

Platform workshop: Undeclared work in the cultural and creative sectors

Brussels, 14-15 May 2024

EXECUTIVE SUMMARY

This Platform thematic review workshop provided participants with an opportunity to deepen their understanding of undeclared work in the cultural and creative sectors (i.e. prevalence, causes, types of undeclared work) and discuss policy measures for preventing and tackling undeclared work. The workshop brought together 40 participants. These included representatives of labour inspectorates and social security institutions from 11 Member States, EU level sectoral social partners, and representatives of European institutions. Additionally, representatives from the European Labour Authority (ELA), thematic experts and members of the Platform support team participated in the event.

Introduction to the theme of the workshop



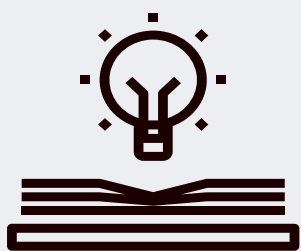
Representatives from ELA welcomed participants and stressed that mutual learning is one of ELA's most important activities. Participants were reminded that the workshop is based on the ongoing study on 'undeclared work in the cultural and creative sectors'.

A welcome speech was also given by a representative of the Social Information and Investigation Service (SIIS) from the host country (Belgium) who stressed the importance of the workshop highlighting the high risk of undeclared work in the CCS.

The first thematic presentation discussed the **social and professional situation of artists and workers in the CCS in the EU**. After summarising the main characteristics of the CCS workforce (balanced gender distribution, young and a highly educated workers representing 7.7 million workers in the EU), the presentation highlighted the prevalence of non-standard forms of employment and the challenges associated with project-based work, such as job insecurity, irregular working hours, unpaid overtime, and unstable earnings. Different levels of unionisation across different subsectors were also noted, with some, such as the audiovisual sector and the live performance sector, performing better than others.

The second thematic presentation summarised the **findings of the ongoing study on undeclared work in CCS**. It was stressed that tackling undeclared work in the CCS is not a high priority for policymakers, and enforcement authorities in the Member States. Key issues of the CCS include fragmented collective

Introduction to the theme of the workshop - continued



representation, fragmented value chains (i.e. consecutive steps that contribute to the creation of the finished product), a high degree of self-employment, unpaid rehearsals, absence of written contracts, cash payments, and the impact of digitalisation. Fraudulent practices, such as using different contractual schemes than employment contracts (e.g. interns or 'amateurs' contracts) and working while being on unemployment benefits were also highlighted.

Questions from participants highlighted the widespread use of the term 'freelancer' in the CCS. It was noted that while only few countries have a legal definition of 'freelancer', this term is largely used by professionals to refer to the autonomy and freedom they enjoy in the organisation of their work.

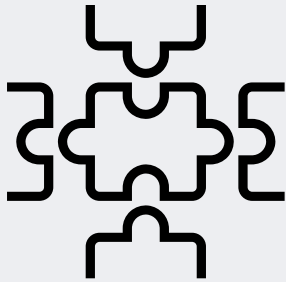
Presentations from the host country on statistics of undeclared work in the cultural and creative sectors and on the status of the 'arts workers' in Belgium



Statistics and examples of undeclared work across various CCS in Belgium were presented. The Social Information and Investigation Service (SIIS) highlighted the challenges of monitoring undeclared work in the CCS due to their diverse realities and occupations. Examples included bogus self-employment among journalists, combining work with unemployment benefits among performing artists, and the prevalence of unpaid work in the video games industry. The recently introduced reform on the status of 'arts workers' and establishing the 'Working in the Arts Commission', along with reforms to prevent undeclared work among 'amateur artists' in Belgium were discussed by the Federal Public Service (FPS) Social Security. The importance of declaring work to access the different benefits was emphasised.

Questions from participants sought clarifications about the number of registered professional artists in Belgium, the ratio of employed versus self-employed artists and the financial sustainability of the system.

Undeclared work in the cultural and creative sectors: types of undeclared work and challenges

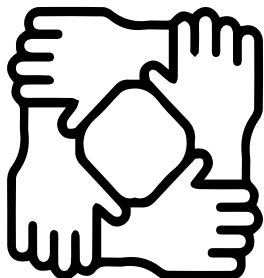


Participants from two Member States presented the types of undeclared work and challenges in the CCS.

- ▶ **Latvia** highlighted the challenges in detecting undeclared work in the CCS where service contracts are prevalent. In 2023, 30 inspections revealed violations including employment without contracts and failure to submit the necessary information to the tax authorities. Inspections in the CCS are challenging due to short-term contracts and the use of civil law relationships which are beyond the competence of labour inspectorates.
- ▶ **Spain** explained that the special social security system for artists and technical workers was revised in 2022 to protect those with short-term employment conditions. The revision addressed challenges such as the misclassification of an employment relationship as self-employment and fraudulent practices such as employers' affiliation of workers to the general social security system instead of the special one to pay lower contributions. Additional issues addressed included unregistered unemployment and the participation of minors in the CCS.

Questions sought clarity on the personal scope of the special social security system for artists in Spain. It was clarified that this applies to employees and not to the self-employed.

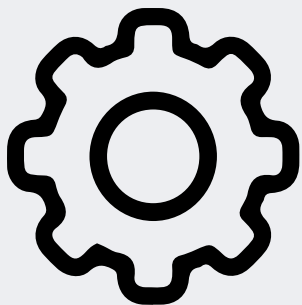
Working Group Discussion I: Sharing learning on the concept and scope of cultural and creative sectors, inspection approaches, experiences, challenges, and types of undeclared work



During the working group discussion, participants shared learning on the concept and scope of cultural and creative sectors, inspection approaches, experiences, challenges, and types of undeclared work. Key points included:

- ▶ Most countries follow the statistical classification of economic activities in the European Community (NACE) and **do not have a national list of CCS occupations**.
- ▶ Various approaches to **defining CCS** exist (e.g. Portugal's specific regime for CCS workers, and France's specific regime for live performances).
- ▶ **Challenges in defining art and artists**, particularly with emerging subsectors such as social media and game developers.
- ▶ **Inspections in CCS** vary in priority across countries, with some Member States highlighting it as a priority while others do not.
- ▶ Different subsectors within the CCS show variations in the **prevalence of undeclared work**, with **bogus self-employment** highlighted among journalists and web designers.
- ▶ Bogus self-employment is prevalent in the CCS also due to the growth of the **platform economy**.
- ▶ **Difficulties in assessing and reclassifying a self-employment relationship** as an employment relationship.
- ▶ **Challenges in conducting inspections** include identifying undeclared work versus volunteer work and ensuring compliance with regulations relating to unpaid work.
- ▶ **Limited resources** to conduct inspections at large events outside working hours.

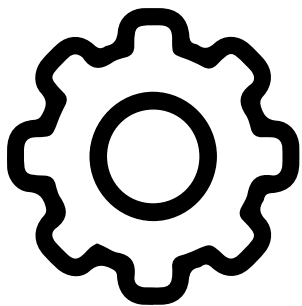
High labour mobility in the cultural and creative sectors and undeclared work in a cross-border context



This presentation focussed on the challenges of applying labour law and social security legislation to cross-border workers in the CCS. These challenges stem from several factors, including the involvement of numerous actors in the fragmented value chain, the complexity of identifying the responsible party, the broad definition of 'artists' which includes technical workers, and the nature of the work, which is often short-term, highly mobile and characterised by periods of inactivity. Various scenarios and considerations when applying labour law and social security legislation to cultural and creative workers were discussed.

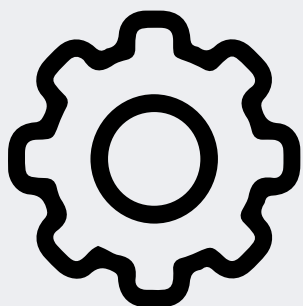
Questions from participants aimed to clarify whether statistics on cross-border work in the CCS are available through the Portable documents (PD) A1 database. It was explained that statistics exist, but these are based on the NACE classification of the CCS and not on specific occupations.

Perspectives from social partners and representative bodies on tackling undeclared work in the cultural and creative sectors in Member States



The representative from the European Arts and Entertainment Alliance discussed the challenges related to undeclared work in the live performance and audiovisual sectors. These issues include informal working arrangements and the use of non-adapted contracts such as 'IP Rights' contracts to cover the (full) remuneration for a performance/working day, forced self-employment, reliance on third-party payrolling companies to limit employers' responsibility, and partially paid or unpaid work which often arise from the dedication of workers and their will and ambition to perform.

Policy approaches preventing undeclared work in the cultural and creative sectors

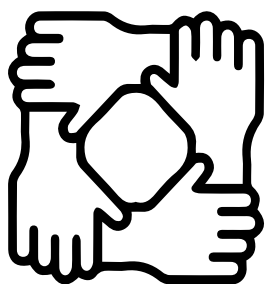


- ▶ **Denmark** shared insights into their policy approaches to prevent undeclared work in the CCS. These approaches include sending letters to event organisers before events take place with information about the applicable legislation and links to the relevant information; dialogue meetings with event organisers; call centres to answer any questions organisers may have in relation to the applicable legislation, etc.

Questions sought clarification on the competences of the Danish Working Environment authority and the tax authority, and on their joint inspections with the police.

- ▶ An introduction to the toolkit '**Juist is Juist**' (What's right is right) developed by the Industry federation for the arts (oKo) in Belgium was provided. 'Juist is Juist' provides guidance and practical information to promote fair remuneration and empower stakeholders to engage in informed collaborations based on shared principles and agreements.

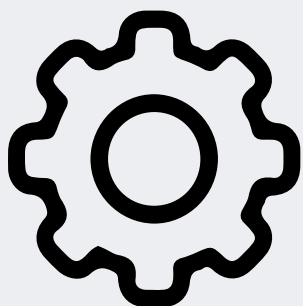
Working Group Discussion II: Sharing learning on good practice policy measures to prevent undeclared work in the cultural and creative sectors



During the working group discussion, participants shared their experiences on policy measures adopted to prevent undeclared work in the CCS. Points included:

- ▶ The **single contact point** system to register employees (e.g. GUSO system in France).
- ▶ **Voucher schemes** to simplify administrative burdens (e.g. voucher system in Greece).
- ▶ **Reduction of social security contributions for artists** (e.g. Article 1bis in Belgium).
- ▶ **Tax incentives** for artists (e.g. Poland and Slovakia).
- ▶ The inclusion of **social clauses** in public procurement tenders (e.g. Poland).
- ▶ **Information measures** for effective inspections (e.g. letter campaigns in Spain).
- ▶ Regulatory measures for **minors** (e.g. authorisation requirement in Belgium).
- ▶ Collaboration with **social partners** for effective dissemination of information (e.g. France).

Enforcement measures tackling undeclared work in the cultural and creative sectors

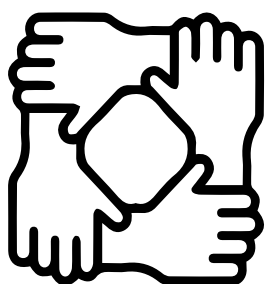


Participants from two Member States presented enforcement measures employed to tackle undeclared work in the CCS.

- ▶ After presenting some statistics on the number of workers active in the CCS, **Portugal** focussed on the methods used to tackle the misclassification of a dependent employment relationship as self-employment in the CCS. These include the 'communication of activity' which requires entities operating in the CCS to provide a justification about the use of service contracts and the notification to verify the regularity of employment relationship.
- ▶ Following data presentation on cultural employment and undeclared work in the CCS, **Greece** highlighted policy measures tackling undeclared work in the CCS such as the introduction in 2023 of the obligation for employers to provide fair remuneration and the payment of social security contributions concerning rehearsals for theatre, dance and music productions; as well as a voucher scheme which simplifies the administrative burden for occasionally employed workers.

Participants raised questions seeking clarification about Portugal's mass notification system and the process when an entity disagrees with the reclassification of employment.

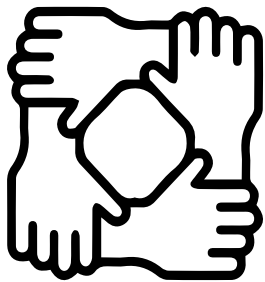
Working Group Discussion III – Sharing learning on good practice enforcement measures to tackle undeclared work in the cultural and creative sectors



During the working group discussion, participants shared their experiences regarding enforcement measures to tackle undeclared work in the CCS. Key points included:

- ▶ The most effective way to detect undeclared work in the CCS is through **complaints** (e.g. Slovakia, Spain).
- ▶ **Unannounced visits** are also considered effective measures to tackle undeclared work in the CCS (e.g. flash controls in Belgium)
- ▶ Detection of undeclared work by using **electronic tools and registers** (e.g. the general register for workers in Romania)
- ▶ **Labour inspectorates' collaboration with tax authorities** (e.g. Spain and Romania) and **other governmental organisations** for information sharing (e.g. Portugal's collaboration with the Ministry of Culture)
- ▶ Challenges in verifying **employment status** and enforcing regulations (e.g. Slovakia)

Working Group Discussion III – Sharing learning on good practice enforcement measures to tackle undeclared work in the cultural and creative sectors – continued



- ▶ **Sanctions** for non-compliance and illegal employment practices, including fines and tax corrections.
- ▶ To address the **language barrier** when conducting inspections at events where third-country nationals are employed, Member States use different methods such as questionnaire in several languages (e.g. Portugal and Denmark); translation tools (e.g. Portugal and Slovakia) and interpreters (e.g. Portugal).
- ▶ **Cooperation among Member States** and exchange of information to address cross-border issues.

Conclusions / final remarks



ELA wrapped up the workshop by thanking the participants for their active participation and drawing attention to the key outcomes. Participants were encouraged to refer to the study on 'Undeclared work in the cultural and creative sectors' and the Learning Resource Paper that will follow the workshop for more detailed information on the topic.

Further information: The Thematic Review Workshop was a key part of a broader mutual learning process among Platform members and observers. For national authorities interested in further cooperation ELA can provide targeted support, among others by facilitating study visits.