



# Approaches to preventing, detecting and tackling bogus self-employment

**Report from the peer  
learning dialogues**

September 2024



The author would like to thank all of the participants for their contributions during the peer learning dialogues.

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# 1.0 Introduction

This report documents the outcomes of two Peer Learning Dialogues (PLD) on the same topic: *Approaches to preventing, detecting and tackling bogus self-employment in relation to undeclared work*. The PLD is a scheme related to the activities of the [European Platform tackling undeclared work](#)<sup>1</sup>. Representatives from ten countries (Belgium (BE), Czechia (CZ), Finland (FI), Greece (EL), Ireland (IE), the Netherlands (NL), Poland (PL), Portugal (PT), Slovakia (SK), and Spain (ES)), representing labour, social security and tax enforcement authorities, took part in the three consecutive meetings that were organised under each of the two PLDs in the period between November 2023 and March 2024. Furthermore, trade union representatives from LO-Landsorganisationen (Sweden) and ACV United Freelancers (BE) attended a session in one of the PLD meetings. They shared their experience and role in addressing bogus self-employment with the PLD participants as input to the discussions.

- ▶ 1<sup>st</sup> and 2<sup>nd</sup> meeting: participants focussed on the definitions, characteristics, causes and trends of bogus self-employment and shared practices and approaches in preventing, detecting, and tackling bogus self-employment;
- ▶ 3<sup>rd</sup> meeting: participants discussed lessons learnt to improve approaches to preventing, detecting and tackling bogus self-employment and jointly formulated suggestions for actions that could be implemented by enforcement authorities from other Member States or supported by ELA.

The first two meetings of both PLDs concluded with a set of actions which participants took forward and tested or explored in their home countries in the period preceding the third meeting. The lessons learned from these actions were then reported and reflected upon at the third meeting. The outcomes of these actions and the discussions during the three meetings on the experiences with the tested actions have been included in this report.

The present report aims to **summarise the key issues** that have been discussed during the two PLDs with a view to sharing these with Member States and ELA to contribute to mutual learning. It also presents some of the actions that PLD participants have tested at their home base during the short period prior to the third meetings of the respective PLDs. Finally, the report **presents the main reflections and suggestions for future actions** that could be considered by Member States and by ELA.

## 2.0 Legal definitions

### 2.1 Introduction

Legal concepts and definitions of 'dependent employment', 'self-employment' and 'bogus self-employment' vary across the Member States. At EU level most recent labour legislation<sup>2</sup> uses the **concept of 'worker' in order to refer to a person who is providing services of economic value to another person in return for a payment, while the economic value may not be of a marginal nature**. The organisational/personal 'subordination'

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<sup>1</sup> The European Platform tackling undeclared work supports the activities of the European Labour Authority and the cooperation between national authorities' enforcement agencies in the fight against undeclared work in Member States and in cross-border situations in the EU,

<sup>2</sup> [Directive \(EU\) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union](#) and [Directive \(EU\) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU](#). The EU definition of 'worker' has mainly been developed by the CJEU in its case law on the free movement of workers. See also the [proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work](#), which has been [adopted by the European Parliament on 24 April 2024](#).



criterion (and not necessarily the economic dependency) is thereby the determining factor to establish the worker status: e.g., the employer decides the place and time of work, the worker uses the equipment made available by the employer, etc.

Changing labour markets and employment models have over the years led to a greater diversification in the demand and supply of 'labour'. Non-standard forms of employment (including self-employment) have increased and complemented what used to be the standard: full-time, permanent employment contracts with one single employer.

In order to avoid unequal treatment between standard and non-standard 'workers', various atypical forms of work (i.e., part-time, fixed-term, temporary agency work (TAW)) performed under an employment contract have been addressed by legislation both at the EU and national level. However, one particular category of 'workers' remains of concern to both legislators and policymakers at the EU and Member State level: *the 'dependent' solo self-employed*. *Solo self-employed persons* who exclusively provide services to one single client ('economic dependency') and/or depend on their instructions or work organisation ('organisational or personal dependency') fall into a grey area because their employment status remains unclear. The question arises as to whether **solo self-employed persons work are genuine self-employed workers or whether they perform dependent work** and, thus, are bogus self-employed persons.

**Bogus self-employment** is often referred to as 'false self-employment' and is commonly understood as involving persons/workers registered as self-employed whose conditions of employment are de facto dependent employment. National labour legislation and/or court decisions determine this status. Engaging persons as bogus self-employed is used to circumvent tax and/or social insurance liabilities, or employers' responsibilities.<sup>3</sup>

The participants of the PLDs discussed at length their **national concepts and legal definitions** of 'workers', 'self-employment' and 'bogus self-employment'. Participants also discussed whether their respective national legislation is including a 'third' category of employment status and whether a legal statutory (rebuttable) presumption of employment status exists in the national legislation.

## 2.2 The concept of 'worker'

The exchanges during the PLDs revealed the difficulties arising from the national and linguistic terminology that is applied in Member States to define the concept of a 'worker'. This is making country comparison difficult. The concept of 'worker' is often used as a generic term covering all types of standard and non-standard employment including self-employed, while it is also often considered as interchangeable with the concept of 'employee', referring to someone who is working with an employment contract. The terminology that is being used may hence sometimes be misleading. However, the concept of 'worker' is nowadays the prevailing term in EU labour legislation following extensive CJEU case law in the area of the free movement of workers and referring to someone who is engaged with an employment contract<sup>4</sup>.

In the participating Member States, the **concept of 'worker'**, meaning someone who is in a dependent employment situation, is most often **defined in national (labour) legislation**<sup>5</sup>. In some Member States (e.g., FI and PT) the concept of an 'employment relationship or contract' has been defined in law instead of that of a 'worker'. A few Member States have no statutory definition of the 'worker' concept at all (e.g., EL). However, in all

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<sup>3</sup> Definition taken from OECD (2014) *Employment Outlook 2014*. Paris: OECD ; See also [the Platform's glossary](#) of the [European Platform tackling undeclared work](#).

<sup>4</sup> See: Killhoffer, Z., Lenaerts, K., Hauben H., et.al, (2019). [Study to gather evidence on the working conditions of platform workers](#), Brussels, European Commission

<sup>5</sup> Most Member States that have a statutory concept of 'worker' have defined this in the national labour legislation. In some Member States (e.g. NL) the concept is defined in civil law.



Member States **national courts** have the ultimate say on the employment status and have often developed or fine-tuned the national definitions in their jurisprudence.

**Very similar criteria or indicators are used to define the concept of ‘worker’** (or concept of ‘employment relationship’) in Member States. The most important common criterion is the organisational – though not economic – dependency of the worker (i.e., **the ‘subordination’, ‘authority’ or ‘supervision’ criterion**). All the participating countries (with the exception of SK), also include in their legal concept of ‘worker’, the **remuneration (‘wage’) dimension**. Other criteria (or nuances to the already mentioned criteria such as the subordination dimension) are sometimes also included in national legal definitions, although with greater variety, such as the absence of business risk, the contractual ‘will’ of the parties and the ‘alienation’ dimension (ES)<sup>6</sup>, i.e., the fact that the services must be delivered by the worker in person (EL), the latter in combination with the fact that work is delivered under the employer’s liability and at a place decided by the employer (CZ) or under the employer’s powers to determine when the work must be performed (SK).

### Key take-away: national concepts of ‘worker’

In general terms, **the national concepts of dependent employment as enshrined in Member States’ legislation are to a large extent (though not entirely) aligned with the EU concept of ‘worker’** as defined by the Court of Justice of the European Union (CJEU) case law and in most recent EU labour legislation.

The main common criteria regarding the concept of a ‘worker’ in Member States are:

- A contractual ‘employment’ relationship characterised by ‘subordination’, ‘supervision’, ‘hierarchy’, ‘control’, ‘authority’ or ‘organisational dependency’ between the ‘employer’ and the ‘worker’ (employee);
- Payment of a ‘wage’ or ‘remuneration’ for the ‘service’ or ‘labour’ delivered by the individual ‘worker’ (employee);
- A certain economic ‘value’ of the ‘service’ or ‘labour’ delivered by the individual ‘worker’ (employee).

## 2.3 The concept of ‘self-employment’

The situation is very different when it comes to the **concept of ‘self-employment’**. The concept of ‘self-employment’ does not exist in some Member States (e.g. CS, FI, SK) which apply different, though similar concepts such as ‘entrepreneurship’ and/or ‘businesses’ instead. These concepts are typically defined in the national company or competition law.

The exchanges during the PLDs also revealed the difficulties relating to the national terminologies on the different concepts concerned with ‘independent work’ as opposed to ‘dependent work in an employment relationship’ (e.g., freelancers, independent contractors, self-employed, one-person businesses, etc).

The concept of self-employment is in the several Member States defined in **specific social security legislation** (e.g. in the Czech Pension Insurance Act), in rules concerned with **posting** (e.g. NL) and/or in **national income tax legislation**. In BE, self-employed persons are defined as a residual category in secondary legislation: ‘a natural person who performs a professional activity which can generate income in BE and who is not bound by an employment contract or by a statute applicable to civil servants’. ES, on the other hand, is the only participating Member State which has a specific Self-Employment Code regulating the rights and obligations of the self-

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<sup>6</sup> The alienation dimension concerns questions such as ‘which of the contracting parties is owning the work, assuming the labour costs and/or taking the economic risks’ and/or ‘whether the work product is incorporated into the employer’s assets’ or ‘offered on the market through the employer or business’.



employed. The code defines a self-employed person as someone who works for his/her own account and is carrying out an economic or professional activity irrespective of whether s/he has employees or not.

During the PLDs it also occurred that in Member States a distinction is often made between the so-called 'liberal professions' and the trade professions, which typically are performed by 'self-employed' but which resort to different national taxation rules. Some participants finally also mentioned that in their national approaches, a distinction is made between single (or solo self-employed) and self-employed persons with employees (e.g. NL).

In spite of the significant diversity in the concepts and approaches that are applied in the national legislation of the participating Member States, the professional status of 'self-employment' seems nevertheless in all countries to refer to **persons who are providing paid services to others person but for their own account and under their own direction**. The self-employed are subject to 'professional/company' income tax, are often (though not always) VAT liable and are responsible for paying their own social security contributions or taxes as opposed to 'workers' whose social security coverage is usually paid by contributions from both the employer and the worker.

## 2.4 The grey zone between 'workers' and 'self-employed'

Discussions during the PLDs revealed that the participating Member States generally apply **the traditional binary divide between the employment status of a worker and that of a self-employed** ('entrepreneur', 'independent contractor', 'free-lancer' or 'business').

However, the exchange between the participants of the PLDs highlighted some nuances in specific Member States, where legislation is sometimes deviating from the strict binary divide concerning employment status.

- ▶ In ES and PT, a **third category** of the (economically) dependent self-employed exist<sup>7</sup>. They are technically self-employed but have access to broader social protection coverage than the 'genuine' self-employed workers. Also in PT, dependent self-employed who are providing at least 80% of their services to one single client constitute a separate category. In 2023 the ceiling of 80% has been lowered to 50% expanding the scope of the dependent self-employed. Dependent self-employed in PT enjoy certain rights genuine self-employed are not entitled to such as access to the parental leave schemes.
- ▶ In some Member States (e.g. CZ) **specific employment contracts exist for small-scale jobs**, which are exempted from the mandatory social insurance contributions<sup>8</sup>.
- ▶ In PL, **civil law contracts** can be concluded when the contracting parties agree to do so. Three types of civil law contracts exist: contracts for services, contracts for mandates and contracts for specific tasks. They can either be concluded by self-employed who run a business or by individuals who are not conducting a business. While this type of contracts is technically not considered as employment contracts, some labour code provisions (e.g. OSH related rules, minimum wages, etc) apply to the contractual relationship between the parties of a civil law contract. However, some labour protection schemes (e.g. annual leave schemes) do not apply to the civil law contracts.

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<sup>7</sup> In ES the 'TRADE' category refers to economically dependent self-employed persons who are defined as those with more than 75% of their earnings depending on one single client. Their total number nevertheless represents only a very small minority of self-employed (7 600 out of 2 000 000 self-employed) in ES.

<sup>8</sup> In Czechia two specific types of employment contracts exist for small-scale jobs (up to 300 hours per year and with a salary below EUR 400 per month or max 20 hours per week and with a salary below EUR 160 per month), which are exempted from the mandatory health and social insurance contributions. The current provisions are however under revision.





The PLDs also revealed practices that are applied by companies when engaging collaborators, which **at first sight appear to be in full accordance with the national legislation that concern self-employed**, but which in reality may point at **concealed dependent work**.

### Key take-away: FI's experience with the light-entrepreneurship

In FI, 'light entrepreneurship' has become a growing concern, especially involving foreign workers ((EU citizens and third country nationals) in sectors like construction, forestry, food delivery, cleaning sector, restaurants and beauty salons. This practice involves companies using billing service companies to pay workers, misclassifying them as self-employed when they are actually on a dependent employment relationship in accordance with the national Employment Contract legislation. According to the Finnish labour inspectorates, light entrepreneurship constitutes a grey zone in FI and a growing challenge, especially when foreign workers (both EU citizens and third country nationals) are involved.

Foreign workers, often unfamiliar with the Finnish labour legislation and do not speak Finnish, are contracted as light entrepreneurs but are in fact, employees. Labour inspectors have found more cases of companies employing foreign workers through billing service companies, which handle payments instead of directly paying wages. It is important for both the party commissioning the work and the person performing the work to know whether the arrangement is an employment relationship, as this affects the rights and obligations of both parties.

Some Member States use **legal rebuttable presumptions of worker status** in their national labour legislation as a measure to address possible misclassifications that may occur as a consequence of the grey zone that exists between worker status and self-employment. Different approaches can be discerned and have been discussed at the PLD meetings: general legal presumptions applicable to all economic sectors, or to a number of specific (risk) sectors (e.g. construction, cleaning industry, etc) and sector-specific legal presumptions which in Member States are primarily concerned with the digital platform economy.<sup>9</sup>

### Box 1. Examples of legal presumptions of employment status in Member States<sup>10</sup>

- ▶ In **BE**, the **27 December 2006 program law** establishes guidelines for determining whether professional activities are performed as an employee under an employment contract or as a self-employed individual. While parties are free to define their agreements, social security laws, which are of public policy, take precedence. Legal presumptions regarding the existence of an employment contract remain applicable. The law introduces criteria for assessing the nature of the employment relationship, such as the expressed will of the parties, the freedom to organise work and working hours, and the possibility of hierarchical control. In certain sectors, including construction, guarding and surveillance, transportation, cleaning, agriculture, horticulture and digital platform activities, rebuttable presumption of the presence of salaried or self-employed status can be introduced if certain established criteria are met. For some roles, like sportsmen and transport of persons and goods a non-rebuttable

<sup>9</sup> The new [Directive of the European Parliament and of the Council on improving working conditions in platform work](#), which has been [adopted by the European Parliament on 24 April 2024](#), introduces a legal rebuttable presumption of worker status for persons working for digital labour platforms. Member States will have to transpose the provisions of the Directive within two years after its entry into force.

<sup>10</sup> The ELA Report (2023) on '[Methods and Instruments to gather evidence of undeclared work](#)' provides an overview of different types of legal presumptions on employment status in a selected number of Member States.



legal presumption of an employment contract is established. In contrast, a rebuttable presumption applies to roles like pharmacists and sales representatives.

- ▶ In **EL**, two legal presumptions exist; a **general legal presumption** on employee status for specific economic sectors (e.g. domestic services, teleworking, etc) and the legal presumption in **the platform economy** which was introduced in 2021. It functions as a 'negative' legal presumption: when the following four criteria are cumulatively met, the relationship is not one of dependent employment: (1) ability to assign the work to a subcontractor, (2) ability to select various projects, (3) possibility to provide services to other clients, and (4) ability to connect and disconnect from the platform, determining the time of provision of their services within given time frames based on their personal needs.
- ▶ **PT** has also a general legal presumption applicable to **all economic sectors**. Five criteria are set by law and upon meeting at least two of these criteria there is a presumption of an employment contract. PT also introduced a legal presumption in the **platform economy** as of May 2023: six criteria are defined in legislation: (1) equipment is owned by the digital platform, (2) platform exercises power, (3) platform sets the price and payments, (4) platform controls the activities in real time and (5) platform determines the organisation of the work. When two of these six criteria are met, there is a presumption of an employment contract.
- ▶ In **ES**, a legal presumption was established in law in August 2021 for workers providing services through **digital platforms** following a judgment of the Supreme Court the year before. Such workers are legally presumed to be in dependent employment and are hence not self-employed.
- ▶ In **NL**, a new legislative **proposal** on the introduction of a **general legal presumption** of employment status is currently under public consultation. Three main criteria are considered: (1) authority on the substance of labour (the degree to which the employer can issue instructions on the quantity and quality of the work); (2) the degree to which the work and worker are embedded in the organisation of the employer's business operations, and (3) the degree to which one is working for her/his own account. The two first criteria are the most important while all criteria need to be weighed against each other when assessing employment status. A fourth criterion is also proposed: all (self-employed) services, which are performed in return of a payment that is below EUR 32,24/hour will be presumed to be performed under an employment relationship. The proposal contains a reverse burden of proof, implying that it is up to the 'employer'/principal to prove that there is no employment contract.

### Key take-away: Employment classification and its consequences

The **employment classification** of an individual into the worker or self-employed employment status has important **consequences in all the participating Member States** as it determines the application of labour law including occupational safety and health (OSH) regulations, social security contributions and entitlements, and (personal and corporate) income tax legislation.

In all participating Member States, hiring the services of a self-employed person is far less costly for the 'buyer', while related liabilities and costs are often externalised to the individual service provider. In such a context, there is a **real risk of 'false' or 'bogus' self-employment, of intentional avoidance/evasion of labour, social security and tax obligations by the 'buyer' and of lower levels of labour and social protection for the individual worker.**



## 2.5 Bogus self-employment

Participants in the PLDs agreed that the **demarcation between the legal concepts of workers and self-employed is not always clear-cut** in Member States' national legislation. Changing labour markets and work patterns have contributed to the increased use of various types of non-standard forms of labour, challenging thereby the traditional binary divide between worker and self-employed status.

Individuals can be engaged, **intentionally or not**, as self-employed when it should have been under an employment contract. Bogus self-employment is commonly understood as engaging **persons/workers who are registered as self-employed but whose conditions of employment are de facto pointing at dependent employment**. Contracting bogus self-employed is primarily used to cut costs and 'to circumvent tax and/or social insurance liabilities, or employers' responsibilities'<sup>11</sup> while it may also occur unintentionally due to a low awareness about one's social, labour and tax rights, especially in cross-border settings.

Interestingly, there is **no definition of 'bogus self-employment' in the national legislation of Member States** as participants in the PLDs confirmed. Instead, some Member States (e.g. CZ, EL, SK) use the **concept of 'illegal work'**. Participants are of the opinion that bogus self-employment is *primarily an operational challenge for the different national enforcement authorities* entrusted with enforcing the correct application of the relevant (tax, social security and labour) legislation in cases of bogus self-employment. It is because of the failure to comply with the substantive provisions of the said legislation that administrative and criminal sanctions can be applied.

While it is the national legislation of Member States that determines the employment status, there is room for interpretation when the concepts are not clear-cut. While national **enforcement authorities are entrusted to verify if a person is in bogus self-employment or not, national courts have always the ultimate decision**. The application and enforcement of the legislation in practice implies that the facts and circumstances of individual cases are to be considered and assessed. This may lead to a **reclassification from the (bogus) self-employed status into the status of a 'worker'** and trigger the (retro-active) application of social security, tax and wage rules that are applicable to employment relationships as well as administrative and/or criminal sanctions. However, since facts and circumstances constitute the basis for the final assessment in individual cases, outcomes of such assessment cannot automatically be applied to other individual situations, even when these are occurring in the same economic sector and/or same company.

### Summary of the key conclusions on concepts and employment classification in Member States

- ▶ The national legal **concepts of 'worker' or of 'employment relationship/contract'** are laid down in national **labour legislation** and/or have been (further) developed by **national jurisprudence** in Member States. These national definitions reveal commonalities such as the organisational dependency and (with the exception of SK) the remuneration ('wage') and are similar to the EU concept of worker as defined by EU legislation and CJEU case law. However, there is some variety between the Member States in what regards some other elements or criteria that determine the dependent employment status as defined in statutory law (e.g., the 'in person' provision of the service by the individual worker, the absence of any business risk, the power to decide where and when work needs to be performed, etc).
- ▶ The **concept of 'self-employment' is not legally defined** in several Member States (e.g., CZ, FI, SK) and other 'alternative' concepts are being used such as that of 'entrepreneurship', independent contractor, freelancer or 'business', which are regulated by national business legislation. In other Member States, self-employment is often **defined from the perspective of social security** (e.g., CZ), **posting** (e.g., NL) or

<sup>11</sup> Definition taken from OECD (2014) *Employment Outlook 2014*. Paris: OECD ; See also [the Platform's glossary](#) of the [European Platform tackling undeclared work](#).



**income tax**), with some countries having different legislation governing each element (social insurance, taxation, labour laws) such that, in limited circumstances, not all three align (e.g., IE). In all participating Member States individual self-employed persons (entrepreneurs or businesses) are not subject to labour law and have a different social security and tax income treatment than what is the case for dependent employment.

- ▶ Participants agree that in all participating Member State a **grey zone exists** between dependent employment and genuine self-employed who work for their own account and at own risk. This grey zone is often depending on the own national legislative frameworks which sometimes have a third category of employment status, apply specific rules to small scale jobs or use concepts such as ‘civil law contracts’ that are unknown in other Member States. One way to tackle this is to introduce legal presumptions of employment status generally or for specific economic (risk) sectors as several Member States have done. However, participants report also on practices of engaging self-employed that at first sight are in accordance with the prevailing legislation but are in fact bogus self-employment.
- ▶ In the Member States participating in the PLD, **‘bogus self-employment’ is not defined in national legislation.**

## 3.0 Prevalence, causes and trends of bogus self-employment

### 3.1 Prevalence of bogus self-employment

There is at present no consensus in theory on how the **dependent self-employment**, a grey zone between genuine self-employment and waged employment, should be defined and measured.<sup>12</sup> Two types of dependency are generally considered, simultaneously or alternatively, when establishing dependent self-employment, namely **economic dependency** and **personal or organisational dependency**.<sup>13</sup> Providing services primarily for one single or one dominant client is often used for determining ‘economic’ dependency together with a minimum quantifiable level of services or income dependency (e.g., 75%, 80%, etc). Dependent self-employment may in some cases point at ‘concealed’, ‘false’ or bogus self-employment.

In what regards the prevalence and characteristics of bogus self-employment, a recent study conducted under the Platform’s umbrella<sup>14</sup> points to significant **differences between Member States, economic sectors and age cohorts**. When both economic and organisation dependency is considered simultaneously, 3,2% of self-employed without employees are displaying the characteristics of being dependent self-employed in the EU. The highest prevalence is reported in SK (21,2%), Sweden (15,3%) and Bulgaria (8,8%). The prevalence of bogus self-employment is particularly present among younger self-employed (6%) and among the self-employed with lower and medium skills (4%).

The figures are far more striking if only the economic or the organisational dependency is taken into consideration. **13,9 % of the self-employed are economically dependent on one client or dominant client** (for at least 75% of their income) with Sweden (35,3%), SK (31,3%) and Hungary (30,6%) topping the list. Some economic sectors

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<sup>12</sup> Horodnic, I.A., Williams, C.C. and Horodnic A.V., (2023). *Extent of dependent self-employment in the European Union*, European Platform tackling undeclared work, Bratislava

<sup>13</sup> ibidem

<sup>14</sup> ibidem



are particularly affected by economic dependency: 25% of the self-employed workers in the agricultural, forestry and fishing sector, 21,1% of the self-employed in the machine operators, assemblers and elementary occupations and 14,6% of the self-employed with low or medium skill levels.<sup>15</sup>

19% of the self-employed active in the EU lack the autonomy to decide on their working time and for statistical purposes, this is pointing at personal or organisational dependency. The share of the self-employed who are organisationally dependent is the highest in Bulgaria (46,2%), Croatia (46,1%) and SK (44,4%). The prevalence of the organisation dependency exceeds the 20% in professional categories such as machine operators, assemblers and elementary occupations (33,5%), clerical support, service and sales workers (22,8%), the self-employed with low or medium skill levels (20,7%) and in sectors such as education, human health and social work (24,2%), wholesale and retail trade, transportation and storage, accommodation and food services (22,4%).

## 3.2 Causes of bogus self-employment

Bogus self-employment can have **various causes** and is often the consequence of a combination of factors such as **unclear legislative frameworks concerned with employment status, employers' practices to optimise costs including wage costs or insufficient awareness on one's employment or social security rights**. A distinction is often made between on the one hand **unintentional bogus self-employment** arising from a lack of knowledge or from, the complexity or gaps in the legislation, and on the other hand **intentional bogus self-employment**, where the driving force is fraud and financial gain.<sup>16</sup>

The evasion or avoidance of legal (tax, labour and social security) obligations, the extensive use of subcontracting chains, the involvement of all sorts of intermediaries and the intentional abuse of prevailing EU rules on posting are examples of approaches or mechanisms that may point at bogus self-employment especially in a cross-border context. Less 'visible' or detectable forms of work (e.g., home work/telework or online services in sectors such as ICT, business services, call-centres, etc.) may also trigger bogus self-employment. Of specific nature is the 'potential' bogus self-employment in the digital platform economy (e.g. food delivery services, personal transport services, etc.). On the other hand, policy reforms aimed at promoting 'entrepreneurialism' may lead to an increase in self-employment and/or small scale businesses providing services that are performed by former workers/employees<sup>17</sup>.

All participants of the PLDs unanimously agreed that the **cost containment or reduction of businesses is the main reason** leading to the use of (bogus) self-employment, often in combination with the **unawareness and limited language skills among the engaged foreign workers**. By engaging self-employed instead of workers on the pay-roll, companies minimise their costs and avoid their legal responsibilities by circumventing the tax, social security and labour legislation including the provisions concerned with minimum wages, OSH, annual paid leave, working hours, paid sick leave, occupational health care, etc. Intentional bogus self-employment was considered by the PLD participants as a growing phenomenon in an expanding range of economic sectors.

### Box 2. Examples of bogus self-employment from Member States

- ▶ In **BE**, inspectorates report on a relatively new phenomenon of fraudulent practices: third-country nationals are made **shareholders of companies** that are established in BE, without their consent. Another fraudulent practice is related to the companies' **choices of their NACE codes** (statistical classification of economic activities in the European Community), determining in which economic sector they are active in.

<sup>15</sup> ibidem

<sup>16</sup> ibidem

<sup>17</sup> ibidem





Companies' Statutes sometimes determine particular NACE codes (e.g. construction) but these companies are effectively operating in very different economic sectors (e.g. agriculture), with higher minimum wage requirements and/or different working conditions. The practices of 'NACE code shopping' with a view to circumvent labour and social security legislation is difficult to detect and address for enforcement authorities.

- ▶ **Light-entrepreneurship** (see separate box above) is a relatively new phenomenon in **FI** by means of which employees are contracted as entrepreneurs by companies that use billing service companies as intermediaries between the employer/client for whom the work is performed and the person concerned. The labour inspectorate detected several cases of bogus self-employment as the relationship between the client and the engaged person proved to be dependent employment in accordance with the provisions of the national Employment Contract legislation.
- ▶ In **NL**, providing services as **(unregistered) self-employed** is reportedly rather easy for third country and EU nationals and difficult for the tax authorities to detect. At the same time tax and social security contributions for self-employed are relatively low, once they have registered. Because of the current moratorium on employment status verifications, it is likely that there is significant undeclared work and bogus self-employment. Until the enforcement moratorium is abolished on 1 January 2025, tax inspectors can only enforce when the principal is considered to be in bad faith or when directions were given and the principal did not change anything after having been given these directions.
- ▶ In **PL**, it is relatively easy to establish a company (5 000 Zloty) and this is often done in order to post workers abroad. **'Fast' posting** of third country nationals is a real challenge nowadays, whereas more recently there are also companies established in Ukraine who are posting Ukrainian nationals who are already living in PL to PL. Furthermore, there is the practice of posting persons who are contracted in PL by means of civil law contracts. This practice is perfectly legal and in accordance with the Polish legislation as civil law contracts are comparable to employment contracts. The main differences are that with civil law contracts there is no subordination between the two contracting parties while not all labour law provision apply (e.g., annual leave schemes).
- ▶ In **SK**, the labour inspectorate reports a relatively high incidence of **'contracts with volunteers'**, cases when work is performed for free or through work arrangements that pay only expenses and not wages (the latter not being part of the legal concept of dependent employment). Both examples may point at fraudulent practices on the side of the engaging company.

### 3.3 Trends and characteristics of bogus self-employment

The participants to the PLDs agree that the **construction sector** is the economic sector that is by far mostly impacted by bogus self-employment. Intentional bogus self-employment with a view to minimise employment costs throughout complex subcontracting chains in combination with the engagement of workers who are often unaware about their labour and social rights is considered to be the main reason. In **ES**, but also in several other participating Member States (e.g. **BE**, **FI**, **PT**, **NL**) the **digital platform economy** is also heavily affected by bogus self-employment.

However, there is evidence of a **growing trend of bogus self-employment throughout an increasing number of economic sectors**: (parcel, food, grocery) **delivery sector** (e.g. **NL**), **manufacturing industry** (e.g. **CZ**, **SK**), **meat processing sector**, **HORECA** (e.g., **FI**), **cleaning services** (e.g., **FI**), **forestry and fishing** (e.g. **FI**, **NL**), **health care sector** (e.g., **NL**, **ES**), **domestic services** (e.g. **NL**), **home care services** (e.g. **NL**) **international aviation industry** (e.g., **BE** and **PT**), **legal and translation services** (e.g., **ES**), or in **sectors that depend on**



**services which are provided online and are hence less visible for enforcement authorities** (e.g. CZ). The [United Freelancers Union](#) (ACV-CSC), which is representing solo self-employed in BE, reports that bogus self-employment exists in sectors such as construction, media, IT and consultancy, arts and entertainment, health and care services, HORECA, transport and deliver services, 'specialised services' (including accounting, cleaning, security services) and in the digital platform economy.

The increase of bogus self-employment in the different economic sectors can also be indirectly deduced from the statistics, which point at the **sharp increase in self-employment** that has been recorded in recent years and in a **growing number of economic sectors in several Member States**. For instance, in NL, there has been a significant increase of third country nationals (TCNs) engaged as self-employed in the care sector in recent years, whereas the use of self-employed workers in some economic sectors (cultural and creative industries; agriculture, forestry and fishing, 'other services' and specialised business services) has grown and has exceeded 30%. NL is confronted with a growing number of TCNs who perform services on the territory as self-employed but are often not registered locally. However, not all countries have identified significant levels of bogus self-employment thereby avoiding tax (e.g., IE).

**Third Country Nationals (TCNs)** is the category of workers that is mostly affected by bogus self-employment according to the PLD participants. This trend seems to be most often connected with **specific economic sectors** (e.g., construction, domestic services) or **types of labour** (low-skilled or manual labour). For instance, in FI, TCNs are often and increasingly engaged by companies by means of the beforementioned light entrepreneurship contracts and through intermediaries, who are actively promoting, in foreign languages aimed at all foreign workers (EU citizens and third country nationals), the use of such light entrepreneurship contracts. Unawareness about their rights and/or the risk to lose their work or residence permits in cases of contract renewals push TCNs to accept this type of contracts implying lower levels of labour and social protection.

**Youngsters** and (international) students were also identified as vulnerable and subject to bogus self-employment (e.g., ES, FI, NL, PL). For instance, in NL, international students obtain a residence permit and are allowed to work for 16h/week or work as self-employed. They are not subject to working hour registration and OSH legislation. They are vulnerable to situations of undeclared work and/or of bogus self-employment. The labour inspectorate of FI also reports on cases of youngsters who are in bogus self-employment (e.g. icecream vendors).

During the PLDs, participants discussed also their experiences with **the PDA1 forms** that are issued in other Member States for posted workers sent to their territory. These PDA1 forms are often issued for **a period of one year and for multiple/all (receiving) Member States**. This practice is raising questions as it appears not to be in line with the EU legal provisions concerning the temporary nature of postings while it is very unlikely that the posting company is providing services simultaneously or consecutively in multiple/all Member States in the framework of which the workers are posted. A similar situation exists for other mobile workers and self-employed who have obtained PDA1 forms in the competent state for longer periods and for multiple states. Enforcement authorities of Member States have to accept the PDA1 forms that are issued by competent social security authorities in other Member States and they cannot be disregarded or easily contested, which in many instances is constituting an obstacle for effectively enforcing the provisions of the Posting Directives. Such obstacles also impede the possibilities for enforcement authorities to detect fraudulent practices and establishing the correct employment status of the workers concerned.

The **access to the national labour market** (work permits) or to **the national service market for self-employed** for TCNs differs between Member States while this is also linked with the residence rights and permits for the TCNs concerned. For instance, in SK, the work permit regime for TCN workers is rather strict, implying that TCNs often apply for a local trade license to operate a business. In NL, the status of self-employed is rather attractive for applicants given the relative low tax and social security contributions and a residence permit is also easier to obtain than a work permit for workers while bogus self-employment is at present not systematically inspected due



to a national moratorium. By contrast, in FI it is easier for a TCN to obtain a work permit as a worker than as a self-employed. The discussions during the PLDs revealed that some Member States are less strict in granting work permits for TCNs than others, which has repercussions for intra-EU mobility and postings of these TCNs concerned.

### Box 3. Posting of third country nationals

Posted third country nationals who work in the host Member State are an increasing challenge for the competent enforcement authorities (e.g., BE, FI, IE, NL, SK) because of several, often interconnected reasons concerned with EU free movement, free provision of services and EU/national (im-)migration legislation.

Different challenges relating to the application and enforcement of the EU posting and social security coordination rules have been reported on by the enforcement agencies during the PLDs. Whereas most challenges concern the determination of the exact employment status and of the applicable labour and social security legislation, some of these challenges also concern possible bogus self-employment.

- ▶ TCNs who enter the national labour market in the sending Member State and obtain a work permit to work as a worker in an employment relationship there before they are posted to the host Member State but in reality they have not actually worked in the sending Member State prior to the posting. In some instances, these TCNs who have obtained a work permit as a worker in the sending Member State are directly paid by companies established in the host Member State as self-employed.
- ▶ TCNs who obtain a 'business permit' or self-employment status in a sending Member State, without having been active as a self-employed in the sending Member State, and who post themselves to the host Member State to perform services, often without a local registration in the host Member State;
- ▶ TCNs who are posted as workers or as self-employed by temporary work agencies (TWAs) established in the sending Member State. Of a particular nature is the situation of TCNs who are posted from other Member States through TWAs that contract the TCN with 'civil law contracts', a type of contract which is not known as such in the host Member State's legal system;
- ▶ TCNs who are posted from another Member State and are registered as shareholders of companies established in the host country without their consent;

Labour inspectorates in some Member States (e.g., FI) have voiced their concerns on the very short duration of some TCN postings from abroad (e.g. seasonal work) which are difficult to detect and monitor. FI can investigate cases of bogus self-employment where individuals should be classified as employees rather than independent contractors. However, in the cases of legitimate self-employment, Finnish authorities cannot intervene, as their jurisdiction only extends to supervising employers. The labour inspectorate can in such instances only inspect the posting company, which is considered as the presumed employer but is based in the sending Member State. Also, in other Member States, labour inspectorates are constrained by their mandate, which in these cases is excluding the determination of bogus self-employment.

Participants in the PLDs concluded that in spite of the growing trend of bogus self-employment in an increasing number of economic sectors in Member States, it has **not yet in all countries been considered as a top priority** by the authorities and enforcement authorities.

### Summary of the key conclusions on prevalence, causes and trends in bogus self-employment in Member States





- ▶ **Bogus self-employment** is growing in several Member States **in an increasing number of economic sectors** (e.g. construction, digital platform economy, manufacturing industries, delivery sector, HORECA, etc). Cross-border mobility and intra-EU posting have contributed to a significant rise of (cross-border) bogus self-employment. There is some evidence that this trend is going to affect a wider range of economic sectors (health care, domestic services, home care, etc) as seems to be the case already in some Member States (e.g., BE, FI, NL).
- ▶ Engaging self-employed workers instead of workers on the pay-roll in order to **cut business costs is systematically considered as the main cause** of (intentional) bogus self-employment in combination with the contracting of (posted or mobile) TCNs who are most vulnerable to bogus self-employment, often because of their unawareness and/or limited language skills.
- ▶ **Cross-border mobility and postings of TCNs** within the EU, often involving intermediaries and non-standard contracts of engagement (such as contract concluded with 'self-employed' TCNs) constitute a **growing and very complex challenge** for the national enforcement authorities.
- ▶ **Bogus self-employment in cross-border settings is a rapidly growing trend** especially in economic sectors requiring low-skilled and manual work (e.g., construction, meat processing, delivery, manufacturing, etc.), which are characterised by structural labour shortages. Cross-border bogus self-employment implying third country nationals and EU citizens seems to have become a bigger challenge than the 'national' bogus self-employment of own residents in Member States.
- ▶ In spite of the growing challenge of (cross-border) bogus self-employment, it has **not yet been considered as a priority** by national policy makers and enforcement authorities in several Member States.

## 4.0 Determination of bogus self-employment and employment status classification

The participants spent considerable time exchanging information and experiences on **the methods that they apply to determine the correct employment status** in their respective national enforcement practices. The mandates of the labour inspectorates in Member States in view of determining bogus self-employment varies to a very large extent and **different approaches** exist.

In some Member States (e.g., NL) the **tax authorities are primarily responsible** for determining the employment status and hence for the possible re-classification in cases of bogus self-employment through the assessment of the income tax obligations of the individuals concerned. In other Member States, the tax authority is responsible for determining employment status for tax purposes only. For instance, in IE, the Irish tax authority is responsible for determining the employment status for tax purposes only. The Irish National labour inspectorate and the agency responsible for social protection each have a responsibility, based on their own legal framework, to determine the employment status for the purposes of employment rights or social insurance purposes, respectively. While in most situations involving the determination of employment status, there is a common approach across the three bodies, the decision of one organisation is not binding on the other. As a consequence, the determination of employment status in one context may not be the same as in another context. There may be exceptional cases where the legal frameworks of the agencies result in divergent outcomes.



**National labour inspectorates' responsibilities are furthermore often constrained by their mandate** to apply the labour code exclusively to dependent employment and not to the self-employed. This may sometimes imply that they cannot investigate the working conditions of the self-employed (e.g. FI). By contrast, in ES the Labour and Social Security Inspectorate is mandated to inspect dependent workers, the self-employed and the dependent self-employed ('TRADE'). Their mandate is consequently much broader than that of the labour inspectorates in the other Member States, where social security enforcement is often entrusted to other enforcement authorities or where the tax authorities are in lead to determine the employment status and possible reclassification.

In Greece, inspectors can observe but they are bound by what they detect without having the possibility to interrogate the workers on their employment status during onsite inspections. They can ask question to the workers during the inspections but the answers are not binding. They can also request to see documents from the employer but inspectors, as a consequence of their limited mandate, are not using a checklist or questionnaires aimed at verifying employment status. In PT on the other hand, findings of the labour inspectorate are binding for the public prosecutor, but it is the latter who decides whether to go to court or not.

Like in all Member States the courts in PL ultimately decide on the employment status in individual cases. Labour inspectors can at present not take action to change civil contracts into labour contracts, but there are at present plans being discussed with a view to extend the mandate of the labour inspectorates which would allow them to take an administrative decision aimed at the reclassification of civil contracts into employment contracts. At present however, courts are, in the viewpoint of the Polish participant, hesitant to reclassify and they will always follow the will and choice of the contracting parties. Civil law contracts are hence very seldomly reclassified as employment contracts even in cases of clear employment relationships. The reluctance of courts to decide on a reclassification was also noted in some other Member States (e.g. PT).

The legal concepts of 'worker' and dependent employment enshrined in national labour law are the main reference points for national labour inspectorates whereas national tax and social security legislation on the other hand serve as the assessment frameworks for the tax and social security enforcement authorities within their respective mandates and when conducting inspections. The participants of the PLDs raised the issue that **tax, social security and labour inspection authorities** may have different and **sometimes conflicting interests**. Determining the correct employment status and/or possible reclassification into the worker status in situations of bogus self-employment, may not always be considered a top priority outweighing or overriding other considerations (e.g. in situations when the self-employed is correctly paying taxes and/or social security contributions). For instance, in FI, tax authorities may not be inclined to decide on a reclassification of bogus self-employed when taxes are properly paid.

### Key take-away: Varying competences in determining bogus self-employment in Member States

There is **great variety between Member States concerning which national enforcement authority is competent to determine the employment status** including to decide on a possible reclassification of bogus self-employed persons. In some Member States this is the prerogative of the **tax authorities** and the **labour inspectorates cannot intervene**, while in some other Member States **social security enforcement authorities** have the legal means to check on the employment status.

Each national enforcement authority approaches bogus self-employment from its own perspective and within its own mandate but all participants in the PLD acknowledged the **critical importance of inter-agency cooperation** between tax, labour, and social security when addressing bogus self-employment.



Apart from the limitations concerned with their respective mandates (labour, tax and social security) enforcement authorities may have in Member States, the participants in the PLDs voiced **several challenges and obstacles** when determining the correct employment status in the enforcement practices.

**Three critical challenges** deserve particular attention:

- ▶ Detecting bogus self-employment and establishing the correct employment status (which eventually implies a reclassification into the status of ‘worker’) is a **time-consuming, cumbersome and very lengthy process**. Onsite inspections take time and require individual interrogations of workers and employers while searching for firm evidence. Ultimately, the national courts render the final judgments in cases of disputes which cannot be resolved administratively. Court proceedings can last for several months while court rulings always concern individual cases and cannot be used with a view to solve other, even similar/identical, cases of possible bogus self-employment. Companies which are suspected to have engaged bogus self-employed are often assisted by specialised lawyers who appeal decisions made by the enforcement bodies or administrative authorities and/or assist the employers during the court proceedings.
- ▶ **Inadequate and inefficient inter-agency cooperation** and information exchanges between the tax, social security and labour inspectorates, prior, during and after the investigations of cases of bogus self-employment is highlighted as one of the **key issues of concern**, specifically for the labour inspectorates who often have no or insufficient competences to check on cases if bogus self-employment is suspected in their Member States. This challenge will be further addressed in chapter 5.4.
- ▶ The **proof of the subordination dimension** or hierarchical relationship between the employer and the worker is conceived as one of the biggest challenges by enforcement authorities during inspections. However, such a subordination dimension (and hence establishment of an employment relationship) may not always be of a primary concern for the tax administrations which are dealing with income tax compliance matters. Compliance with the income taxation rules may hence in practice outweigh a correct classification of employment status, especially in cases where the tax authorities are in lead to determine the latter.

### Summary of the key conclusions relating to the determination of bogus self-employment

- ▶ The **determination of bogus self-employment** and possible re-classification into the dependent employment status is often entrusted to the tax authorities (e.g., NL), whereas the mandates of labour inspectorates are often constrained to applying the national Labour Code on dependent employment only, preventing them to inspect the self-employed (one-person businesses or entrepreneurs) (e.g., FI). By contrast, in ES the Labour and Social Security Inspectorate can inspect every person regardless of employment status.
- ▶ The **institutional approach and mandates concerning the establishment of bogus self-employment differ considerably** across Member States. Tax authorities are often in lead, whereas in ES the Labour and Social Security Inspectorate can investigate all persons regardless of their employment status (including the self-employed). National labour inspectorates have sometimes no mandate in relation to bogus self-employment or their mandate is constrained and limited to the verification of worker status excluding thereby any inspection competences on the self-employed (entrepreneurs or businesses).
- ▶ **Three main critical challenges** have been identified by the PLD participants:
  - (1) Detecting bogus self-employment and establishing the correct employment status is a very lengthy, cumbersome and time-consuming process;



- (2) Inadequate and inefficient inter-agency cooperation between tax, social security and labour enforcement authorities hinders the process of detecting bogus self-employment and of establishing the correct employment status;
- (3) The 'subordination' dimension or hierarchical relationship between the employer and the 'bogus self-employed' person is hard to prove in practice.

## 5.0 The prevention, detection and tackling of 'bogus self-employment' in Member States

The PLD participants shared information and experiences regarding the mechanisms, tools, procedures, and good practices to prevent, detect and tackle bogus self-employment. In addition, participants discussed at large the current inter-institutional cooperation and information exchange and needs, both nationally and cross-border. In this chapter, the focus is laid on the situation of bogus self-employment in Member States, whereas in the ensuing Chapter attention is paid to the cross-border dimension of bogus self-employment.

However, it has to be noted that a (strict) distinction or division between in-country bogus self-employment and cross-border bogus self-employment has become rather blurred or even superfluous. This is due to the fact that (1) the economic sectors that are most affected by bogus self-employment are those that increasingly rely on foreign (EU and TCN) labour and (2) TCNs are particularly vulnerable to the risk of bogus self-employment in a cross-border context.

### 5.1 Prevention of bogus self-employment

Several national initiatives and actions in Member States have been identified during the PLDs, which aim to **prevent bogus self-employment** to occur. Some of these preventative measures are sector specific (e.g., construction), while others are targeting bogus self-employment in a wider range or in all economic sectors. However, not all participating Member States have reported prevention actions and some (e.g. ES, SK, EL) have limited experience with actions aimed at preventing bogus self-employment.

According to the Swedish trade union representative, the social partners including trade unions play a very active role in the prevention and detection of bogus self-employment in **Sweden**, due to the very high unionisation of workers and the extended enforcement mandate on working conditions that is entrusted to them. In Sweden the total number of self-employed is relatively low (55 000 persons) while more than 90% of the workers in Sweden are covered by collective agreements which regulate the working conditions in the different economic sectors. Inspections are performed by the social partners, not by state inspections (with the exception of OSH). As a consequence, unions have an interest to apply a broad concept of workers/employees. Unions have a veto when employers intend to hire the services of someone who is not an employee while the employer has the obligation to inform the unions about the intended recruitments.

National enforcement authorities use their **websites to publish information** with a view to prevent or deter bogus self-employment. The [website of the labour Inspectorate](#) in NL provides a lot of information in that regard, e.g. the road map verification duty and the self-inspection on honest work (including inspection results) in Dutch and English. The website of Dutch tax authorities also contains information that individuals can consult in order to



assess employment status ([Checklist](#)). As in NL, the Irish tax authority does not publish tax inspection reports, but quarterly reports of settlements with tax defaulters. It also provides additional information on how it targets and disrupts Shadow Economy activities in its Annual Report, including the number of site visits carried out, the types of business visited and the outcome of those visits. Information on the checking of employment status and on the risk of bogus self-employment is also freely available for the general public in some other Member States (e.g. Germany [Practical Guide](#)) and in the UK ([Checklist](#)).

### Key take-away: The Irish Code of Practice

The [Irish Code of Practice](#) has been developed by the social protection authority in consultation with the tax authority and national labour inspectorate. The Code is an assessment test containing 20 criteria that concern the determination of a dependent employment relationship and an additional 20 criteria that concern the status of the self-employed. The Code is mainly meant to be used by individuals, employers and tax advisors.

The Code of Practice was considered by most PLD participants to be a **very useful guide to determine the employment status** and considered a reference for other countries' enforcement authorities. Several national enforcement agencies from other Member States used the Irish Code in order to review their own checklist and tools for determining employment status in the 'testing' phase prior to the third meeting of the PLDs.

However, the recent Supreme Court judgement in the Revenue Commissioners v Karshan (Midlands) Ltd. T/A Domino's Pizza, set out a new five step framework to be applied to determine employment status for tax purposes. The Irish tax authorities have published a detailed guidance setting out the impact of the judgement in determining employment status for taxation purposes. An updated Code of Practice will be published shortly and will detail matters to be considered when determining employment status which are broader than the list of items in the current Code.

Some Member States have **online assessment or guiding tools or instruments** that can be consulted by the wider public (individuals, employers, etc) to verify the employment status. The Dutch government published an [online self-assessment tool](#) that can be consulted by workers and employers in order to check on employment status. (Several) Model Agreements are published on the [website](#) of the Dutch tax authority which individual self-employed persons can use when concluding a contract for services with their client. Different model agreements are published for different economic sectors and occupations. A General Model Agreement is also available. The site also contains an online searchable register of all agreements that self-employed have concluded and which have been registered into the online database. Similarly, **trade unions** in Member States have also produced checklist and/or assessment tools for individuals to check on employment status. The United Freelancers of the Belgian ACV-CSC union (trade union) produced a checklist with closed questions that have pre-defined weights, and which is focused on the working conditions individuals experience in practice.

**Media coverage** and press reports are considered in several participating Member States as an effective way to bring the phenomenon of bogus self-employment in the public attention while it also has a deterring effect in the economic sectors concerned. In IE, the tax authority issued press releases detailing the recent Revenue Commissioners v Karshan Midlands Ltd. Irish Supreme Court judgement and the revised guidance on determining employment status for tax purposes that it published following that judgement, both of which were reported in the media. A report from the Slovak Supreme Audit Office on bogus self-employment in October 2023 triggered extensive public debate and was covered by the mass media. New government proposals concerning the employment classification and introducing a legal presumption on worker status in cases of low hourly earnings in NL also received a lot of attention from the social partners and in the media.

In order to prevent bogus self-employment from occurring, parties which are about to enter into a particular contract to undertake work or services, could also **approach the public administration to seek advice on the**



**employment status** that needs to be applied in their contractual relationship. Such a rather unique approach has been institutionalised in BE where an **Administrative Commission on labour relations is functioning, which can be approached to determine employment status.**

### Key take-away: The Belgian Administrative Commission on Labour Relations

The [Administrative Commission on labour relations](#) in BE functions as an **out-of-court mechanism**. The Commission can be approached in order to clarify the employment status in cases of doubt. BE has a social penal code, which is currently being revised. The Administrative Commission is not a court of law, but it serves as a sort of 'filter' allowing contractual parties to clarify the status of their contractual relationship and avoid time-consuming and expensive court proceedings.

The Belgian Labour Relations law contains four general criteria which determine if a person is an employee or self-employed person:

- ▶ the will of the parties as expressed in their agreement;
- ▶ the freedom to organize the work;
- ▶ the freedom to organize working time; and
- ▶ the possibility of exercising hierarchical control.

Belgian legislation also contains legal presumptions of employment status as is reported in the present Report.

The Commission is part of **Federal Public Service (FPS) Social Security** (which holds the secretary and registry). Two chambers exist: Languages: French and Dutch. The Commission is chaired by a Labour Court Magistrate and is furthermore composed of 4 senior civil servants from the different competent institutions.

Both parties to a contract (for employment or services) or one of the parties can initiate the procedure which is run online. An online application form needs to be completed and supporting documents can be submitted, which are then assessed by the Administrative Commission during their closed hearings.

Timescale for submitting applications:

- ▶ The employment relationship has not yet begun.
- ▶ Within a period of one year after the start of the working relationship.
- ▶ Within a period of one year after a new element occurs in the employment relationship.

The hearings of the Administrative Commission are not open to the public and a decision has to be reached within a period of 3 months.

Two different types of procedures can be initiated:

- ▶ Advisory procedure:
  - ▷ Non-binding.
  - ▷ Not adversarial (the other party is not involved but has to be informed if the Commission does not agree with the statute chosen by the applicant).
- ▶ Decision-making procedure:





- ▷ Ruling decision.
- ▷ Binding for the public institutions that are members of the Commission, as well as social insurance funds for the self-employed and the parties.
- ▷ Adversarial (other party is always informed of the application and invited to intervene in the procedure).
- ▷ The decision taken in this procedure can be appealed to the labour court.

The consequences of a ruling by the Administrative Commission:

- ▶ A decision to requalify is valid only for the future.
- ▶ The Commission forwards the decision to the NSSO and to the NISSE. On this basis, these institutions will request and/or carry out the necessary regularisations.
- ▶ An employer must in principle affiliate with the NSSO and declare the work performance and wages of an employee.
- ▶ A self-employed person must affiliate himself with a social insurance fund for self-employed persons.
- ▶ In both cases, a late affiliation or declaration can give rise to contribution surcharges and penalties.

If a case will be brought before a court of law, parties may get a fine, pay interest and this can get very expensive. The deadline for requalification: prescription deadline is 3 years (when in the court of law).

## 5.2 Detection of bogus-self employment at national level

The detection of bogus self-employment in the participating Member States often results from **tip-offs or notifications from public institutions, social partners or from the public**. The Finnish labour inspectorate receives tip-offs from the trade unions in the construction sector. In NL, the labour inspectors conducted in the last four years 96 investigations at the direct request of the social partners regarding the compliance with collective bargaining agreements. In ES, different public channels are used in order to detect bogus self-employment.

The **public** can submit **complaints** or use anonymously the mailbox of the Labour and Social Security Inspectorate. The labour inspectorates in some Member States (e.g. CZ, EL, FI, HU, NL) and the tax authorities (e.g., IE) also receive anonymous complaints or notifications from the public in cases of potential bogus self-employment. However, in some Member States, such anonymous complaints are no longer being accepted, often for reasons relating to the privacy legislation. In PL, the labour inspectorate no longer accepts anonymous complaints as they now need to be signed by the complainant. In PT, individual complaints made by the public are no longer considered by the enforcement authorities, and such complaints must now be anonymised before being processed. Consequently, the data maintained after the anonymisation are of lower quality and detail, making it more difficult for the inspection services to follow-up.

**Notifications from other national institutions** also contribute to the detection of bogus self-employment in Member States. In ES, the Labour and Social Security Inspectorate receives information from data crossing to plan inspections. In CZ the Labour Inspectorate receives requests for inspections from the Ministry of Labour and Social Affairs or Ministry of the Interior, when suspicions are aroused during work permit applications or extensions. The Labour Inspectorate in NL receives notifications from the Chamber of Commerce on suspected bogus self-



employment. In EL, labour inspection services receive notifications from the economic police. **Inter-institutional notifications on suspected cases of bogus self-employment are considered by the PLD participants as critical in the fight against bogus self-employment.**

**On-site inspections** conducted by the competent enforcement authorities is the main mechanism to detect bogus self-employment. National authorities and enforcement bodies from Member States have adopted different (internal) **checklists and guidance to determine the correct employment (or income tax or social security) status**. Labour inspectorates from almost all participating Member States (with the exception of EL) use checklists with criteria or lists with (open) questions determining whether in a given individual case the status of dependent employment can be established.

These checklists are used during on-site inspections and the interviews with the workers and/or the employer/principal. Different approaches can be discerned, from closed lists of questions to a more 'open' list, leaving room for the inspectors to adjust their inspection approach. In SK, labour inspectors are instructed with general inspection methodologies regarding illegal employment and can use a [checklist for labour inspectors to detect bogus self-employment](#). These are general guidelines for inspectors, providing hints on how to proceed or steps that every labour inspector should take, and they include a set of questions that can be asked.

In IE, tax officials use a **standard interview questionnaire** in the construction sector, which is a two-page form. The inspectors ask if the workers are employees or self-employed and use the page of the form appropriate to the type of worker. The questionnaire includes questions that target information useful to determine whether there is bogus self-employment involved. This questionnaire is in the process of being updated on foot of the recent Supreme Court judgement, which introduced a new five-step framework for determining employment status for taxation purposes. The Spanish Labour and Social Security Inspectorate has an internal guide about bogus self-employment in digital platforms (platform economy). It outlines what the inspectors have to do and what documents they need to ask for. The guide is an internal document and is not published.

### Key take-away: Mutual learning from sharing checklists national enforcement agencies use to determine employment status

The sharing of checklists and methodologies used by national enforcement agencies to determine employment status was a common action that all participants of the two PLDs agreed to undertake. The checklists were collected, exchanged and examined by all participants during the interim periods leading to the respective third meetings at which they reported their findings.

The PLD participants found it extremely useful to **share the respective checklists and questionnaires** among each other for **mutual learning purposes**. This has led to **very concrete and practical outcomes with minimal resources**.

Several national enforcement authorities adapted their own checklists based on those received from other Member States: new questions were added, while questions and/or approaches were redesigned. Exchanges within national enforcement agencies' staff members took place in view of adapting national checklists.

For instance, The Czech Labour Inspectorate adopted a new, adjusted questionnaire in support of the inspectors based on the different checklists received from their peers during the PLD. New questions were considered such as 'how many clients did you have in the past 12 months', 'how did you first get in touch with the client', 'how do you go to the workplace', 'who gives the detailed instructions', and 'who pays you when you get ill', etc.

On-site inspections aimed at detecting bogus self-employment are considered to be particularly difficult by the PLD participants for various reasons: uncooperative behaviour of employers and/or workers, language barriers,





time consuming inspection of documentary evidence, lengthy interrogations, etc. Participants of the PLD agreed that it is important for inspectors to **have an open and flexible approach during the inspection**, mainly because employers and suspected bogus self-employed often know what they have to answer and aware on how the more standard questions are to be responded to. Some participants mentioned that bogus self-employed workers are in some cases instructed by the principals or employers what and how to reply to the questions from the inspection services. The PLD participants welcomed and suggested to have **training initiatives on inspection methodologies and on soft skills**.

### Key take-away: Training on interview techniques for labour inspectors in FI

In 2022, inspectors from the Finnish labour inspectorate identified the need to have **specific training on interviewing techniques and approaches**. **The training on interviewing techniques was not specifically aimed at detecting bogus self-employment, but the techniques learned in the training** can be applied during onsite inspections targeting the detection of bogus self-employment. Such training was considered necessary for both the interactions with and interviews of the employers who are circumventing the law on the one hand and of the workers who are in vulnerable situations of exploitation on the other. The standard training which inspectors receive in FI is not including this dimension in its curriculum.

The training was designed in cooperation with the training unit and legal department of the labour inspectorate but also with the police academy. The police academy has training modules on interrogation techniques being it designed for different contexts and situations than establishing bogus self-employment. Sufficient preparation time was taken in order to explain the specificities of the labour inspections to the trainer from the police academy.

A one-day face-to-face training was organised with about 20 inspectors in 2023. The programme devoted attention to topics such as legal questions that may arise on possible evidence that is revealed during interviews, general methodologies on how to interact with persons who refuse to share or talk, interviewing techniques and issues that need to be considered when interviewing persons in very fragile situations.

The participants have evaluated their experiences and this is being used for the design of a new training that is scheduled for autumn 2024. More practical situations and case examples will be incorporated while the topic of coercive control will be added into the programme.

**Targeted information campaigns** are also used by enforcement authorities in order to detect and address bogus self-employment. In the box below, an example of a recent effective information campaign tackling bogus self-employment in PT is presented. The action was 'tested' as part of the PLDs.

### Key take-away: targeted information campaign in PT

The Authority for Working Conditions in PT launched a **targeted information action** which aimed at verifying the status of those persons who were registered as dependent self-employed as there was a suspicion of significant bogus self-employment among this group.

The campaign was based on data retrieved from the social security database as a test action as part of the PLD in the beginning of 2024. 9 645 companies employing 17 622 economically dependent self-employed were targeted and approached. The targeted dependent self-employed were selected based on several criteria: an economic dependency of more the 80%, not having received an income from employment in the preceding year and having had an income through their self-employed activities that is exceeding 12 times the minimum



salaries for employees. 14 days were given for the replies. The information action was accompanied by on-site inspections in the 16 regional departments.

The PLD participants considered **legal advice and assistance to the enforcers** during investigations, administrative and judicial proceedings as very important as companies themselves usually rely on experienced lawyers. Some participating enforcement authorities rely on their own internal law departments, while they use private law firms to represent them before court. In Southern FI, the labour inspectorate has an **internal ‘helpdesk’** which inspectors can address in difficult bogus self-employment cases.

### 5.3 Addressing bogus self-employment in subcontracting chains in the construction sector

The construction sector has been identified by the PLD participants as the economic sector, which is mostly affected by bogus self-employment in Member States, often by engaging TCNs. The construction sector is characterised by **very extensive and complex subcontracting chains**, which is an additional challenge for enforcement authorities when fighting bogus self-employment. Authorities of some Member States operate very specific mechanisms targeting tax avoidance including bogus self-employment in the subcontracting chains of the construction sector and have often implemented chain liability throughout the subcontracting chain in national legislation.

Three examples of **national approaches to address possible cases of bogus self-employment in the subcontracting chains** are presented in the box hereafter.

#### Box 4. Tackling bogus self-employment in subcontracting chains in the construction sector

► In **NL**, **chain liability** exists in the legislation concerned with the construction sector and a **system of ‘blocked accounts’** is used. The latter implies that in general, 35% of the invoiced fees from subcontractors is paid by the principal on a ‘blocked account’ and hence not directly transferred to the account of the subcontractor. The subcontractor can ask to unblock the money but only under certain conditions. In such a case, the tax administration can decide to first conduct a tax audit before the money can be released and paid out to the subcontractor.

Within the Dutch tax administration, a Team for Large Construction Projects is in place, which has a unit specialised in on-site inspections. They receive inputs from the data systems every month, which they cross-check: turnovers of the various companies in the subcontracting chain are compared to the information relating to the payments of employees, and when they detect turnovers of self-employed working in the construction sector with a turnover of more than EUR 5 000 000 for instance, this could be an indicator that the self-employed person hired other self-employed persons to perform the work. This may point at bogus self-employment. The Team for Large Construction Projects of the tax authority can also conclude agreements with the construction companies to share on a monthly basis the data that are registered by means of the electronic gate administration which is kept at the entrance of the construction sites and which monitors access and working times of those who enter the construction site. When a main contractor in large construction projects hires a subcontractor, they receive a link to register all employees and other contracted parties, but if they do not send the link further down the chain, it looks like workers on the system are on the payroll of the subcontractor but in reality, they are often self-employed (or employed by a subcontractor). In such cases, the tax administration will conduct a further investigation which, in cases of bogus self-employment, may lead to wage-tax corrections imposed by the tax administration. Dutch tax authorities furthermore examine the VAT returns and VAT listings to check on ‘intra-community’ services down the supply chain.



In **IE**, a third-party reporting system is in place through which traders, businesses and companies are required to file returns to the tax authority containing details of payments above EUR 6 000 made by them to third parties for services provided in a year. In addition, certain payments by principal contractors to subcontractors in the construction, forestry and meat-processing industries are subject to a withholding tax that is applied at different rates (0%, 20%, or 35%) depending on the tax risk posed by the subcontractor (e.g., 0% for those who pose least risk rising to 35% for the highest risk subcontractors). The principal contractor must notify the tax authority of every contract entered into and each subcontractor engaged to work on that contract. In the construction industry, each new site or project is assigned a unique Site Identifier Number (SIN), which must be used for every contract notified to the tax authority for that site. Every payment made to a subcontractor is reported in real time and the system advises the principal contractor of the % tax to be withheld. This is then paid to Revenue by the principal contractor and offset against the subcontractor's tax liabilities.

► In **ES** there is a specific law on subcontracting in construction, [Law 32/2006](#), with some requirements to be fulfilled by companies that indirectly imply a prevention of undeclared work or BSE in the sector (article 5). In order to be a contracted or subcontracted company in construction, it is needed to have the necessary material and human resources, to assume the risks and obligations of the activity, to demonstrate that management and operational personnel are trained in risk prevention, and to be registered in the Register of Accredited Companies. Furthermore, a limit of three levels is set in the subcontracting chain. When a contract is concluded with a self-employed worker, the chain is broken, and the self-employed worker is banned to subcontract his work to a third party.

## 5.4 Sanctions

Participants also discussed **the administrative sanctions** applied in cases of **misclassification of an employment relationship as self-employment** (and as a consequence for the non-compliance with labour, social and tax rules applicable to an employment relationship). Different national practices and sanctioning regimes were reported for the participating Member States.

In some Member States administrative fines can be imposed directly by the enforcement authorities in cases of bogus self-employment although these fines are sometimes provisional. At the same time, it occurs that in several Member States fines are most often issued by the courts (e.g. BE, EL, PT) following court proceedings.

The amounts of the (administrative) fines vary considerably across the Member States concerned:

- In **BE**: the penalties have been updated with the implementation of the renewed Social Penal Code on 1 July 2024. Under this new framework, failing to declare a worker, classified as a level 4 infringement, can result in imprisonment ranging from 6 months to 3 years, a criminal fine ranging from EUR 600 EUR to EUR 7 000, or an administrative fine between EUR 300 to EUR 3 500. These financial penalties are also subject to an increase by a factor of 8;
- In **CZ**: fines between EUR 2 000 and EUR 400 000/case;
- In **FI**: labour inspections issue improvement notices and written advice that contain deadlines for the employers to execute the reclassification and pay them salaries as employees while also ensuring for example adequate health care coverage. If the employer does not comply, it can lead to a hearing process with a threat of a fine;
- In **EL**, the fine for undeclared work (including bogus self-employment) is 10 500 €/case, but this can be lowered to EUR 2 000 if the employer agrees to reclassify the worker and will employ the person for at least one year;



- ▶ In IE, when employers fail to operate the PAYE system<sup>18</sup>, including where the employer chooses to engage with bogus self-employment, penalties can be applied for breaches of the PAYE Regulations. The employer receives a warning notification specifying a timeframe within which to rectify the situation. The penalty for a breach of the Regulations is EUR 4 000 per breach. If the employer corrects the situation, they can obtain a mitigation of the penalty down to EUR 2 000 in a single amount. In the event of failure by the employer to operate PAYE or pay the penalty, the course of action open to the tax official is to serve a Notice of Opinion before a judge where the circumstances are outlined, and a judge decides on the level of the penalty due. Where a tax liability arising from bogus self-employment is identified in the course of a compliance intervention carried out under the Compliance Intervention Framework (this is a Code of practice for Revenue Interventions), the employer may also be subject to a tax geared penalty plus interest;
- ▶ In ES: fines varying between EUR 10 000 and EUR 100 000 per foreign worker in bogus self-employment without a work permit.

In all participating Member States, **court proceedings** are the ultimate means to settle cases of bogus self-employment. Enforcement authorities, often through the Public Prosecutor's office can bring employers who circumvent the tax, social and labour legislation to court in accordance with the national legislation. Undeclared work or bogus self-employment is in some Member States and under certain conditions considered as a crime under the Criminal code, as is the case in ES. In BE, a specific social penal code exists, which is currently under revision. In Sweden, two types of courts exist for disputes concerned with labour law: the labour courts composed of representatives of both the unions and employers' organisations and the administrative courts which covers OSH.

The PLDs revealed that the experiences with the **involvement of the national courts** in the settling of cases of bogus self-employment and their readiness to reclassify **are different between the Member States**. In some instances, there seems to be some hesitation or even reluctance among judges to reclassify cases of bogus self-employment (e.g., PL, PT). In these Member States, the will of the parties to decide and to choose the type of the contract (and hence employment status) will prevail, also before the courts (e.g. civil law contracts in PL). This is in contrast with other Member States (e.g., BE, NL) where the intention and 'will' of the parties and the way the contract has been called (e.g. the terminology used in the written contracts), appear to be of less relevance in the ultimate assessment of the employment status by the judiciary. Finally, it has to be noted that in some Member States court cases on bogus self-employment are very exceptional (e.g., CZ, EL, SK).

## 5.5 Inter-agency cooperation, data exchange and risk-assessment

There is a common understanding that bogus self-employment can only be effectively addressed by a **joint collaborative effort of national tax, social security and labour enforcement authorities** by means of **structured information and data exchange**, and by **joint or coordinated inspections**.

Whereas tax authorities in Member States are often in lead when it comes to determining the existence of bogus self-employment (e.g., NL), the mandates of national labour inspectorates in these Member States appear to be rather restrictively defined in national legislation. This is often also the case generally in other Member States where labour inspectorates seem to have restricted powers concerning the detection of bogus self-employment (e.g. EL). This **limited mandate often prevents labour inspectorates from inspecting self-employed persons** and hence effectively detect and determine bogus self-employment. When labour inspectorates detect possible

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<sup>18</sup> In IE, most employees pay tax through the PAYE (Pay As You Earn) system. The employer deducts the tax directly from the wages and pays this tax directly to Revenue through the PAYE system.



cases of suspected bogus self-employment, they are often dependent on the tax authorities or on the social security institutions to take action.

As already has been mentioned, the inspection **competences** concerned with bogus self-employment are most often **spread among different national tax, labour and social security enforcement authorities** (e.g. BE, CZ, FI, IE, SK and NL), while only in ES labour and social security enforcement competences are part of the mandate of one single Labour and Social Security Inspectorate. When compared to its counterparts in other Member States, the Spanish inspection appears to have larger competences in view of determining bogus self-employment. BE has five 'social' inspection services: social security for the employees, social security for the self-employed, unemployment office, labour inspection and the sickness insurance inspection. Only two of these authorities have competence in matters of bogus self-employment.

PLD participants unanimously agree that **the fragmented competences between the three institutional enforcement authorities is requiring coordinated approaches and data and information exchange in order to effectively address bogus self-employment.**

**Sharing inspection reports** with other enforcement authorities, especially when the latter have the primary responsibility in the fight against bogus self-employment, is considered as an effective way of addressing bogus self-employment as they may lead to subsequent inspections by these inspection authorities and related results (reclassification, fines, etc). In several participating Member States labour inspectorates are allowed to share their inspection reports with the tax authorities. In some Member States (e.g., FI) inspection reports are made public, and this is often welcomed by employers who are concerned about their reputation (e.g. forestry sector in which bogus self-employment of TCNs is on the rise). In PT the inspection reports of the labour inspectorate are binding for the public prosecutor. In ES the Labour and Social Security Inspectorate sends the conclusions and legal reasoning of important bogus self-employment inspections to the tax inspectorate, so they can plan tax inspections in a consecutive way. However the reverse is often not legally possible as tax authorities cannot always share their information with the labour inspectorates in most Member States or only in a limited way in others.

**Targeted data-mining and the cross-checking of available databases** is a pro-active way to detect bogus self-employment in the participating Member States. Such approaches can contribute to **risk assessment** and constitute the basis for targeted on-site inspections. The previous assumes the sharing of relevant data and information between the different (tax, social security and labour) enforcement authorities. In some Member States, data exchange protocols or bilateral agreements are concluded between the different enforcement authorities with a view to ensure an adequate data exchange. However, it occurs that (1) tax administrations are often not allowed to share fiscal data with the labour inspectorates or only in a very limited way (e.g., CZ, FI, NL, PL) and (2) the protection of personal data legislation is often preventing effective data exchanges between the enforcement authorities and specifically from the fiscal (and sometimes also social security) authorities to the labour inspectorates.

The PLDs revealed several **positive experiences** but also some **areas for improvement** regarding the **information exchanges and mutual access to the databases** of different (tax, social and labour) administrations and enforcement authorities in Member States.

- ▶ In **NL**, employers have to register their employees when they start working and the social security and tax authorities have access to this database. However, the labour inspectorates have no access. They can ask their counterpart information on individual cases (one employer, one employee, etc). Because of the limited access, risk analysis become very difficult for the labour inspectorates. The Dutch tax authorities on the other hand use the data on wages/payments and the data on VAT in the construction sector to detect cases of bogus self-employment. One of the biggest constraints for the sharing of data is the 'privacy issue' and the rules applied by the Revenue Agency concerning the sharing of personal data. A covenant on the





exchange of information between the various enforcement authorities was adopted but it was not rolled out because of the privacy issue. Tax authorities can at present not share data with the labour inspectorates.

- ▶ In **BE**, the national institute for the social security of the self-employed has access to the data of the tax administration on the basis of a bilateral agreement but the national office of social security for employees has not. There is a need to conclude a trilateral agreement between the three institutions aimed at sharing the data and information.
- ▶ In **FI**, the labour inspectorate has access to the Incomes Register, an electronic database maintained by the tax administration, which provides detailed information on wages paid and the identity of the employer. The labour inspectorate has access to the immigration database which contains information on the residence permits of TCNs and residence status of EU nationals.
- ▶ In **SK**, the labour inspectorate uses historical records of employers which systematically engage self-employed over longer periods of time as this may be an indicator of possible cases of illegal employment (the concept of bogus self-employment is locally not existing).
- ▶ The withholding tax system in **IE** enables the tax authorities to produce reports in relation to potential misclassification of employment status of construction workers. In IE protocols between the tax authorities, social security and labour inspectorates regulate similar data and information exchange allowing also for data cross-checking. Information is exchanged either in bulk data form or on a case-by-case basis between designated case workers strictly in accordance with the relevant legislation, data sharing agreements and the data protection laws.
- ▶ In **PL** the labour inspectorate has no bilateral agreements with other institutions with a view to share information and data.
- ▶ Unlike what is the case in most Member States **PT** has legislation allowing the labour inspectorate to check that tax and social security databases.
- ▶ The Labour and Social Security Inspectorate in **ES** uses data mining (cross-checking of different databases) and checks the tax and social security information of companies. Checks are also performed on the invoicing information from self-employed workers and their clients. The Labour and Social Security Inspection in ES receives, upon request, data on the companies and the self-employed directly from the tax authorities. The Inspectorate also may check new registrations of self-employed persons if the Social Security administration ask them to inspect.

**Data mining and inspections** conducted by enforcement authorities require **sufficient resources**. The Spanish Labour and Social Security Inspectorate employs around 10 people for the data mining but works also with an external private company for technical work. A special unit of the Labour and Social Security Inspectorate is coordinating the inspections on bogus self-employment on the digital platforms, because of the complexity.

Finally, the PLDs also revealed some practices of **joint actions in which the different national enforcement authorities are involved** such as regular meetings, joint planning and joint inspections.

- ▶ In **NL**, intervention teams composed of representatives from tax, municipalities, social security, labour inspections and immigration services jointly design plans and do joint inspections at municipal level since the past 25 years with a view to share information between the different services.
- ▶ In **PT**, tax authorities, social security and labour inspectorates meet monthly at regional level and they conduct joint inspections.



- ▶ In **IE**, tax authorities, social security and labour inspectorate regularly carry out joint inspections, often in cooperation with the police.
- ▶ In **BE**, monthly meetings take place at regional levels in which the different inspection authorities are involved, risk analysis is conducted, and action plans are drawn up, joint inspections take place per jurisdiction, often in cooperation with the police.
- ▶ In **FI**, regional inter-agency meetings are held in which the police, the tax authorities, pension fund, immigration service and labour inspectorates take part. Joint inspections are regularly conducted. These joint inspections are only occasionally conducted to bogus self-employment.

In some Member States however, **no joint national inspections on bogus self-employment** in which the tax, social and labour inspections are involved have taken place until now, (e.g. EL, PL).

### Key take-away: First ever joint inspection by labour and tax enforcement authorities in SK

The Slovak Labour Inspectorate committed to approaching the national tax authority to explore a possible joint inspection as an action to test in the short interim period leading to the third meeting of the PLD concerned. A memorandum of understanding was prepared and signed in late 2023 and a first-ever joint inspection was conducted in the manufacturing sector. This led to the detection of several cases of bogus self-employment and triggered a lot of media attention.

### Key take-away: Joint inspection by tax and social security authorities in the Tourist Coach Tour Sector in IE

Within the framework of the PLD, The Irish tax administration carried out on-site inspections with inspectors from the social protection agency as part of a joint operation into operators within the Tourism Coach Tour sector. Two specific locations were identified for the project, and a customised questionnaire was designed for this purpose. Inspections were carried out on Coach drivers and tourist guides, which revealed some potential cases of undeclared work including bogus self-employment for both categories of workers. Ongoing work is being carried out on the cases identified.

### Summary of the key conclusions on the prevention, detection and tackling of bogus self-employment in Member States

- ▶ National enforcement authorities and trade unions in some Member States use their **websites** to provide information on the rights of workers, employment classification, and (sometimes) on bogus self-employment by means of self-assessment tools, checklists and model contracts. However, several participating Member States have limited experience in preventative actions addressing bogus self-employment.
- ▶ **Media coverage** of new policy initiatives and inspection results brings the issue of bogus self-employment to public attention and triggers consultation with the (sectoral) social partners.
- ▶ The Belgian Administrative Commission on Labour Relations, which is organised under umbrella of the Social Security Institution is an **out-of-court mechanism** contracting parties can approach to determine employment status and considered as a unique and alternative measure to prevent bogus self-employment from occurring.
- ▶ (Anonymous) **notifications** by the public, cooperation with the trade unions and notifications from other national institutions on suspected bogus self-employment are proven ways to help detecting bogus self-



employment. The publication of inspection reports or results has in some participating Member States a deterring effect.

- ▶ **Data mining and the cross-checking** of tax and social security data facilitates greatly the targeted inspections such as in ES where the Labour and Social Security Inspectorate has data on bogus self-employment in the different economic sectors based on the data which are made available by the tax authorities. Also in PT, targeted information campaigns based on the sharing of data between the different authorities has led to very effective approaches in fighting bogus self-employment.
- ▶ Enforcement authorities use (internal) checklists or lists with open questions which can be used by inspectors during inspections. The **sharing of the different 'national' checklists** between the participating enforcement agencies of the PLDs has proven to be very useful and several participating enforcement agencies have reflected and/or adapted their own checklists as a result. The [Irish Code of Practice](#), which serves also as a public available assessment tool has been used as a reference, but this is undergoing review in light of the recent Revenue Commissioners v Karshan Midlands Ltd. Irish Supreme Court judgement and an updated version will be published shortly;
- ▶ **Targeted information campaigns** based on data mining and aimed at verifying employment status of suspected bogus self-employed, such as in PT, are an effective means to tackle bogus self-employment;
- ▶ Competences and mandates to verify employment status vary to a great extent between tax, social security and labour enforcement authorities in Member States. The **fragmented competences between the three institutional enforcement authorities require coordinated approaches, data and information exchange and joint inspections in order to effectively address bogus self-employment**. The PLDs demonstrated that such joint actions deliver successful results in tackling bogus self-employment.
- ▶ Bogus self-employment can only **effectively be addressed when tax, social security and labour law enforcement authorities coordinate** their respective approaches and share data. The sharing of tax data of self-employed and of companies (professional or corporate income tax, VAT) and of the number and identities of subcontractors in e.g., the construction sector with other enforcement authorities, contributes to a more effective approach in fighting bogus self-employment.
- ▶ **Training in soft skills and in interviewing techniques** and methodologies for enforcement authorities (e.g. FI) are considered highly useful in the fight against bogus self-employment;
- ▶ **Specific tax mechanisms** such as the 'withholding tax system' in IE and the 'block account system' in NL in combination with measures that promote the chain liability or limit the subcontracting chains, contribute
- ▶ **Sanctions and sanctioning regimes** in cases of bogus self-employment **differ considerably** across the participating Member States. Not all enforcement authorities have the competence to issue (administrative) fines while the amounts applied vary considerably. Labour inspectorates appear to be mostly affected by their limited competences and report several challenges such as the difficulties to prove 'subordination' and the fact that employers are often assisted by specialised lawyers challenging the administrative decisions. Judicial proceedings are the ultimate means to establish the employment status in all Member States, but judges are in some Member States hesitant to reclassify bogus self-employed.





## 6.0 Preventing, detecting and tackling bogus self-employment in a cross-border context

The PLDs devoted time for reflection and discussion on the experience of the participating national enforcement authorities with **tackling bogus self-employment in a cross-border context**. There was unanimity among the participants that **cross-border bogus self-employment is a growing challenge and very difficult to detect and tackle because of its very complex features**. Most cases of cross-border bogus self-employment concern third country nationals who enter the territory (and labour market) of the host Member State through another Member State either by means of an intermediary (e.g. temporary work agencies or companies) established in that Member State (e.g. unlawful postings, etc) or on their own initiative (cross-border mobility in the EU).

The most important challenge that was raised concerns the fact that in order to solve cross-border cases of bogus self-employment, most often **enforcement authorities** have to be involved, which have **different competences in the respective Member States concerned**. A question on bogus self-employment that is addressed by a labour inspector in country X may need answers from the tax, social security institution or immigration services of country Y, where the (posted or mobile) worker is coming from and/or where s/he is based. The latter institution may not have a (similar) interest in solving the challenge of a possible case of bogus self-employment status in the host country. Cross-border cooperation is hence requiring **non-linear relationships and information exchanges between authorities and enforcement bodies that have different competences and interests**.

The participants of the PLDs agreed that in spite of the growing challenge of cross-border bogus self-employment, national enforcement authorities have **very limited cross-border experiences, if at any all. More intensive and improved cross-border information exchange and cooperation is considered as a priority**.

Because of the rather limited experiences with cross-border cooperation among the participants of the PLDs, the information provided hereafter is rather limited.

In what regards **preventative measures**, enforcement authorities sometimes use **information leaflets** to inform foreign workers about their rights and sometimes also about the risks of bogus self-employment. For instance, when the labour inspectors in FI investigate construction sites, they give information leaflets which are translated into 10 languages to the workers. The information is also available on the following websites: <https://tyosuojelu.fi/en/about-us/publications/are-you-self-employed-or-an-employee> and <https://tyosuojelu.fi/en/employment-relationship/characteristics-of-an-employment-relationship>, but foreign workers are not always aware of this. The labour inspectors find it more useful to go on-site and hand out leaflets redirecting workers to the website and offering help onsite. Furthermore, a mobile application [Work Help Finland](#), which is available in 26 languages, explains the rights of foreign workers, but the information is not specifically addressing bogus self-employment. Some Finnish embassies started promoting the app, for instance when people apply for work permits. In BE (Flanders), one of the largest trade unions, the ACV, provides information in 15 languages on its [website](#) for foreigners who intend to work in BE, on posting and on employment status (including on bogus self-employment).

Enforcement authorities in Member States have **limited experience with risk assessment** concerned with cross-border bogus self-employment. The existing prior notification systems for foreign self-employed who are planning to deliver services in the host Member States are a useful instrument to embark on targeted risk assessments tackling bogus self-employment.



## Key take-away: Risk assessment in NL in cross-border situations: incoming flows of self-employed established in other EU Member States.

**Self-employed persons** who are posted from abroad and foreign service providers (including self-employed) providing services in NL are obliged to use the **online prior notification system** when they are active in seven risks sectors ([postedworkers.nl](https://www.postedworkers.nl)): agriculture, construction, transport, manufacturing, HORECA, cleaning industry and the health and care sector<sup>19</sup>. The clients who are making use of the services are obliged to verify whether the notification has been done. The system has been operational since 2020 but fully effective as of 2021.

The prior notification system and related database is a very useful tool for the Dutch inspection to **conduct a risk analysis on the incoming flows of posted self-employed** and of the **regular posted workers**: for the year 2023, some 80 000 - 90 000 regular posted workers have been sent to the Dutch territory by their employers in comparison to about 15 000 self-employed.

An analysis of the data reveals that about 65% of the posted self-employed concern **short stays of less than one month**, half of which are postings of less than 5 days. About 6 000 postings concern periods between 6 months and one year. In terms of the nationality of the posted self-employed, the data reveal that they are nationals from some specific Member States. A larger majority are Polish, whereas substantial incoming flows are Slovaks, Belgians and Czechs. Interesting is that the data reveal that also some 337 Ukrainian nationals have been recorded as posted self-employed. The data also demonstrate the countries from where the workers and self-employed are posted (country of origin), which may be different than the nationality of the persons concerned. About 35-40% of posted workers from PL are TCNs while only a very few TCNs are posted as self-employed. The main economic sector in which posted workers and self-employed are active in is the construction sector.

In short, the **prior notification tool for posted self-employed and workers is an interesting tool to do risk analysis**. It reveals that for the year 2023, 15% of the incoming posted persons are self-employed, who stay for very short time and are mainly active in the construction industry. Very few posted self-employed are third country nationals. The prior notification tool can easily be checked by the inspectors during their inspections.

The PLDs revealed that only a few Member States have bilateral agreements in place concerned with the cross-border cooperation and information exchanges. CZ and SK have a **bilateral agreement** on administrative cooperation. CZ has also a memorandum on cooperation and exchange of information with the Polish National Labour Inspectorate. No other bilateral cross-border agreements have been reported during the PLDs and the PLD participants were not aware about any existing bilateral agreement their country/authorities had concluded with counterparts in another Member State. All participants nevertheless agreed that such cross-border protocols would be useful with a view to tackle cross-border bogus self-employment.

Most PLD participants were **aware about the existence of the IMI (Internal Market Information System) modules** on posting and on road transport as a means for cross-border exchange of information between national enforcement authorities in the EU. A very small minority of participants has ever worked with the IMI modules of posting. Access to the IMI is often only constrained to the central levels of the administration (e.g., PL). In EL two persons per regional inspection services have access (passwords) to IMI while also the central office can consult IMI. In FI both labour and road transport inspectors have access to IMI. Also in BE not all inspectors and inspection

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<sup>19</sup> [List of the risk sectors](#) which are subject to the prior notification obligation for self-employed who intend to provide services in the Netherlands.



authorities have access to the IMI modules. FI and SK reported that they have limited experience with the use of IMI with regard to bogus self-employment.

Challenges relating to the IMI that were mentioned most during the PLDs were the very **slow responsiveness** (e.g. BE, NL) by the contacted counterparts and the **outdated technology** that is not adapted to the real needs of the enforcement authorities (e.g., NL). PLD participants agreed that it would be useful to learn more about the existing IMI modules and to reflect on how IMI could be further developed in order to support information exchange in view of tackling cross-border bogus self-employment.

Cross-border **joint and concerted inspections** were also discussed among the PLD participants who considered this as an effective mechanism to tackle cross-border bogus self-employment. Several joint inspections that were facilitated with the support of ELA were mentioned by the participants such as the CJI involving the following Member States: NL-BG, RO-HU, HU-AU, PT-SK, PL-PT, ES-PT, BE-NL and FI-EE.

The Czech participant mentioned a recent case of an ELA Staff Exchange CZ-AT (Linz and Steyr, Austria) where inspections were conducted on a construction site in Austria, in which Austrian Authorities and members of the Czech State Labour Inspection Office and Czech Social Security Administration participated. The inspection was led by the Austrian Financial Police and led to immediate results and reclassification of bogus self-employment case that was identified during the inspection. Furthermore, several fines were applied. This inspection can serve as an example of effective practice tackling cross-border bogus self-employment. The involvement of the Financial Police (tax authority) was considered to be crucial.

### Summary of the key conclusions on preventing, detecting and tackling bogus self-employment in a cross-border context

- ▶ **Bogus self-employment is increasingly becoming a cross-border challenge** due to the significant number of (posted or mobile) TCNs or EU nationals. There is a need for stronger cooperation between the different national authorities and enforcement agencies (with varying competences) to address the issue in a coordinated way.
- ▶ In some Member States initiatives are taken by enforcement agencies and social partners **to provide information to foreign workers** who are engaged to work in these Member States by means of websites, information brochures and leaflets translated in several languages including languages from third countries.
- ▶ Prior notification systems for foreign self-employed who plan to provide services in Member States in combination with the prior notification systems in situations of posting are useful tools for **the risk assessment and monitoring of the incoming flows of mobile workers and self-employed**.
- ▶ There is generally **limited knowledge on and limited experience with the cross-border cooperation mechanisms** that exist or could be developed such as on bilateral cooperation agreements or protocols with enforcement authorities from other Member States and the use of the IMI modules. **Concerted or joint inspections** are considered by all PLD participants and a very effective mechanism to tackle bogus self-employment in a cross-border context.

## 7.0 Reflections and suggestions

The two Peer Learning Dialogues highlighted several **common trends in bogus self-employment** in Member States and in cross-border situations and **challenges** which the different national enforcement authorities are confronted with when tackling bogus self-employment. The discussions also resulted in suggestions on how to overcome some of the challenges.



- ▶ There is a common need for **additional reflection on the national definitions and concepts** of ‘workers’ versus ‘self-employed’, on the criteria that are used to establish an employment relationship and on the importance for assigning the burden of proof. In spite of a notable growing alignment, national concepts still differ, which is remaining a challenge, especially in cross-border settings.
- ▶ In several Member States, **bogus self-employment is a growing and pressing issue** in an increasing number of economic sectors and especially in the construction, manufacturing, delivery and platform economy; cross-border mobility and postings, especially of vulnerable groups such as TCNs (but also young people), and through intermediaries established abroad, are complicating the enforcement.
- ▶ **Different national immigration policies by Member States towards TCNs in combination with the current EU posting rules have a direct effect on bogus self-employment** in (other) Member States where TCNs are posted.
- ▶ The **inter-institutional cooperation** between national tax, social security and labour law enforcement authorities is critical for an effective approach to tackle bogus self-employment regardless of the way competences in Member States are assigned and/or divided among these different enforcement authorities. An active involvement of the **tax authorities** is a necessary prerequisite for an effective fight against bogus self-employment, regardless of which enforcement agency is in lead to determine bogus self-employment. Tax authorities are however not always convinced about the need to address bogus self-employment and/or are reluctant to become engaged. The main reason is that they are primarily concerned with the application of the fiscal rules (income taxation) regardless of the employment status of individuals.
- ▶ **Sharing of fiscal and social security data** (on companies and individual service providers, including self-employed), the cross-checking of data collected by the different enforcement authorities, and data mining are effective ways in Member States to detect bogus self-employment and develop risk-assessment approaches and (targeted) inspection plans. Access to taxation and fiscal data are necessary ingredients for an effective fight against bogus self-employment. More efforts seem to be needed for an improved involvement of the labour inspectorates by the tax and social security administrations and for an increased access to the fiscal data. This may require overcoming obstacles relating to the sharing of personal data.
- ▶ **Chain liability, restrictions on subcontracting chains and mechanisms such as the tax withholding system or the blocked account system** are **effective means to address bogus self-employment**, especially in the construction sector.
- ▶ **Very little is known about bogus self-employment in the online services sector**, which is often facilitated by digital platforms. The digital platform economy is prone to bogus self-employment in most Member States and poses particular difficulties for enforcement. The online services sector is by definition borderless and has an important cross-border dimension requiring information exchanges and cooperation across borders between the Member States’ enforcement authorities.
- ▶ At present, there is **very limited knowledge and experience** among the different national enforcement authorities **on cross-border inter-institutional cooperation and information exchange** relating to cross-border bogus self-employment. There is very limited experience with effective cross-border cases on bogus self-employment. However, national enforcement bodies are aware about the necessity to increase and intensify cross-border cooperation and information exchanges in the light of the fact that bogus self-employment is increasingly a cross-border challenge (as opposed to a pure ‘national’ phenomenon) by the sharp increase of (posted and mobile) TCN and EU nationals who are professionally active on the territories of the receiving Member States in a growing number of economic sectors and often for very short durations. Whereas bogus self-employment still exists in the national context in some sectors (e.g. cultural and creative industry, etc), economic sectors involving primarily low-skilled labour and manual work (construction, meat processing,



manufacturing, etc) are increasingly affected by **cross-border bogus self-employment**. Be this as it may, also other sectors (health care, home care, domestic services, HORECA, etc) are likely to become affected by cross-border bogus self-employment due to the structural labour shortages in these sectors, as is already the case in some Member States.

- ▶ Increasing cross-border cooperation between Member States with a view to tackle cross-border bogus self-employment, most often requires **information exchanges and cooperation between enforcement agencies which have different competences in the respective countries** e.g. between labour inspection of Member State X and tax authority of Member State Y). Moreover, the respective authorities may have very different and even opposing interests with regard to a specific case of cross-border bogus self-employment. **Non-linear cooperation mechanisms, information exchanges and actions (between enforcement agencies from different Member States that have different competences)** need therefore to be initiated and promoted.

## 7.1 Suggestions for national authorities

- ▶ The participants involved in the two PLDs suggest their counterparts in other Member States to carry out **actions aimed at assessing the legal frameworks and concepts**, the **prevalence and trends** relating to bogus self-employment and the **methods and tools applied to prevent, detect and address bogus self-employment**. Critical in this regard is the inter-institutional cooperation and data exchange between tax, social security and labour protection authorities.

**Small-scale steps or actions** could be considered similar to those that have been undertaken and tested under the PLDs and which proved to trigger immediate and practical results, such as:

- ▷ bilateral consultation between the different competent enforcement authorities (tax, social security and labour) in view of a possible future joint action;
  - ▷ informative meetings with the hierarchy of the enforcement authorities to raise awareness;
  - ▷ review of the checklists and of the inspection methods used by the enforcement authorities from other Member States;
  - ▷ training in soft skills and interview techniques;
  - ▷ joint inspections with other competent national enforcement authorities; or
  - ▷ workshops with sectoral social partners.
- ▶ PLD participants suggest to initiate **awareness raising actions** in Member States aimed at getting the tax authorities more involved into a more coordinated or joint national approach towards bogus self-employment and to examine possibilities for an improved access to and exchange of fiscal data. This is likely to imply that a legal solution is found to overcome possible limitations concerning the personal data protection rules.
  - ▶ The PLD revealed that **awareness raising among national judges** on the issue of bogus self-employment could also be considered as an effective way to tackle bogus self-employment;
  - ▶ PLD participants would welcome enforcement authorities from other Member States sharing their **checklists, inspection guides and model agreements** used to establish employment status and **information tools** used to inform (foreign) workers and businesses about the risks of bogus self-employment.
  - ▶ In the long term, PLD participants suggest that Member States adopt **national plans** tackling bogus self-employment which include specific preventative and deterring measures and new inter-agency cooperation mechanisms. Such national plans need to be supported by tax, social security and labour protection institutions





and enforcement authorities and incorporated into their own institutional strategic plans. Inter-institutional **protocols and agreements** on the cooperation arrangements and data exchanges between the national authorities and enforcement agencies are helpful tools for a more effective fight addressing bogus self-employment.

- ▶ The organisation of **national training and workshops** on bogus self-employment involving representatives from the different competent national enforcement bodies at the different levels of the organisation is considered as one of the priorities and the basis for further developing cross-border institutional cooperation with the various enforcement authorities in other Member States.

## 7.2 Suggestions for ELA

- ▶ The PLD participants suggested that ELA could further **facilitate the organisation of trainings** for national labour, social security and tax enforcement authorities which have competences in detecting and tackling bogus self-employment on:
  - ▷ Key **relevant EU legal framework** on posting (including both labour and social security dimensions), and on the EU/national immigration legislation and to TCNs.
  - ▷ **Cross-border cooperation and information exchange** including on the functioning of the IMI modules (posting module).
- ▶ ELA could **facilitate the organisation of workshops** for national labour, social security and tax enforcement authorities *aimed at identifying and sharing good practices* across Member States on the following:
  - ▷ National authorities' **legislation on payment of wages** and the payment of tax and social security contributions as well as which enforcement authorities are involved or should be involved in the detection of bogus self-employment;
  - ▷ **Tools and instruments** to prevent, detect and tackle bogus self-employment;
  - ▷ Successful national **inter-institutional cooperation and data exchange between tax, social security and labour protection enforcement authorities** to detect and tackle bogus self-employment with a focus on the applied tools and methodologies; specific attention should be paid to the data sharing with and by tax authorities;
  - ▷ **Inspection methodologies**, including **risk assessment**, applied in Member States to detect and tackle bogus self-employment: what questions are used, how to approach workers and/or employers during on-site inspections, soft skills, etc. This could lead to the development of various guiding templates by ELA or a useful toolkit with resources;
  - ▷ National **systems on prior notifications of 'incoming' postings** of workers posted from other (sending) Member States including notification systems for individual service providers and self-employed;
  - ▷ National **cooperation approaches** between the competent enforcement authorities and the institutions competent for (1) the issuing of visa/residence permits, (2) authorisations to run an activity as self-employed and (3) work permits; national approaches in cooperation with their embassies established in third countries.
  - ▷ The role of **(sectoral) social partners** in the prevention, detection and tackling of bogus self-employment;



- ▶ ELA could provide **practical support** to increase the knowledge and skills of national enforcement authorities – focusing on successful evidence-based practices to detect and tackle bogus self-employment in the different economic sectors – and **disseminate good practices** across Member States:

- ▷ *Practical support*

- Collecting and publishing cross-border **bilateral agreements** and **protocols** relevant for tackling cross-border bogus self-employment; developing an overview of the existing bilateral agreements and protocols; developing a model bilateral agreement or protocol;
- Collecting and sharing **various checklists, guides and model agreements** used in Member States to establish the employment status, when these are already publicly available; In what regards the more internal checklists that are used by the enforcement agencies, PLD participants suggested not to make these publicly available but to share these on an online platform with restricted access (for instance on CIRCABC).
- Drawing up of a comparative **table listing the infringements**, fines and penalties that are applied in cases of bogus self-employment in Member States (or for infringements concerning the non-compliance with tax, labour and social security legislation in cases of a misclassification);
- Developing **non-binding ‘orientation’ guidelines** for national enforcement authorities on how to tackle cross-border bogus self-employment detected on their territories, e.g. in cases when other EU nationals or TCNs are either posted from abroad and/or have made use of their right to provide services on the territory of the host Member State. How to control registration as a business or self-employed in another EU Member States? How to check establishment of TWA in other Member States? etc.;
- Production of an **overview of the distribution rules and channels**, and the lines of communication in all Member States and an **overview of all competent bodies** in Member States with a short description of their competences (in the field of bogus self-employment and enforcement of the related fiscal, social security and labour provisions).

- ▷ *Disseminating good practices, for example*

- Further develop **the network of enforcement authorities from Member States into** a community of good practice where enforcement authorities can share links to their experiences, tools and methodologies on national websites.

- ▶ ELA could provide **practical support to tackle cross-border bogus self-employment**.

- ▷ Support could continue to be provided to Member States to engage in **study visits and/or carry out concerted and joint inspections** tackling cross-border bogus self-employment.
- ▷ An EU-wide **awareness raising campaign complementing national initiatives tackling bogus self-employment** can be launched.

- ▶ ELA could **launch a (short) study** collecting information in support of the national enforcement authorities concerned with tackling bogus self-employment on:

- ▷ **Cross-border data** concerning registrations of self-employed persons in other Member States than the host country, temporary work agencies established in other Member States than the host country and of personal and corporate income tax.



- ▷ The **prior notification systems** some 10 Member States are operating and which require individual service providers including self-employed who are established in other Member States to pre-register when they plan to deliver services on the territories of the host Member State.
  - ▷ **Bogus self-employment in online services** provided through digital platforms.
  - ▷ Limitations of the **personal data protection legislation** for an improved data sharing between national tax, social security and labour authorities in their fight against bogus self-employment and ways to overcome these obstacles.
  - ▷ Comparative analysis on the **risk analysis** (methodologies and tools) targeting the detection of bogus self-employment in Member States with a view to identify trends and promote mutual learning and as a basis for defining the scope of possible complementary risk analysis to be conducted by ELA.
- ▶ ELA could consider supporting awareness raising in view of extending the use of the IMI by national enforcement authorities could be considered.
- ▶ ELA could consider **strengthening its ties with national tax and enforcement authorities** and involving them more systematically in its activities. A joint information session or workshop between ELA and the EU Advanced International Administrative Cooperation Community (AIAC) could be considered to share mutual learning and explore possible common initiatives<sup>20</sup>.
- ▶ ELA could take action to **raise awareness on the implications that the issuing of PDA1 have for the enforcement authorities** in the receiving Member States to promote an approach that is more aligned with the prevailing social security coordination and posting rules. The focus should be on the short and temporary nature of the posting (excluding the possibility for too long periods of posting) and on postings in the host country where the posted worker is effectively sent to (avoiding thereby that PDA1 forms are issued for numerous Member States or unlimitedly).
- ▶ ELA could run public information campaigns or take other initiatives focussing on bogus self-employment such as a **'Week of Action'** or **leaflets** explaining the differences between being in dependent employment or in self-employment.

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<sup>20</sup> [AIAC](#)





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# Annex 1: Objective and culture of the dialogues for peer learning and cross-border action

## Aim and objectives of the dialogues

The aim of dialogues for peer learning and cross-border action is to allow Platform representatives to explore an issue in greater depth with a small group of peers and/or to 'test' new approaches for tackling undeclared work. The scheme is demand-driven, allowing the participants to facilitate learning and information exchange, establish mutual trust and kick-start future activities.

## Format

The dialogues for peer learning and cross-border action consist of three one-day meetings for up to six Platform representatives and one thematic expert facilitating the process.

English is the working language of the dialogue.

Three dialogue meetings address different aspects of the topic, chosen by the participants. The process of dialogues for peer learning and cross-border action includes:

- ▶ 1st meeting: Participants share the lessons learned and identify commonalities that can be future actions / proposals / suggestions.
- ▶ 2nd meeting: Participants share the lessons learned and identify commonalities that can be future actions / proposals / suggestions.
- ▶ Time for participants of the dialogues to test the actions / proposals / suggestions in their enforcement authorities.
- ▶ 3rd meeting: Participants share feedback on challenges faced implementing these actions / suggestions / proposals and share tips on overcoming them.
- ▶ Outcome paper with joint suggestions for all enforcement authorities; feeding into the wider work of ELA including the Platform.

Based on the three meetings, an outcome paper (approx. 15 pages) will be formulated summing up the discussions, providing operational guidance as well as broader suggestions. The aim of this paper is to help all enforcement authorities to improve their effectiveness in tackling undeclared work and for ELA, including the Platform, to plan future activities.

## Roles of the Participants

All participants of the dialogues for peer learning and cross-border action are expected to contribute with their knowledge and experience to form the best possible outcome of the discussions and suggestions including to:

- ▶ Scope the topics addressed in the dialogues;
- ▶ Present and share good practices and/or lessons learned;



- ▶ Participate in all three meetings of the dialogues and share relevant input;
- ▶ Test dialogues activities/suggestions in their enforcement authorities;
- ▶ Contribute to develop suggestions and operational guidance.

Participants are strongly encouraged to volunteer as the chairs of particular sessions of the dialogue.

The chairs will trigger the discussion and ensure that group discussions are smooth, inclusive and effective to ensure the group makes the best of the allocated time.



## Annex 2: UDW Platform outputs related to bogus-self employment

[Extent of dependent self-employment in the European Union \(2023\)](#)

[Tackling undeclared work in the collaborative economy and bogus self-employment \(2020\)](#)

[A learning resource from the seminar of the European Platform tackling undeclared work: Tackling undeclared work in the air transport sector, with a special focus on bogus self-employment of aircrews \(2020\)](#)

[2019 European Platform tackling undeclared work survey report: tackling undeclared work in the collaborative economy and bogus self-employment, data exchange and data protection, and cross-border sanctions \(2019\)](#)

[The practices of enforcement bodies in detecting and preventing bogus self-employment \(2017\)](#)

[Second plenary meeting, Brussels, 9-10 March 2017 - Report of the plenary and workshops relating to bogus self-employment \(2017\)](#)

[Good practice fiche - Slovakia: Checklist for labour inspectors to detect bogus self-employment \(2020\)](#)

[Good practice fiche - Ireland: Awareness raising campaign about Bogus Self-Employment \(2020\)](#)

[Good practice fiche - UK: Road Haulage Association's information campaign factsheet to prevent abuse of bogus self-employment \(2019\)](#)