



European Platform
tackling undeclared work

Tackling undeclared work among third country nationals working in supply chains, including via temporary work agencies

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1. Introduction

This paper summarises the key points and arguments presented and discussed at the European Platform tackling undeclared work (henceforth “the Platform”) webinar on ‘Tackling undeclared work among third country nationals working in supply chains, including via temporary work agencies’. The event took place online on 21 February 2024 and brought together approximately 80 participants, including Platform members, observers, invited experts and practitioners in the field, as well as representatives from ELA and the European Commission.

The webinar built on findings and suggestions from several previous activities of the Platform, focused on undeclared work among third country nationals (TCNs), investigating fraudulent temporary work agencies, or undeclared work in supply chains with a particular focus on the construction and services sectors. The current webinar extended and deepened this knowledge by focusing exclusively on challenges of possible undeclared work emerging in a supply chain that involves several temporary work agencies, potentially spanning across both EU and non-EU countries. A key challenge, from the perspective of all involved stakeholders (enforcement agencies, employers, temporary work agencies and workers), is the allocation of responsibilities over the supply chain as a whole, and understanding the legal complexity that spans across several countries in which such a chain operates.

The structure of the report consists of three building blocks, all of which were addressed during the webinar:

- ▶ Types of agencies and challenges related to placing TCNs to work in the EU via a chain of agencies;
- ▶ The legal complexity of placing TCNs to declared work in the EU via a chain of agencies and successful approaches addressing this complexity;
- ▶ Compliance on the side of employers and agencies to mitigate undeclared work in the global sense, including the placement of TCNs to work in the EU via a chain of agencies;
- ▶ Key conclusions and learning points from the thematic day’s presentations and discussion.

The webinar provided an opportunity for Platform members and observers to share their experiences and good practices in preventing and deterring undeclared work in supply chains that involve (several) agencies, through which TCNs are placed to work in the EU. The longer the supply chain, the higher the likelihood that employers, workers, and enforcement authorities will face complexities in meeting the requirements of declared employment.

The report identifies the specific features of long supply chains; emerging challenges for enforcement authorities located in the EU and operating within national legal frameworks; and reviews a selection of existing practices of enforcement authorities shared during the webinar. The webinar covered workers in different sectors, such as HORECA, construction or industry, while acknowledging that the risk of undeclared work also concerns the pooling of high-skilled workers, e.g. in the IT sector.



2. Challenges of undeclared work in long supply chains

Undeclared work in long supply chains is becoming increasingly prevalent as the demand for and supply of labour becomes more international. This internationalisation encompasses not only the labour market's response to the cross-border movement of goods, services, and capital but also the global spread of production processes. That implies a heightened supply of non-domestic labour, including TCNs, who are more vulnerable to end up in undeclared work situations.

Labour market intermediaries that operate transnationally include several types of organisations or agencies. First, individual brokers can help with the recruitment of TCNs, facilitating connections between candidates and employers, without being formally part of any contractual arrangement. Second, agencies operate as intermediaries in the recruitment process, helping to connect TCN workers with employers in the EU. Recruitment processes are further managed through methods such as Direct Recruitment, where candidates are directly connected to companies, Recruitment Process Outsourcing, where agencies take over HR and recruitment duties, and Managed Service Providers, which oversee contingent labour. Consultancies, like Career Management firms, provide integrated staff management, while subcontractors offer services to other contractors. Platforms mediate service provision, and Temporary Work Agencies offer contingent labour to work in the EU with varying degrees of agency involvement e.g., in the recruitment only, or more extensive support to the worker and the employer such as managing the payroll, accommodation, and transport for workers). Via such agencies, employers seeking to hire TCN workers gain high flexibility in hiring workers, outsource recruitment costs and externalise risks (e.g., regarding the complex legal relationship with employing TCNs via a supply chain or several agencies).

The increasingly globalised supply chains of labour market intermediaries, especially those spanning outside of the EU, raise several challenges for the enforcement authorities. The presentation by thematic expert, Sonila Danaj (EuroCentre Vienna, Austria), provided a comprehensive insight into these challenges:

- ▶ Transnational supply chains may take advantage of the lack of regulations beyond the EU.
- ▶ Employers and enforcement authorities face challenges in identifying and addressing undeclared work cases amongst their workers. The legal status of workers placed via supply chains can be complex and may vary across various EU Member States and for TCNs.
- ▶ Enforcement authorities with competencies defined within national legal frameworks may have difficulties in identifying and penalising employers and agencies that take advantage of legal gaps in complex supply chains. The existence of fraudulent agencies distorts fair competition in the market of placement agencies, and the activities of enforcement authorities could not only target tackling undeclared work in individuals, but also tackling the existence of fraudulent agencies that facilitate undeclared work.

The European Union has implemented several regulations to manage the access of TCNs, reflecting the complexity and nuance of this issue.

Temporary Work Agencies (TWAs), which may be based within the receiving country, the sending country, or operate internationally, play a significant role in addressing the demand for a cross-border labour force. The expert identified the following most common forms of how (a chain of) TWAs may contribute to the emergence of undeclared work:



- ▶ **Unregistered employment** can involve full-time, part-time, temporary or permanent job and be based on the lack of registration or licensing of one or more of the three parties, worker, TWA, or user company.
- ▶ **Underdeclared employment** can occur in a variation and combination of forms within the triangular relationship between worker, TWA, or user company.
- ▶ **Misrepresented employment** e.g. bogus self-employment, part-time, undeclared overtime, lower professional category/skill level/seniority, undeclared posting, bogus posting.
- ▶ **Letterbox companies/TWAs engaged in cross-border activity** can be used to facilitate undeclared/under-declared employment.

Distinguishing between undeclared work, illegal employment, and labour exploitation is often challenging, as these issues interlink and reinforce each other (Van Nierop et al. 2021). This confluence of issues creates significant risks to TCN employees, including the difficulty of accessing formal employment, the dependence on employers for employment criteria fulfilment for permit issuance or renewal, and vulnerabilities tied to sectoral characteristics and recruitment pathways.

The implications of these practices are manifold. Complex contractual situations involving multiple parties can heighten the risk of undeclared work. Monitoring and tracing undeclared work through supply chains remains challenging. Moreover, the smaller the contract size, the higher the risk of undeclared work and the worker's exposure to tax breaches and lack of social security coverage. Therefore, the thematic expert highlighted that **addressing undeclared work across the EU necessitates a multifaceted approach**, including deterrence by enforcement authorities, reparation through policy, and prevention and awareness efforts by public authorities, social partners, and NGOs. Effective strategies also involve joint inspections and information exchange. The next section of the report offers more specific insights of practitioners' views to address some of these challenges.

3. Successful approaches

The webinar included presentations and discussion points that highlighted how to (successfully) overcome the above-identified challenges. These approaches range from addressing the legal complexity, falling under the jurisdiction of several types of legislation (work, migration, residence, etc.), to developing individual commitment by agencies and employers to tackle undeclared work in the effort to fill labour shortages. Individual counselling services, such as legal advice or even court representation on behalf of an individual TCN worker may also help TCNs exposed to incorrect employment reporting, undeclared work or exploitation.

3.1 Addressing the legal complexity in placing workers via long supply chains

The representative from the European Labour Mobility Institute, addressed the complexities and legal challenges associated with posting TCNs to work in the EU and re-posting such workers within several Member States of the EU. While it is legal to post TCNs from one EU Member State to another if they are lawfully employed in the sending EU Member State, the issue of legal compliance becomes intricate when considering the entry and stay of these workers in the receiving Member State.

For example, a Ukrainian worker lawfully working in Poland under temporary protection might receive a job offer from a TWA in Germany. The question then arises: does this worker need a special visa to work in Germany? As mentioned by the speaker, Germany requires such visa, and failure to obtain it results in the legal status of the worker's entry becoming illegal. Consequently, posted workers, despite being legally employed in their sending



Member State, face the risk of deportation if they do not comply with the receiving country's visa requirements. Notably, a worker may be banned from re-entering Germany but can return to Poland, reflecting a shift from a broader Schengen zone ban to a more country-specific approach.

A **cautious approach to posting TCNs has been suggested**, advising against posting to countries like Denmark, Germany, Austria, and recommending avoidance of the Netherlands, Sweden, Finland, and Norway. These countries have stricter requirements, often demanding that visas are obtained within the first 90 days of entry. In contrast, other countries are perceived as more lenient, only requiring visas after the 90-day threshold.

Moreover, one of the most significant challenges is that the **responsibility for complying with visa and residence requirements often falls entirely on the worker, with little to no scrutiny placed on the employers**. This situation leads to a high degree of uncertainty and exposure to undeclared or underdeclared work.

The legal complexities and the uncertainty surrounding the right of TCNs to stay and work in the receiving countries contribute significantly to the proliferation of undeclared work. The speaker's analysis highlights the need for **clearer regulations and more consistent enforcement across the EU** to ensure the legal compliance and protection of posted third-country nationals.

To provide insights into managing foreign labour, a **representative of the Portuguese Authority for the Work Conditions**, provided valuable **insights into the experience of hiring workers from third countries in Portugal**. In Portugal, workers constitute 50% of the population, with 6% being foreign workers. Most of these foreign workers come from Brazil, followed by Cape Verde, Ukraine, and Angola. They are predominantly employed in sectors such as cleaning services, which account for 9% of their employment, followed by sales roles at 7.6%, and construction at 5.7%.

A crucial aspect of managing foreign labour involves addressing the issue of undeclared work. When an undeclared worker is detected, **identifying the employer is a primary step**. Authorities use a brief questionnaire to gather details such as the commencement date of the worker and the nature of their contract. To ascertain whether a worker is declared, the social security system's database is utilised. This database helps verify if the worker is officially declared and identifies the employer responsible for their salary. Special attention is given to cases involving TWAs, where examining the written contract for compliance is essential. The labour authorities maintain a list of TWAs categorised by region and imposing strict regulations for those operating without a license.

The Portuguese labour law stipulates that **both the employer and the company manager are accountable** for any infringements, including those related to undeclared work. This **accountability extends to contractors, company or agricultural holdings, and their managers, administrators, or directors**. They are jointly and severally liable for legal compliance and for any violations committed by subcontractors on their premises or under their responsibility, including the payment of fines.

This framework places significant responsibility on employers and TWAs, creating a deterrent against undeclared work. The labour inspectorate plays a pivotal role in this process, offering guidance and support through its website and telephone services. Workers and companies can book appointments to resolve queries related to their employment relationships, which ensures clarity and compliance with labour laws.

3.2 Overcoming fraud via cooperation between various inspectorates

During the webinar discussion, Belgium reported a situation frequently faced by the National Social Security Office (NSSO) inspection department. Belgian companies often provide workers to major construction firms or private



entities, framing it as a service. These workers, often from EU countries with lower labour and social security costs, are part of mixed teams and work under the site manager's direction. The companies providing these workers are short-lived, typically lasting no more than two years, and they replace each other over time.

From the enforcement perspective, this arrangement leads to the following issues:

- ▶ The Belgian company becomes the employer, violating service provision regulations and social security coordination (regulation 883/2004).
- ▶ The posting companies lack substantial activity in their home country, exceeding the 2-year posting limit and complicating social security declaration verification.
- ▶ This results in numerous labour law breaches, including unauthorised worker hiring, and issues with working hours and pay.

Proving the Belgian company's employer status involves showing even a minimal transfer of authority, with evidence coming from contracts and worker testimonies. In cases of worker posting, demonstrating the lack of a substantial link with the home country is crucial for reassigning social security contribution debts.

Addressing these challenges requires **collaboration between Belgian labour and social inspectorates, and between the social security institutions of the involved countries**. However, proof requirements vary by department depending on the type of inspectorate. The complex network of employers and users complicates service traceability. An **effective fraud detection in this area necessitates planned cooperation between various inspectorates due to their different competences**.

3.3 Provision of counselling services

A representative from the Slovene NGO Delavska Svetovalnica, highlighted several key issues based on his experience and the efforts of his organisation to provide support and counselling to TCNs who enter the EU for work through (a chain of) TWAs.

One significant issue workers face is the **lack of information**. Many posted workers, e.g., those going from Slovenia to Germany, are not adequately informed by the TWA about the need for a Vander-Elst Visa. As a result, workers travel to Germany to work without the proper documentation, believing that the paperwork received from the sending TWAs is sufficient. Delavska Svetovalnica strives to properly inform these workers about their legal requirements and rights.

Another issue arises when **workers are unaware of the termination of their social insurance. This can occur when the original TWA placing the worker ceases to exist, or merges with another organisation**. A distressing case was shared during the webinar, where a TCN worker, given documents to work in Slovenia through three different companies, was diagnosed with carcinoma. It was only after the Slovenian social insurance institution contacted Slovakia, the sending country where the TWA has been placed, that they realised that her social insurance had expired upon ownership. Although this case does not strictly refer to undeclared work, it showcases misinterpretations in the full scope of obligations that agencies and employers face.

Work accidents within subcontracting chains also pose serious challenges. An incident was described, where a TCN worker fell seven meters from a roof, suffering severe injuries, while working for a Slovenian construction company subcontracted on a site in Germany. The legal entity of the company was elusive, with its last bank account closed the year before the accident, complicating the worker's compensation and support process.



Finally, the speaker pointed at fraudulent agency practices related to the high costs associated with obtaining the necessary paperwork for employment in the EU. These costs can be prohibitive, as shown on an example of a worker from India paying EUR 10 000 as a fee to an agency. This case highlights the financial barriers faced by TCNs seeking work in the EU via TWAs, while at the same undergoing the risk of undeclared work, underdeclared work, or even work-related exploitation.

To address similar issues, the NGO Delavska Svetovalnica engages in various awareness-raising and counselling efforts. These include direct advocacy on behalf of workers, helping them navigate legal procedures, disseminating information through social media, establishing direct contacts with trade unions, and liaising with the Ministry of Foreign Affairs and embassies. These actions are aimed at improving the situation for TCNs working in the EU through TWAs, ensuring they are informed, protected and supported throughout their employment.

3.4 Developing values in the industry of temporary agency work

The webinar highlighted that commitment to legal employment is not limited to overcoming legal complexity that often emerges when employing TCNs via a chain of agencies. Deterrence measures in case of fraudulent practices, and support to workers that may find themselves in a fraudulent contract, are equally important. Achieving legal employment for TCNs goes beyond overcoming the legal complexity, introducing deterrence practices or counselling services to workers against fraudulent agencies. A representative from the World Employment Confederation (WEC), discussed the benefits of the presence of TWAs in addressing labour market challenges in Europe, particularly in relation to TCNs. He highlighted that 70% of employers face difficulties in hiring due to labour shortages and skills gaps, underscoring the **urgent need for fair regulation that allows these gaps to be filled, thereby facilitating the smooth functioning of supply chains.**

The speaker pointed out that nearly two-thirds of Europeans are not well-informed about immigration, with most of their knowledge coming from mass media. This lack of information contributes to misunderstandings about the role of TCNs in filling labour shortages. The speaker advocated for the **agency work industry as a legal pathway for migration, which can significantly aid in the integration of migrants from third countries into European labour markets.** 44% of individuals seeking employment turn to staffing and recruitment agencies, which can serve as a powerful tool to increase employment in the EU. However, some EU Member States still impose restrictions on employing third-country nationals as agency workers, which hampers this potential solution.

The WEC representative also discussed the benefits of the presence of TWAs in addressing labour market challenges in Europe, particularly in relation to TCNs. He emphasised the key contributions of the private employment services sector, including broadening access to labour markets, facilitating faster and more resilient transitions for workers, enhancing cooperation between labour market stakeholders, and increasing access to skills development and training.

WEC focus is on the **legitimate part of the agency work industry, which adheres to an industry code of conduct and does not represent fraudulent agencies.** WEC envisions a New Social Contract in Europe, protecting all workers, skills development, and ensuring fair and appropriate regulation in the era of digitalisation. This vision underscores the need to **overcome legislative hurdles to fully harness the potential of agency work in integrating TCNs** into the European labour force, addressing skill gaps, and supporting economic growth.



4 Conclusions

Thematic expert, Marta Kahancová, from the Central European Labour Studies Institute, summarised the above presentations and discussions. She emphasised the critical role that TWAs play in addressing skill shortages within the European labour market, particularly in the context of long supply chains and meeting international demand for labour. She highlighted the importance of agencies in placing skills where they are most needed. At the same time, she identified several concluding learning points:

Learning points

- ▶ Lessons learned in tackling undeclared work in long supply chains emphasise the importance of **distinguishing undeclared work from illegal work and from exploitation**. This is paramount in deciding the approach to the identified case: TCNs workers might find themselves in circumstances of constraint or unfree labour relations.
- ▶ Despite the existence of a shared labour market and regulations within the European Union, there are **varying legislations across Member States**. This generates a need for clear information among workers and employers.
- ▶ The fundamental challenge in placing TCNs via (a chain of) TWAs to work in the EU is the legal complexity, as highlighted by several presentations. The relationship between workers, employers, and intermediaries is governed by **three different regulatory packages: labour legislation, migration legislation, and tax and social security legislation**. These packages are not always fully aligned, leading to complexities, especially in the context of long supply chains.
- ▶ Enforcement authorities could significantly contribute to **alleviating this complexity by sharing information**. There is a need for a concerted effort to harmonise diverse strands to effectively address the challenges within the European labour market.
- ▶ **Due diligence on the part of employers**, along with the involvement of NGOs and social partners, can support the above efforts by enforcement authorities and their cooperation.



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