relevant for assessing issues arising in the area between dependent and independent work.

Certification bodies are authorities with territorial or national competence, such as associations between employers and employees' representatives, the territorial Labour Inspectorate, universities inscribed in the register of the certification commissions maintained by the Ministry of Labour and Social Policies, the Ministry of Labour and Social Policies and provincial councils of labour consultants. The certification procedure pertains to employment and self-employment contracts, waivers and settlements; internal regulations of the cooperatives, which refer to contracts concluded with the working partners; procurement contracts and commercial contracts which, directly or indirectly, entail a labour performance.

The Certification procedure consists of the following steps:

- ▶ Each certification process starts following a joint application filed by both parties to the employment contract. It must be concluded within 30 days of the request;
- ▶ The local Labour Inspectorate must be informed of the beginning of the certification process. Both the local Labour Inspectorate and other public authorities may submit observations to the Certification Commission;
- ▶ The Commission's decision must be substantiated and indicate the labour judge to which an appeal can be addressed;
- ▶ The certification decision must indicate the reasons for the certification request (i.e. civil, administrative, fiscal or pension effects).

The legal effectiveness of certification stems from the fact that the certified contract also produces effects toward third parties (until jurisdictional appeal). Moreover, the certification decision determines the temporary ineffectiveness of any inspection assessment. Appeal against the certification decision is only allowed for the following defects: misclassification of the contract; discrepancy between contractual text and actual and concrete performance, defects in consent and violation of procedure.

Certification procedures can also be used to certify the authenticity of a procurement contract, both at the contracting stage and during its implementation, based on the following indicators:

- ▶ Is the contractor an entrepreneur, with proper technical and economic organisation?
- ▶ Does the contractor have effective managerial power?
- ▶ Exclusive use of capital, machinery and equipment provided by the client;
- ▶ Nature of performance actually provided by workers engaged in the contract;
- ▶ Compensation is agreed on the basis of the result (and not on the actual hours of work).



The certification system enables specific competences and powers of the Labour Inspectorates. Firstly, the certification commission notifies the local Labour Inspectorate (ITL) of the start of the procedure and must take its comments into account. This ensures preventive controls. The subsequent controls occur when the labour inspectors, upon entering the company, must verify the existence of any vices in the certification application that may affect the Commission's decision and in particular, whether the application has been signed by both parties to the contract, whether the application contains all the elements necessary to allow a complete assessment by the Certification Commission and whether there is compliance with the obligation to communicate the beginning of the procedure. However, the certification has no effect with regard to any conduct of criminal relevance.

In addition to the presented Member State's approaches to tackling undeclared work in supply chains, the approach adopted in **Denmark addresses social dumping through intensifying collaboration and exchange of information between government bodies and with supply chain participants**.²⁸ This collaboration is frequently anchored in a forum with a dedicated purpose, scope and guidelines. As an example, the cooperation of the Danish Tax Agency, the Danish Working Environment Authority and the Danish Police facilitated joint actions at workplaces with a risk of social dumping, e.g. suspicion of the use of illegal labour, non-compliance with working environment regulations, and tax and VAT fraud. This cooperation between public authorities contributed to the establishment of guidance principles for companies, which are guided on how they can perform controls by:

- ▶ Checking registration conditions of potential subcontractors or suppliers before entering into any contract;
- ▶ Regular implementation of controls on whether suppliers/subcontractors are (still) registered and submit regular tax and VAT claims;
- ▶ Targeted information and guidance.²⁹

In addition to guidance offered to companies, this approach also contributes to sharing responsibility for declared employment and taxes throughout the supply chain, and in the long-run helps to establish trust between business partners in the supply chain. Prevention, or early measures, are also promoted by the Danish approach to tackling undeclared work in supply chains. Early efforts apply, e.g. to large construction projects, such as in the form of facilitating an early dialogue between the developer and the main contractors, preferably already before the construction begins. After a contract is signed, building mutual trust and create a regular contact is important. Moreover, state authorities explain to developers what they can do themselves to ensure a compliant project. Voluntary agreements on regular transmission of information about persons working on the construction site can be combined with other types of information. Finally, the authorities are also involved in controlling the communication between the parties in the supply chain. There is a requirement that foreign service providers register in the Registry of Foreign Service Providers (the RUT register), a requirement for electronic payment of all sums exceeding 8 000 DKK, shared responsibility in the chain by considering the companies' undocumented payments as a purpose (e.g., a masked distribution to the main shareholder), and the option to demand a withholding obligation from the end user in case only foreign labour is provided. In the case of public developers, subcontractors must also comply with existing collective agreements and there is a trial scheme of issuing social ID cards for workers in the chain in place.

4.2 Sectoral perspectives

The approaches used to tackle undeclared work in the construction and services sectors supply chains are of particular interest, as undeclared work is typically prevalent in these sectors. This section provides an overview of

²⁹ Information and guidance is available at: www.skat.dk



practices and learning points related to these two sectors, drawn from the presentations and discussions during the seminar.

4.2.1 Construction sector

Over a fifth of undeclared work is in the European construction industry. As of 2019, 19 % of all undeclared jobs were in the construction sector, with this figure varying, however, from region to region. In the Nordic nations and East-Central Europe, nearly a third (30 %) of all undeclared work was in the construction sector, compared with just a fifth (20 %) in Western Europe and only one in seven undeclared jobs (15 %) in Southern Europe.³⁰ Four particular features of the construction industry might contribute to a higher propensity of undeclared work in this sector: the nature of the supply chains, the fragmentation of work, the high level of mobility among construction workers, and the fierce competition between construction companies.³¹

The construction sector was one of the first economic sectors in which subcontracting became a widespread phenomenon, raising concerns regarding a possible erosion of workers' rights at the lower end of the subcontracting chain.³² Most construction activities involve several companies with different specialisations. Sometimes these companies work consecutively, sometimes simultaneously. Traditionally, these specialisations are subcontracted or outsourced by the main contractor to other companies, which in turn also subcontract and/or outsource the work. This often results in a long chain of subcontractors, involving many companies. A major disadvantage of long subcontracting or outsourcing chains is the lack of transparency and accountability.³³

Key challenges identified by the Platform (2017)³⁴ in tackling undeclared work in the construction supply chains are:

- ▶ Identification of subcontractors in construction supply chains;
- ▶ The fraudulent practice of letter-box companies posting workers to different Member States from the one where they are registered;
- ▶ Lack of labour inspectors carrying out inspections on construction sites;
- ▶ High levels of unemployment cause workers to accept bad working conditions;
- ▶ Difficulty of finding evidence and effectively sanctioning violations through the ordinary tools of labour inspections;
- ▶ Fraudulent construction companies without own construction activity. They only provide workers to construction companies at both national or cross-border level.³⁵

The possible solutions identified in the 2017 Platform toolkit for tackling undeclared work in construction supply chains were³⁶:

³⁰ Eurobarometer, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2250>
³¹ https://www.fiec.eu/application/files/8016/0127/8404/2020_-_TUWIC_Toolkit_EN_low_res.pdf

³² Heinen, A.; Müller, A.; Kessler, B. (2017).

³³ EFBWW (European Federation of Building and Woodworkers), FIEC (European Construction Industry Federation) (2020). Tackling undeclared work in the construction industry. Toolkit. At https://www.fiec.eu/application/files/8016/0127/8404/2020_-_TUWIC_Toolkit_EN_low_res.pdf

³⁴ Cremers, J., Williams, C.C., Hawley-Woodall, J. and Nikolova, N., 2017. Tackling undeclared work in the construction industry: a learning resource. Brussels: European Platform tackling undeclared work.

³⁵ ETUC (European Trade Union Confederation) (2021). Securing workers' rights in subcontracting chains. Case studies. Brussels, September 2021. https://www.etuc.org/sites/default/files/2021-10/Securing%20workers%20rights_EN_LR.pdf



- ▶ Joint and several liability (JSL) systems in supply chains ('contract based' or 'chain-based systems' JSL);
- ▶ Duties of information disclosure for the main contractor applied to the employees of all the subcontractors and to the self-employed professionals involved in the chain (e.g., Finland and Belgium);
- ▶ Limitation of the number of 'tiers of subcontractors' to three (the issue has been seriously discussed both in Spain³⁷ and in Belgium; Norway has a limit of two tiers for subcontracting);
- ▶ Creation of non-compliance lists of companies that can be excluded from public tenders (e.g. Estonia and Italy).

Notably, the 2014/67 Directive concerning the posting of workers states that Member States shall provide for measures ensuring that in subcontracting chains, posted workers can hold the contractor of which the employer is a direct subcontractor liable, in addition to or in place of the employer.³⁸

One of the promising practices to mitigate multiple challenges related to undeclared work in construction supply chains is the Spanish **Registration of accredited companies as contractors or subcontractors of the construction sector (REA)**.

The public registry was created in 2007 and the registration obligation has been in force since August 2008. The objectives of the registry are to: 1) certify that the companies that operate in the construction sector meet the capacity and quality requirements of occupational risk prevention; 2) obtain greater efficiency and specialisation of production in decentralisation processes; and 3) eliminate subcontracting that is economically unproductive and detrimental to the safety and health of workers.

The REA obliges all companies that intervene in the subcontracting process either as contractors or subcontractors to register with the public registry. Therefore, the target groups also include self-employed workers.³⁹ The mandatory entities have to fulfil the following requirements: provide sufficient material and personal means; assume risks, obligations and responsibilities inherent to the development of the business activity; and directly exercise the powers of organisation and management over the work carried out by their workers. Additional requirements are that the human resources personnel at both managerial and productive level have the necessary training in occupational risk prevention. The registration does not exempt the registered company from the obligation to justify, at any time, when required, the maintenance of the legal requirements.

The REA provides a simplified registration procedure for companies that perform the transnational provision of services, i.e. employ posted workers. No registration is necessary if the posting lasts less than eight days. When postings exceed eight days, the first posting needs to be registered by a declaration of compliance with quality and capacity requirements.

The online or on-site form of registration requires the obliged companies to provide company details, express declaration of compliance with legal requirements (capacity and quality) and company characteristics (activities performed, productive organisation, material and personal means), as well as preventive aspects: organisation of

³⁷ European Platform Tackling Undeclared Work (2019b), *Regulating subcontracting in the construction sector (LSCS)*, Spain, Available at: <https://ec.europa.eu/social/BlobServlet?docId=21646&langId=en>

³⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0067>

³⁹ The target group specifically includes all companies and self-employed workers with salaried employees who intend to be hired or subcontracted to carry out work on a construction site, i.e. 1) a company that carries out construction that belongs to another productive sector; 2) promoters who have the status of contractors; 3) public administrations; and 4) labour companies and cooperative companies. The REA does not cover self-employed workers who do not have employees, promoters or companies limited to the mere supply of materials without workers entering the work (definition of subcontractors: natural or legal persons who contractually assume the commitment to carry out parts of work with the participation of self-employed workers or employees). In terms of transport companies, only those companies contracted for excavation and earthmoving work are obliged to register, though companies providing transport services are not, i.e. loading and unloading of goods with constructions work sites as either their origin or destination.



the prevention of occupational risks, training in preventive matters of human resources (accrediting certificate attached). Moreover, the company must communicate any changes to the company's data, renew registration every three years and request cancellation where appropriate.

In case the company wishes to contract or subcontract with another company, the principal company must verify that the company is registered in the REA and request the REA to certify the registration. The verification needs to be accomplished within the month before the start of the execution of the contract. The certification thus fulfils the duty to monitor compliance by the subcontractor company and exonerates the subcontractor and principal company from joint and several liabilities, i.e. the labour and social security obligations, including responsibilities for undeclared work.

Up to this point, the outcomes of the REA have been promising. The registration system has resulted in the greater professionalisation of companies involved in the construction sector with adequate structures and means having been put in place, thus leading to greater job stability and training of human resources, and better organisation of the subcontracting system. The number of registrations in the REA is under evaluation.⁴⁰

The Labour Inspectorates often face a situation whereby undeclared workers have been detected at a workplace where the employees of several employers work. In that case, it can be very difficult to determine the employer for each worker. To ensure that no one can escape liability for infringing employment, Hungary applies a special legal principle that allows for identification of the employer. The legal principle is described below (Box 1).

Box 1. Presumption of the employer status (Hungary)

The **Presumption of the employer status** is based on the current and previous Acts, which give the Labour Authority the power to determine who is the employer if the evidence is inconclusive.

If the actual employer of the employees cannot be identified as a result of the labour inspection, pending proof to the contrary, it shall be presumed that the employer of the worker concerned is:

- a) The person responsible for coordinating the activity as stipulated in the contract (agreement) between the parties;
- b) The person who effectively manages the activity at the workplace;
- c) The person in whose territory the work is carried out.

As this is an order, the Authority can take subsequent step if they cannot initially identify the employer. If no information can be determined, the authorities can contact the 'contractor managing the activity' in the field of work. The contractor who manages the activity should know which work is being carried out on-site. This workflow knowledge stems from the obligation to record occupational health and safety information in the building logbook.

The Labour Authority examines who is interested in the activity and which company is interested. The person/company intending to perform the work in question is considered the manager of the action/activity.

The purpose of the inspection is to determine the actual employer to thus ensure that the legal consequences are borne/will be borne by the person who is actually responsible for any infringement of the law should this occur. The rebuttal of the presumption is the presumed employer's task, and it is in the interest of the presumed



employer to assist the Labour Authority, because the presumed employer can avoid facing liability only if the actual employer can be determined. As such, the presumption is refutable.

Liability based on presumption cannot be automatically determined. If the Authority determines the identity of the employer on the basis of a presumption, it informs and calls the employer to submit evidence and make a statement. It is not enough to simply declare, for example, that “I am not the employer”, as the presumed employer must indicate the actual employer. Proof in this regard can be in the form of documents, the actual employer’s statement, and employees’ testimony.

Measures taken against an employer established based on a presumption can be applied only to a limited extent. Only in the following four cases can the Authority apply legal consequences with regard to infringement of the rules:

- ▶ The formality of the legal declaration;
- ▶ The obligation of declaring workers;
- ▶ The authorisation of employment of third-country nationals in Hungary; and
- ▶ The employment of third-country nationals and nationals with the right of free movement and residence.

For other infringements, legal consequences may only be applied to the presumed employer if the infringement was committed after the decision that declares they are a presumed employer has been finalised. Evidence is considered to be valid if the actual employer can be identified by the Authority and, based on other evidence, it can be determined without any doubt that the actual employer is different from the presumed employer.

ID cards are one of the direct measures to increase the detection of undeclared work. Social ID cards are a direct control tool that confirms the worker’s presence on a construction site. Social ID cards exist in at least 12 European countries: Belgium, Finland, France, Iceland, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Romania, Spain, and Sweden.⁴¹ The social ID card requirement generally applies also to foreign companies and posted workers. Except for France, Denmark and Spain, all the countries listed above allow or require foreign companies to apply for the social ID card. In most countries, the cards are equipped with different types of fraud-resistant systems, i.e. holograms, watermarks, and ID chips. The use of the card is accepted in the other Member States ⁴²

The social ID Card scheme is merely one of the available tools in combination with other instruments designed to combat undeclared work. In particular, it should be noted that Social ID Card schemes can never replace physical workplace inspections. Both tools should be seen as complementary. Social ID Card schemes should be “readable” on-site and connected to up-to-date databases.⁴³

Lithuania has taken a step forward with the development of an advanced registration tool that generates ID codes (see Box 2).

⁴¹ Cremers, J., Williams, C.C., Hawley-Woodall, J. and Nikolova, N., 2017. Tackling undeclared work in the construction industry: a learning resource. Brussels: European Platform tackling undeclared work.

⁴² European Federation of Building and Woodworkers and the European Construction industry Federation (2015) Social identity cards in the European construction industry. At <https://www.efbww.eu/stream/18f9e8f5-6e7e-47a1-8d86-93440a189e9e>

⁴³ European Federation of Building and Woodworkers and the European Construction industry Federation (2015) Social identity cards in the European construction industry. Available at, <https://www.efbww.eu/stream/18f9e8f5-6e7e-47a1-8d86-93440a189e9e>



Box 2. Transparent identification code for Workers (Lithuania)

64 % - 70 % of foreign workers in the construction sector in 2020 – 2021 in Lithuania were undeclared, with most being Ukrainian citizens (53 % of all undeclared foreign workers). To prevent further increases in undeclared work in the sector, the country introduced a **Transparent Identification Code for Workers (ID Code) in April 2022**.⁴⁴ A QR code is generated in the SoDra system⁴⁵ at the request of the insured person or insurer to verify data and confirm that a particular person is employed (i.e. the employee has been declared) under a work contract or is self-employed or has been posted to the Republic of Lithuania and is insured by a specific insurer. The obligation to have the ID Code applies to any person performing construction work on a construction site. The same obligation includes persons employed under a work contract or who are self-employed, small partnership managers employed under a civil contract, and employees who have been posted to the Republic of Lithuania.

The ID Code may be obtained by logging in to the worker's personal account on the SoDra Electronic Resident Service System (EGAS) or by personally visiting any SoDra service point and verifying their identity, or, alternatively, by submitting a request via other means which includes personal identification (for example, by submitting a request via email signed with a valid e-signature). A person employed under several work contracts or engaged in a self-employed activity will receive a separate code for each work contract (for each social insurance registration with a separate insurer), and for each self-employed activity performed in the different capacities of self-employed persons (for example, activities under a business license and activities under an individual activity certificate).⁴⁶

The obligation to verify the ID Code is the responsibility of the State Labour Inspectorate, State Tax Inspectorate, Financial Crime Investigation Service, the police, and the developer (client) or its authorised contractor. Codes are verified using a QR reader installed on a smart mobile device or other computer device equipped with a camera. The employer/hosting Lithuanian company must ensure that all their employees or posted employees doing construction work have transparent identification codes for workers. They must submit them to the institutions in charge of controlling illegal and undeclared work (the State Labour Inspectorate, the State Tax Inspectorate, the Financial Crime Investigation Service and the police), the developer (client) or its authorised contractor.⁴⁷

The developer (client) or its authorised representative must ensure that all persons who are on a construction site, namely, employees doing construction work, self-employed persons and other persons on a construction site not doing construction work, are identified. Either the employee himself/herself can have the code on paper or download it on their phone. The QR code can be asked by Labour Inspectorates, tax authorities and police.

Due to the initial phase of the implementation of the ID Code, no detailed analysis regarding the effectiveness of the measure is available or as to whether the measure resulted in a reduction of the number of illegal workers being employed, including foreign workers, in the construction sector. The information available by the control is limited to the person's name, surname and the place of the work. The second step will be to expand the system to include other information and control more complex data. A further possible step would be the expansion of the ID Code to other vulnerable groups.

⁴⁵ More information on the SoDra system, available at: <https://www.sodra.lt/en/benefits/information-for-insurers/lwc/legally-working-code>



An additional tool to mitigate the challenges related to undeclared work in construction supply chains is to **increase the transparency of the supply chain by limiting the number of subcontractors**. In Sweden, some major construction companies have agreed to ban chains longer than two subcontractors. As such, their subcontractor(s) can have only one subcontractor. This is to be able to better follow up on their subcontractors. A similar rule applies in Spain. A special Law 32/2006 regulating subcontracting in the construction sector (LSCS) limits the number of contracting chains to four and has been implemented via national collective agreements in the construction, metal and woodworking sector, thereby establishing basic and advanced levels of training for employees. For transferability, action must focus on tackling abuse in temporary recruitment agencies and preventing the proliferation of 'fake' companies.⁴⁸

Information reporting requirement in the Finnish construction industry is another successful practice in terms of tackling undeclared work in supply chains. The main contractors and subcontractors in supply chains are obliged to provide the Tax Administration with the names of all companies or people from whom they have ordered construction services and details of any contract they have concluded on a monthly basis. The aims of the measure are, among others, to combat the grey economy in the construction industry and support fairer competition in the sector, and to support the competitiveness of honest companies in the market.⁴⁹

In terms of the measures that could incentivise businesses at different levels of the supply chain to be compliant, the discussion pointed to the necessity of constantly exerting 'pressure in a kind way' from the side of enforcement authorities. The best way to instigate employers to address the challenges related to undeclared work in the construction supply chains is to present the advantages of compliance and the high risk of non-compliance. The permanent visibility and communication between the enforcement authorities and the business representatives about the benefits of compliance is a recommended way with regard to how to incentivise business compliance/best practices in the construction sector.

Other examples of incentives for business are 'the white and black lists of employers' and diverse awards and actions to promote corporate social responsibility (CSR).⁵⁰ An effective blacklist of employers breaching the ban on illegal work can be more effective than fines as is the case of the [Central Registry of Illicit Employment](#) in Slovakia. Registering companies that breach the rules and are established or operate abroad is, however, a challenge for Slovakia.

An additional incentive for businesses might be to **merge diverse systems** that operate at the level of companies or sectors. For example, the safety and health system personnel might be trained also in compliance of social security regulations to prevent undeclared work in the supply chain.

Increasing transparency through an ID card system that identifies the workers and employers, in addition to more transparency in public procurement and further collaboration with trade unions at the company or sectoral level were additional incentives suggested by the participants. Trade unions can support the inspectors as well as the employers to increase transparency throughout the supply chain. However, as trade unions usually represent workers in regular employment, their ability to support transparency in SMEs is limited.

The costs, including administrative burdens, of the measures suggested can be reduced most effectively through digitisation. Nevertheless, the online system of generating ID cards also requires input cost.

⁴⁸ European Platform tackling undeclared work (2019). [Regulating subcontracting in the construction sector \(LSCS\). Spain.](#)

⁴⁹ European Platform tackling undeclared work (2018).

[Construction Sector reporting requirements, Finland](#)

⁵⁰ For the economic, social and environmental benefits of CSR in the construction sectors see for example Bernaciak , A., Halaburda , M., Bernaciak , A. (2021). The Construction Industry as the Subject of Implementing Corporate Social Responsibility (the Case of Poland). Sustainability 2021, 13, 9728. <https://doi.org/10.3390/su13179728>



4.2.2 Services sector

The data on prevalence of undeclared work are available only for some service sub-sectors.⁵¹ As of 2019, on the supply side, of people engaged in undeclared work in the last 12 months, 27 % did so in the personal services sector (child care, care for elderly and cleaning), 17 % in the hospitality sector and 10 % in the retail and repairs services sector.⁵² The share of undeclared work in the personal and household services sector is slightly over 50 % on average; lowest in the care sector (34 %) and highest in direct household employment (almost 70 %).⁵³ Specifically, in the accommodation and food services sector, 14 % of workers are in unregistered employment (compared with 5 % of the overall EU workforce), 2 % of workers are in bogus self-employment (compared with 4 % of all employment in the EU) and 6 % of employees (1 in 17) in hotels and restaurants receive wages under the table (compared with 5 % of all employees in the EU).⁵⁴

The following challenges related to undeclared work in supply chains apply to the services sector:

- ▶ Undeclared work in the service sectors follows the same patterns seen in other sectors. This often involves subcontracting chains, bogus firms, and false registration of employees – depending on the sector and country;
- ▶ These infringements entail consequences for tax and social security evasion and labour law violations. Moreover, the non-compliant behaviour undermines fair competition in the sector;⁵⁵
- ▶ Key challenges to detect forms of undeclared work in supply chains arise from ineffective implementation of European and national regulation, and complicated interinstitutional and cross-border cooperation of competent authorities;
- ▶ There is also need for a more efficient use of digital control devices and data sharing across the supply (subcontracting) chains and services that are highly mobile with workers dispersed across countries;
- ▶ Another challenge for enforcement is the monitoring of subcontracting chains and liability claims in the service (any) sector. There is a need to bring forward effective liability regulations at national level that reach beyond the scope of European legislation, as well as suggestions on effective enforcement;
- ▶ Less emphasis is currently put on direct deterrence measures that tackle the liability of the contractor for working conditions in the supply chain. The cross-border cooperation of authorities is also still poorly developed;
- ▶ More targeted, strategic and risk-assessment based inspections as well as additional training and education of inspectors on both deterrence and preventative approaches targeting the supply chains of services sector is needed and should include opportunities for exchanges among different countries and authorities.

⁵¹ Based on NACE Rev. 2 classification, the market services is defined as: G-I: Wholesale and retail trade; transport, accommodation and food service activities, K-L: Financial and insurance activities; real estate activities, J: Information and communication, M-N: Professional, scientific and technical activities; administrative and support service activities. Sectors covered by the Services Directive are retail and wholesale trade, construction, business/professional services, real estate, tourism and some entertainment services. 'Statistical classification of economic activities in the European Community', Eurostat, Luxembourg (2008).

⁵² Special Eurobarometer 498 (2019). [Undeclared work in the European Union - Summary](#).

⁵³ Guzi, M. et al. (2022). Undeclared work in the personal and household services. European Labour Authority. At https://www.ela.europa.eu/sites/default/files/2022-03/UDW_Study_report_on_PHS_2022.pdf

⁵⁴ Williams, C., and Horodnic, J. A (2020). Tackling undeclared work in the tourism sector. European Platform tackling undeclared work.

⁵⁵ Horodnic, I., A. Williams, C., Manolică, A., Roman, C.T., Boldureanu, G. (2020). Employer perspectives on undeclared work in the service sector: impacts and policy responses, The Service Industries Journal, at https://www.academia.edu/52408487/Employer_perspectives_on_undeclared_work_in_the_service_sector_impacts_and_policy_responses



Subcontracting liability arrangements are very heterogeneous and vary from country to country. For example, in parcel delivery, third-party logistic providers, as principal contractors, subcontract delivery services to self-employed couriers or couriers employed by small subcontracting firms via chain links (up to three). As a rule, the further away from the principal contractor, the more precarious, unstable, and unprotected are the workers' employment rights.⁵⁶

Measures to improve the detection of undeclared work in the **hospitality services (tourism) sector include the introduction of certified cash registers; and supply chain due diligence initiatives, such as a voluntary supply chain responsibility initiative**, which larger tourism businesses could introduce as part of their corporate social responsibility (CSR) strategies.

Certifications of quality for companies that respect fair working conditions, considering the entire supply chain (and using effective mechanisms for evaluating the criteria to obtain such certification), are also an example of effective deterrence. The certification of labour compliance (Documento Unico di Regolarità Contributiva - DURC) in **Italy** is one such example. This enables contractors to certify their regular status for the assignment of public procurement contracts and simplifies the administrative procedures enabling controls by clients and main contractors in construction supply chains.

The **Norwegian Labour Inspection Authority** successfully applies deterrence inspections based on the cleaning sector regulation.⁵⁷ The deterrence component in the cleaning sector is anchored in the fact that all cleaning companies must register before they can be approved by the Norwegian Labour Inspection Authority to legally provide cleaning services. Additionally, purchasing or hiring cleaning services is permitted only from approved enterprises. This rule also applies to enterprises without employees. The establishment of a cleaning company entails registration in all applicable registers. It must be registered, have valid health and security certifications for all employees and be affiliated with an approved occupational health service safety representative. The employment agreements must meet the minimum conditions and comply with the legislation concerning wages.

Another example of good practice is information campaigns about supply chains and corporate social responsibility in the Netherlands (see Box 3). The aim of the advocated 'chain approach' is raising awareness in the cleaning sector.⁵⁸

Box 3. A 'chain approach': awareness raising in the cleaning sector (the Netherlands)

The initiative of the Dutch Labour Inspectorate is to tackle labour exploitation in the cleaning sector. It involves a two-fold strategy including awareness-raising among businesses who hire cleaning companies with regard to the risk of undeclared workers in the sector, as well as a prevention strategy focused on changing attitudes towards undeclared work within the sector.⁵⁹ The activity starts with an integral problem analysis, including the identification of main stakeholders and the main risks. The actors involved include the Dutch Labour Inspectorate, the Immigration and Naturalisation Service (IND), the Dutch tax authority, municipalities, benefit agencies, NGOs and criminal law authorities. The activity targets organisations that hire cleaning companies, as well as workers that may be involved in undeclared work. The purpose of this measure is to change attitudes vis-à-vis undeclared work, but also to increase the awareness that the chances of being caught are high.

Specific objectives of the initiative include:

⁵⁶ Heidinger, B. (2018). Tackling Undeclared Work in the Road Transport Industry. European Platform tackling undeclared work.

⁵⁷ [UDW in PHS Learning resource paper 0.pdf \(europa.eu\)](#)

⁵⁸ <https://ec.europa.eu/social/BlobServlet?docId=21456&langId=en>

⁵⁹ <https://ec.europa.eu/social/BlobServlet?docId=21456&langId=en>



- ▶ Effective communication with organisations that hire cleaning companies;
- ▶ Facilitate more demand for hiring cleaning companies that employ declared workers, or provide the cleaning work in-house;
- ▶ Increase the responsibility of the actors in the cleaning sector to undertake work appropriately.

As part of the initiative, a 10-point-checklist has been developed, which companies can use when selecting which cleaning company to hire. The Labour Inspectorate also commits itself to maintaining contact with companies and assessing how they are improving through singling out cleaning companies that meet the above targets and supporting them should any problems arise.

Fourteen fast food companies had checks imposed on them during one single day. Controls were implemented in the night, at the same time, at various fast food restaurants owned by the three largest chains. A press release followed which reported on the Inspectorate's action. The inspection outcomes were discussed with the head offices of these companies; with regard to the cleaning companies working for the fast food chains, a fair work checklist has been developed.

This 'chain approach' seeks to develop a relationship and promote shared responsibility throughout the chain over a longer-term period. It also helps to develop a self-inspection tool for cleaning companies, and is supported by the Labour Inspectorate who provide guidance, in addition to campaigns and publications. At the same time, the Labour Inspectorate introduces strict deterrence measures if companies are not willing to cooperate in the positive sense in the 'chain approach' and repeated violations are reported.

The main lessons for Labour Inspectorates to draw are the following:

- ▶ Serve as a facilitator and inform the involved actors;
- ▶ Be firm, act with real passion, and be transparent;
- ▶ Make it a joint project with shared responsibility throughout the chain;
- ▶ Make clear the benefits for companies, e.g. better image, financial benefits, fewer checks in the future in case of compliance;
- ▶ Promote an integrated approach, where a mix of interventions works best (cooperation, checklists, inspections, guidance throughout the improvement process).

In the words of a fast food director, this is a good initiative where both client and staff satisfaction have increased, while maintenance costs have decreased.

Improving the detection of undeclared work is not necessarily the exclusive responsibility of state enforcement authorities. Social partners can, and in fact do, also play a role in detecting undeclared work. For example, the **EU level sectoral social partners** for the private security services, **UNI Europa and CoESS** (Confederation of European Security Services), released several joint statements against undeclared work in the sector.⁶⁰ Among others, the statements stipulate that all private security companies and personnel must be licensed by relevant national authorities, in accordance with national law in the Member States; and that policymakers on local, national and EU level shall effectively enforce law and exclude bidders that use undeclared or partly declared staff from public procurement contracts – following the best value procurement principle, with the help of existing standards.

⁶⁰ [UNI-Europa and CoESS a joint position against undeclared work in the private security sector](#)
[CoESS and UNI Europa Joint Statement for the European Campaign for Declared Work](#)



Furthermore, they demand that contracts awarded within public procurement tenders which do not meet the standard stipulations of procurement processes (e.g. fair working conditions) should be subjected to thorough inquiries. Such inquiries will ensure that employment conditions that emerge under the public contract align with the relevant labour legislation and collective agreements in the country where the service is provided. Companies that subcontract private security services must constantly ensure that also their subcontractors implement the same standards in employment conditions and social responsibility and do not engage in undeclared work. In the private security sector, national legislation in some countries also limits the extent of sub-contracting while sectoral social partners actively support the fight against undeclared work. In Spain for instance, the social partners integrated in a Sectoral Observatory to put a special focus on strict legal compliance of public procurement tenders. In the Netherlands, the Collective Agreement of the sectoral social partners finances a foundation that conduct checks every 3-4 years among all licenced private security companies under the scope of the Collective Agreement to verify whether the company is compliant with the Collective Agreement.

The social partners in the European Sectoral Dialogue Committee for Industrial Cleaning (the “Industrial Cleaning SSDC”), UNI Europa and EFCI (European Cleaning and Facility Services Industry), also released a joint statement, to support the European campaign for declared work 2020 – #EU4FairWork.⁶¹

5.0 Role of social partners in tackling undeclared work in supply chains

Social partners at the national and European level have an important role in supporting enforcement authorities in tackling undeclared work and abusive practices in supply chains. Social partners, including representatives of the European Trade Union Confederation (ETUC) and Business Europe who attended the Platform seminar, identified key areas and ways in which they are active to address undeclared work in supply chains:

Information, awareness raising and training

- ▶ Awareness raising among workers in the supply chain, e.g. making them aware of their labour rights and who their employer is; organising events drawing wrongdoings and violations in supply chains to the attention of the public with the aim of exerting political pressure on politicians and the media;
- ▶ Reporting abuse to competent authorities with a view to trigger an inspection
- ▶ Events, including training and information sessions, both for employers (e.g. finding their way through complex employment regulation and responsible business conduct in supply chains (e.g. what precautions to take to make sure you engage with decent subcontractors) and for workers (e.g. raising their awareness on knowing who their employer is and how to claim their rights);

Prevention

- ▶ Compiling lists of compliant companies, registers allowing contractors to verify e.g. social security contributions of subcontractors;
- ▶ Helping to identify risks and actively supporting national authorities, e.g. by advertising the benefits of working or subcontracting legally, offering support to members (workers in knowing their rights and how to claim them);

⁶¹ <https://www.uni-europa.org/news/efci-and-uni-europa-joint-statement-for-the-european-campaign-for-declared-work-2020-eu4fairwork/>



employers in checking their compliance with legal regulation, social protection measures and occupational health and safety;

- ▶ Developing measures to facilitate identification of the worker and employer, including e.g. registration numbers, hiring date, employment status, subcontracting relation, role and tasks, professional qualifications and training, entry and exit of worksite, etc.;
- ▶ Ensuring monitoring and transparency of worksites for inspectorates and trade unions as well as for main contractors and subcontractors, e.g. by documenting all subcontractors and workers active in the same worksite.
- ▶ Supporting the application of the due diligence principle, e.g. through close involvement of social partners in the elaboration voluntary approaches, such as certification procedures and the establishment of codes of conduct;

Policy dialogue

- ▶ Act local, e.g. involve employers and trade unions to support the development of contact points for the prosecution authorities and labour inspectorates;
- ▶ Engaging with public contractors, e.g. in discussions on the scope and depth of public tenders, and supporting public authorities in defining socially responsible public procurement contracts in accordance with legal regulation, including measures put in place to avoid undeclared or underdeclared work;
- ▶ Participating in a variety of exchanges of information and joint workshops with regional authorities, labour inspectorates and prosecutors;
- ▶ Developing wider cooperation platforms, also including e.g. social security authorities.

Social dialogue and collective bargaining

- ▶ Securing workers' representation and bargaining coverage along the entire chain, not only at the first level;
- ▶ Collective bargaining to conclude collective agreements containing also obligations with regard to subcontracting, e.g. transparency requirements, commitments to limit the length of subcontracting chains, prohibition of cash payments, requiring salary payments to individual bank accounts;
- ▶ Round-tables to develop policy measures, sectoral strategies or cooperation agreements;
- ▶ Social ID cards and personal labour cards based on sectoral collective or tripartite agreements.

Enforcement

- ▶ Supporting the use of tougher sanctions as a complement to dedicated legislation on subcontracting (new legislation is not needed in the eyes of employers' representatives);
- ▶ Supporting the establishment of user-friendly and functioning reporting systems, which enable communication between employers, trade unions and enforcement authorities;
- ▶ Industrial action to force contractors to remedy irregularities in the chain;
- ▶ Supporting enforcement control in inspections, e.g. by shop steward visits and reporting abuse to relevant enforcement authorities;



- ▶ Securing access to justice, e.g. by supporting workers in undeclared or vulnerable positions in civil and criminal procedures, also including cooperation with trade unions abroad;
- ▶ Supporting the implementation of alert mechanisms in risk assessment and reporting cases to enforcement authorities;

Finally, **social partners also acknowledge the value of EU-level regulations** as drivers of good working standards in supply chains. Business Europe calls for proper enforcement and implementation of existing EU social legislation, where worker protection and social standards are maintained without unnecessary costs and bureaucracy.⁶² In supply chains, Business Europe calls for resilience and more state involvement as a key factor in eliminating uncertainties such as lack of information in ‘uncharted territories’, red tape, or excessive border controls re-introduced with the COVID-19 pandemic. Furthermore, the evidence requirements to launch proceedings should be kept simple and should focus on the criminals, as per current evidence, according to employers’ representatives, there is often focus put on minor administrative offences instead of larger cases of fraud.

On the side of trade unions, ETUC is calling for fair labour mobility and migration, summarized in their 2021 Resolution.⁶³ In particular, ETUC has formulated a demand for a general EU legal framework on subcontracting, with suggestions for preventing abusive subcontracting that circumvents workers’ rights, applicable legislation and collective agreements, stipulating a maximum length of supply chain, a mandatory non-financial reporting, a responsibility of the main contractor to verify records of subcontractors, workers’ involvement in internal monitoring and compliance procedures, developing mechanisms that enable workers to report above and seek redress, and finally developing an effective sanction mechanism and solvency guarantees.

Finally, an EU-level trade union initiative by ETUC Member UNI Europa⁶⁴ calls for applying public procurement in a more effective and socially responsible way and supporting this by a revision of Public Procurement Directives 2014/23, 2014/24 and 2014/25. This can be a relevant resource for tackling undeclared work in supply chains, in particular because, trade unions call for public procurement procedures to make access to public contracts conditional on collective bargaining to effectively tackle abuse, undeclared work and social fraud, including in cross-border situations and supply chains, while ensuring full respect for national labour market models. In the unions’ view, a revision of the above Directives to make socially responsible procurement compulsory (as opposed to lowest price as the only award criteria, which still today is the main consideration in a majority of tendering procedures) could strengthen the application of social clauses in public procurement through enhanced monitoring and enforcement, including the possibility of disregarding abnormally low bids and excluding contractors and subcontractors who engage in social dumping, abusive practices or discrimination. To be eligible in public procurement, a social conditionality could be introduced for operators to fully respect the fundamental rights of workers, e.g. by practicing collective bargaining, or ensuring full compliance with applicable collective agreements and working conditions by national law and practice.

⁶² Business Europe website. Available at: <https://www.besnesseurope.eu/policies/social/labour-markets-and-social-policy/industrial-relations-and-eu-labour-law>

⁶³ ETUC Resolution on Fair Labour Mobility and Migration in 2021. Available at: https://etuc.org/sites/default/files/document/file/2021-03/EN-ETUC%20Resolution%20on%20Fair%20Labour%20Mobility%20and%20Migration%20adopted_0.pdf

⁶⁴ UNI Europa campaign No public procurement without a collective agreement, 2022. Available at: <https://www.uni-europa.org/news/no-public-procurement-without-a-collective-agreement/>



6.0 Conclusions and learning points

Challenges related to tackling undeclared work can all be placed under the umbrella of **lacking transparency throughout the supply chain**. Transparency relates to the identification of actors (e.g. who is the employer, what is the role of intermediaries etc.), identification of relevant legislation (e.g. which national legislation applies particularly at each level of the chain), identification of responsibilities (e.g. who oversees the subcontractors and workers, what is the relations and obligations between the different subcontractors and their workers, what is the specific role and mandate of enforcement authorities and of social partners in ensuring monitoring and compliance). These steps are crucial in establishing a control process, which requires identifying the chain and its actors to adopt measures that ensure effective compliance and enforcement in a way that is specific, workers' rights oriented, customer friendly, practicable, preventative and deterrent in nature, and cost effective.

Knowledge and experiences collected on addressing undeclared work in supply chains centres around the following themes:

- ▶ Shared challenges in tackling undeclared work, both from a Member State perspective and from a sectoral perspective;
- ▶ Successful approaches (preventative and deterrent) to tackle undeclared work from a Member State perspective and from a sectoral perspective;
- ▶ Measures to protect workers' rights;
- ▶ Measures to incentivise businesses at different levels of the supply chain to be compliant as well as measures that can be applied beyond the national context;

Successful approaches to tackling undeclared work in the supply chain need to **acknowledge two important elements, which make their application distinct from other sectors/areas**. First, the **character of chains itself, which are spread across national borders**, poses a challenge to national authorities that often lack competence and the required access to monitor the whole chain. Therefore, cross-border cooperation among stakeholders and authorities is particularly important for tackling undeclared work in cross-border supply chains. Via such cooperation, restricted national competences may be overcome and joint cross-border knowledge may be applied in preventing undeclared work. Second, **subcontracting, in addition to the development of supply chains at the global level, is a reality whose risks need to be addressed since it is likely that this aspect will become increasingly salient**. This current business model in the chain involves a separation of power from risk and responsibility of subcontractors or even individual workers. Therefore, measures tackling undeclared work in supply chains need to evolve in the direction of covering several levels of the supply chain. They must also be applicable cross-border and complement national regulatory frameworks.

From the point of view of stakeholders concerned, the following conclusions can be formulated:

- ▶ **Enforcement authorities** engage both in preventative measures and in deterrence measures, but need to cope with low personnel capacities and with challenges unique to supply chains (who is the employer, monitoring compliance, problems often with small businesses, intermediaries and letterbox companies that disappear from the radar or dissolve, cross-border challenges in terms of cooperation, information verification, enforcement, etc.);
- ▶ **Trade unions** call for more EU-level regulation of subcontracting and the implementation/monitoring of existing legislation at the national level. At the same time, unions can play an active role in terms of monitoring and enforcement of workers' rights in supply chains, but often face challenges to organise workers along supply chains and extend bargaining coverage across the whole chain.



- **Businesses** consider that there is no need for new regulation; rather, the existing regulations should be transparent, user friendly and more strongly enforced. Employers see value in developing incentivisation measures, due diligence, and compliance measures. This argumentation is based on the assumption that contractors often care for their public image and this incentivises them to prevent undeclared work.

Further to the above overarching views, key learning points from country-specific experiences as well as sectoral perspectives are formulated below.

Learning points from the Member States

Experiences of EU Member States with addressing undeclared work in the supply chain show a **range of measures in the area of legislation, certification, joint liability, and exchange of information and multi-stakeholder cooperation**. Finland developed mandatory registration of all actors/units in the supply chain in registries for tax and employment. In Italy, a certification process of contracts safeguards the development of trust between contract partners and also delivers lessons learned. In Belgium, legislation prescribes joint and severe liability for payment of social security and adequate wage levels by the end user and subcontractors in selected sectors. In Denmark, the good practice of facilitating exchanges of information between all entities involved in the chain helps to build trust between the main contractor and subcontractors along the supply chain. In Germany, evidence shows that in particular types of supply chains, e.g. in postal services, undeclared work may be traced by the use of digital technologies and data management using tracking systems of goods to be delivered.

An important avenue for putting into practice and further multiplying these Member States' experiences is via the effective application of social clauses under public procurement procedures and contracts, thereby setting benchmarks for decent working conditions, including the no tolerance principle for undeclared work, the right to collective bargaining and to fair working conditions. From a learning perspective, the conclusion is that all these **presented measures are complementary; and their combination facilitates the well-functioning of an overarching and feasible compliance mechanism** which includes elements such as legislative initiatives, cooperation, data monitoring, joint enforcement, as well as prevention based on trust between actors involved in the supply chain.

Learning points from the sectoral perspective

Two very relevant sectors in respect to supply chains have been analysed in this paper. In the **construction sector**, incentivising businesses is an important preventative measure. Ways to incentivise businesses include the development of cooperation across the chain, due diligence, resilience and a worker and customer friendly approach across the chain including subcontractors. Other measures include the combination of effective occupational health and safety measures which can be supported by registration with relevant public registries. Banning businesses from access to public procurement, EU funds and similar sources of public funding subsequent to infringements can also have a significant impact, as may implementing even higher fines and stricter national enforcement procedures. Finally, from the perspective of the social partners, especially trade unions, identity cards are important for mitigating undeclared work in construction. These cards help to identify workers and identify who their employer is. Moreover, they help inspectors, as well as employers, and increase transparency throughout the chain.

In the services sector, **public procurement rules and their implementation**, following the EC Directives on public procurement, can set an important benchmark for excluding illegal practices in supply chains, such as excluding tenderers not meeting specifications on the quality and transparency on working conditions, or establishing binding standards for public contractors e.g. to implement collective bargaining as part of the public contract. Another learning point from the services sector is to **use the available digital technologies and data to explore the character of work in the supply chain**, if possible at several layers. The use of data allows for a more effective use of the existing and often limited human resources capacity, while being able to uncover



undeclared work e.g. in the postal services where delivery tracking is highly developed (e.g. times spent on delivery, identity of workers involved, identity of subcontractors, etc.). A 'chain approach' designed to motivate actors' responsibility to ensure fair and declared working conditions throughout the supply chain in cleaning services has proven a successful example in the Netherlands. This case shows that cooperation between Labour Inspectorates with all stakeholders in the chain is important and part of an integral approach to tackling undeclared work. It entails the development of trust, via facilitation of contact with subcontractors, via certification, and also via a checklist on decent work and various voluntary codes of conduct initiatives.

Finally, for employers and for the process of public procurement, the concept of 'competition' could be revisited and explored to consider not only price competition, but also other factors such as quality, sustainability, social responsibility and inclusiveness, including declared and fair work, whose presence increases worker and customer satisfaction and prevents the spread of a race to the bottom in supply chains.



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Annex

Glossary

Supply chain is a system of people and things involved in getting a product or service from its source to the person who buys it.⁵

Supplier is a person, commercial company or other organisation, which provides goods, services, or works in the market.⁶

Contractor is any natural or legal person, including a public entity, or a group of such persons, which offers to execute works.⁶⁵

Principal/main contractor in the context of subcontracting is the economic operator to whom a project/contract has been awarded⁶⁶

Subcontracting means employing a firm or person outside one's company to do work as part of a larger project.⁶⁷

Subcontracting chain emerges if a principal contractor, contracted by an investor, either contributes by bringing their own employees or by subcontracting another legal entity (....). This (in theory) endless chain resembles a logistical as well as value chain of economic nature. Every link has its own contract commitment to one of the other links.¹⁰

Value chain is a concept describing the full chain of a business's activities in the creation of a product or service - from the initial reception of materials all the way through its delivery to market, and everything in between.⁶⁸

Client/Investor - Start of the subcontracting chain, this entity is often called the "Investor". The investor commences a project (for example a building project) by hiring a principal contractor, who then hires different subcontractors to carry out specialised tasks.⁶⁹

Off-shoring is the practice of basing some of a company's processes or services in another Member State to take advantage of lower costs in the new location.⁷⁰

Legal owner is an entity with an asset's or property's enforceable claim or title.⁷¹

Customer is person to whom goods are supplied.⁷²

⁶⁵ Directive 2014/24/EU on public procurement, [CELEX:32014L0024](#)

⁶⁶ Council-EN based on Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC, Article 71(3), [CELEX:32014L0024/EN](#)

⁶⁷ Platform glossary https://ec.europa.eu/social/main.jsp?catId=1323&langId=en#chapter_S

⁶⁸ <https://www.techtarget.com/searchcio/definition/value-chain>

⁶⁹ Heinen, A.; Müller, A.; Kessler, B. (2017).

⁷⁰ https://ec.europa.eu/social/main.jsp?catId=1323&langId=en#chapter_O

⁷¹ The Law Dictionary, 'What is a LEGAL OWNER?' (Black's Law Dictionary), <http://thelawdictionary.org/legal-owner/> [2.7.2015]

⁷² [Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax](#)