



European Platform  
tackling undeclared work

# **Tools and approaches to tackle fraudulent temporary agency work, prompting undeclared work**

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Learning resource paper from the thematic review workshop on  
fraudulent temporary agency work prompting undeclared work

12-13 November 2020, online

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**Table of contents**

EXECUTIVE SUMMARY ..... 1

1 Introduction ..... 2

2 WHAT PROMPTS UNDECLARED WORK IN THE CONTEXT OF TEMPORARY AGENCY WORK?..... 3

2.1 What types of fraudulent agency work is the paper addressing? ..... 3

2.2 What are the key characteristics of temporary agency work in the EU? ..... 4

2.3 What is the extent of the problem of fraudulent agency work, prompting undeclared work? ..... 4

3 WHAT ARE THE MAIN TOOLS AND APPROACHES ADOPTED AT THE NATIONAL LEVEL? 10

3.1 Using the tool of national registers .....10

3.2 Challenges of data sharing and mining tools .....12

3.3 Ensuring cooperation with social partners.....12

3.4 Other tools and approaches .....13

4 WHAT ARE THE MAIN EXPERIENCES OF TACKLING FAW THROUGH CROSS-BORDER COOPERATION?.....14

4.1 Potential of data mining and sharing tools .....14

4.2 Experiences of joint / concerted inspections.....15

5 KEY LEARNING OUTCOMES ..... 16

5.1 Robust evidence base needs further development .....16

5.2 Successful national tools .....17

5.3 Examples of cross-border initiatives.....17

5.4 Recommendations .....17

BIBLIOGRAPHY ..... 19

## EXECUTIVE SUMMARY

On 12-13 November 2020, the European Platform tackling undeclared work organised an online thematic review workshop on the issue of **fraudulent temporary agency work, prompting undeclared work**. This brought together 37 Platform members and designated representatives from 19 EU Member States representing labour inspectorates, customs authorities, ministries of labour and European level social partners, as well as representatives from Eurofound and the ILO, the European Commission and the European Labour Authority to engage in mutual learning and exchange knowledge. Participants reflected on the state of play in relation to fraudulent agency work, prompting undeclared work, across the EU. They also discussed the available practical tools and approaches to tackle the problem, both within the Member States and through cross-border cooperation.

The starting point was recognition that there is a need to **investigate fraudulent temporary agency work, prompting undeclared work, in greater depth**. This phenomenon is linked to the increasing flexibility of labour markets where employment via temporary agencies has become an established feature. Temporary agency work refers to work arising out of the triangular employment relationship between a temporary work agency, a worker and a 'user undertaking' (also referred to as a company, final employer, end user, end client or final provider of work). Whilst the majority of temporary work agencies are compliant, challenges arise to prevent, detect and sanction the instances of undeclared work in the context of fraudulent temporary agency work, both within and across Member States. The issue of fraudulent practices of temporary agency work prompting undeclared work has also received political attention in the context of COVID-19 pandemic, with the spotlight on working conditions of seasonal EU mobile workers hired through temporary agencies (see also Guidelines of the Commission on seasonal workers in the EU, 16 July 2020, <sup>1</sup> and the Council conclusions on improving the working and living conditions of seasonal and other mobile workers, 9 October 2020<sup>2</sup>).

### Key findings:

- Individual anecdotal **cases and examples of undeclared temporary agency work** have been identified, both in the national and in the cross-border context including in the sectors of agriculture, care and construction. This is due to certain characteristics of the business model of temporary work agencies, such as highly competitive price pressures on labour costs, the often precarious nature of temporary employment, and the complex and transparent subcontracting chains involved at the national level and cross-border level.
- Undeclared work in this context occurs both when **the agencies are unregistered and unlicensed and when registered agencies under-report the economic activity and hours worked**. There is also sometimes a cross-border dimension, especially when such agencies operate as letterbox-company-type chains with complex ownership structures in several Member States and third countries. Cases were also reported when third-country nationals are involved in undeclared agency work. However, such work is far from being solely a cross-border problem. It is also just as much a national-level issue.
- New forms of informal labour intermediation, which were traditionally undertaken by agencies, also appear to be emerging, especially via social media channels (both in the national and cross-border contexts).
- **Robust evidence on the scale of the problem and the characteristics of fraudulent agency work taking place is notably lacking**. In particular, it is difficult to establish whether it is primarily a case of under-reporting wages by

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<sup>1</sup> See:

[https://ec.europa.eu/info/sites/info/files/guidelines\\_on\\_seasonal\\_workers\\_in\\_the\\_eu\\_in\\_the\\_context\\_of\\_the\\_covid-19\\_outbreak\\_en.pdf](https://ec.europa.eu/info/sites/info/files/guidelines_on_seasonal_workers_in_the_eu_in_the_context_of_the_covid-19_outbreak_en.pdf)

<sup>2</sup> <https://www.consilium.europa.eu/en/press/press-releases/2020/10/12/improving-the-working-and-living-conditions-of-seasonal-and-other-mobile-workers-council-adopts-conclusions/>

workers, user undertakings and/or temporary work agencies. This knowledge base needs to be developed, especially to deepen the understanding of the extent and characteristics of undeclared agency work both at the national level and in the cross-border context, in order to tackle it.

- At the national level, there is some evidence that certain types of undeclared agency work have been successfully prevented through **licensing and registration** systems fostering compliance amongst the agencies. On the other hand, registration systems can also prompt evasion resulting in fraudulent activity happening through other forms which are harder to detect (such as through social media channels, e.g. not agencies per se but labour intermediaries). The impact of registration systems on undeclared agency work could be further investigated.
- National registration systems also enable effective **data exchange and mining** between public authorities to detect and sanction undeclared agency work. In several countries, this tool is used extensively to tackle fraudulent agency behaviours, in others the authorities are not permitted to use this tool due to the existing data protection framework. However, authorities are limited by the data available within the existing data systems, mostly relating to registered agencies and not capturing other new forms of labour intermediaries. The potential to further use data exchange mechanisms at the national level needs to be further investigated.
- **Actions of social partners can also be fruitful**, both acting independently (such as monitoring the compliance with the agency sector collective agreements or setting standards through voluntary codes of conduct) and in cooperation with the enforcement authorities to share data and information about undeclared work directly from the workplaces. However, such actions require both sufficient capacity and depth of social dialogue and social partners at the national level, as well as building trust and clear understanding of the roles between social partners and the enforcement authorities.
- The following **examples of cross-border cooperation** in prevention, detection and awareness-raising of undeclared agency work were discussed in detail:
  - **Data sharing and mining about undeclared agency work in the cross-border context exists**, but the potential of this tool can be further exploited. Question marks exist over the readiness for this deep level of cooperation at the cross-border level.
  - Furthermore, bilateral cases of **joint / concerted inspections, controls and follow up actions**, including sanctions and suspension of fraudulent cross-border agency activity, have also been identified and are showing promising results. They require time, resources, institutional mechanisms and trust building measures to set up and maintain. Complementing bilateral cooperation through more structural EU level cooperation can also help address these challenges.

## 1 Introduction

This report describes **the outcomes of the workshop**, which builds upon the forthcoming Platform report on fraudulent agency work, prompting undeclared work (Pavlovaite et al, forthcoming), and the background paper prepared before this workshop (Pavlovaite, 2020).

Section 1 briefly reviews the state of play and main challenges in defining fraudulent agency work prompting undeclared work in terms of its scale and key features. This is followed by a review of the reflections on the main approaches in tackling fraudulent agency work at the national and cross border levels in sections 2 and 3 respectively, along with the resultant learning outcomes in section 4.

## 2 WHAT PROMPTS UNDECLARED WORK IN THE CONTEXT OF TEMPORARY AGENCY WORK?

### 2.1 What types of fraudulent agency work is the paper addressing?

The focus of this learning resource is the **fraudulent use of agency work for the purposes of undeclared work**. This excludes other temporary agency activities, which can be illegal, criminal or illegitimate (e.g. human trafficking, fake vacancies, abuse of health and safety rules, agencies overcharging fees for employers and workers).

Temporary work agency (TWA) is defined using the legal definition in the Article 3 of the Directive 2008/104/EC as “any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction”.<sup>3</sup> Temporary agency work refers in this context to work arising out of **the triangular employment relationship** between a temporary work agency, a worker and a ‘user undertaking’ (also referred to as a company, final employer, end user, end client or final provider of work).

Across the EU, **most temporary work agencies and user undertakings are compliant** with the legal framework rules and are not involved in facilitating undeclared work. However, some activities delivered through temporary work agencies can be considered susceptible to the risk of undeclared work. This is due to certain characteristics of temporary agency work, such as highly competitive price pressures on labour costs, the often precarious nature of temporary employment, and the complex and non-transparent subcontracting chains involved. This creates potential for fraudulent agency work, prompting undeclared work.

A presentation from the Employers’ Group of Professional Agricultural Organisations in the European Union (Geopa-Copa) illustrated how these characteristics of temporary agency work increase **the risk of undeclared work in the agriculture sector** (see Box 1).

#### **Box 1. Temporary agency work in the agriculture sector**

Over recent years, non-standard forms of employment have been rising in the agriculture sector, including temporary employment, seasonal work, and multi-party employment relationships, involving the temporary agency work.



According to the representative of the Employers’ Group of Professional Agricultural Organisations in the European Union (Geopa-Copa), the key factors prompting fraudulent agency work in the agriculture sector are several in their nature. They relate to the low profitability of the sector, putting pressure on reducing the labour costs, one of the key variables in the profit structures. Furthermore, persisting labour shortages require additional labour force being brought from abroad, including third countries outside the EU. Also, the different rules governing the deployment of temporary agency workers in the different Member States create scope for fraudulent agencies to exploit the differences in national rules and regulations.

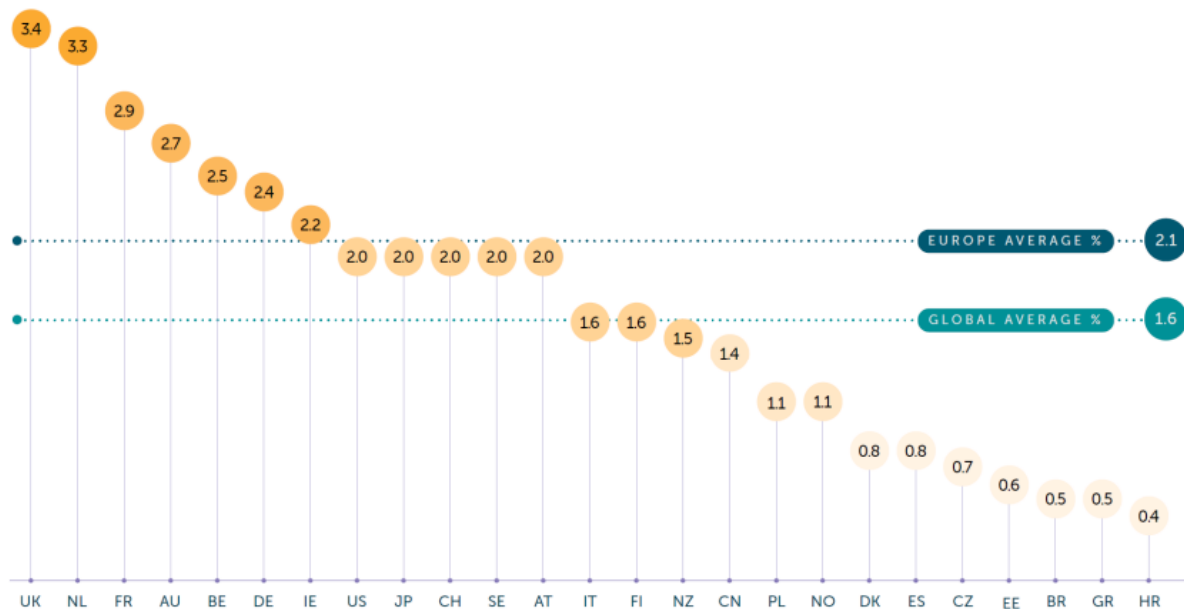
*Source: Delgado, M. (2020).*

<sup>3</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:0014:EN:PDF>

## 2.2 What are the key characteristics of temporary agency work in the EU?

Over the last decade, the share of workers employed by officially registered temporary work agencies has increased (according to Eurostat) and was at 2.1 % in the EU-27 in 2019. This is also supported by data presented in the workshop by World Employment Confederation Europe (see Figure 1), where the share ranged from 3.4% in the UK to 0.4% in Croatia, with the EU average being 2.1%.

**Figure 1. The temporary agency penetration rate, 2018**



Source: WEC Europe 2020.

However, there are marked differences between countries. In some Member States, temporary agency work is a very minor feature of the national labour market and hence its potential link to undeclared work is not a priority for enforcement authorities. Temporary agency work is particularly widespread (as a proportion of total employment) in Slovenia, Slovakia, Spain, the Netherlands and Malta. By contrast, it is below 0.5 % of total employment in Greece and Hungary.

## 2.3 What is the extent of the problem of fraudulent agency work, prompting undeclared work?

Across the EU, many TAWs and user undertakings operate in compliance with the legal framework rules and are not involved in facilitating undeclared work. This paper focuses on TAWs and user undertakings that are **not compliant with the regulations**.

*How significant is the problem?*

Individual cases and examples shared by the participants in the workshop pointed to the existence of fraudulent agency work prompting undeclared work, both at the national and cross-border levels. This shows the awareness of the problem. However, **robust evidence on the scale, extent and features of the problem is lacking**.

Perspectives from the sectoral social partners at the European level in the workshop showed how fraudulent agency work prompting undeclared work occurs in their respective sectors.

A presentation from the **European Federation of Building and Woodworkers** revealed the risks of fraudulent temporary agency work in **the construction sector** and how this manifests also in cross-border temporary agency work.



## FAIR WORK, FAIR PLAY

# SAY NO

### TO UNDECLARED WORK IN CONSTRUCTION

Temporary work agencies provide labour at the lowest levels of the supply chain, often on very cheap and flexible employment conditions. As they operate and compete on the basis of labour-supply-only, they have often no material link with the activities of the user undertakings. Fraudulent behaviours are wide ranging, including avoiding paying the legal / conventional wages, bypassing vocational education and training (VET) and occupational safety and health (OSH) obligations, providing poor quality and overcharged housing, and charging high recruitment fees. In some cases, posting of workers arrangements - by fraudulent agencies operating across two or more

Member States - are associated with social fraud or abuse (involving letterbox companies, posting companies, social security and tax fraud). Overall, fraudulent agencies have creative business models in generating income from charging recruitment fees, disguising employment as business trips, and offering package posting (where the worker gets the full package of work, accommodation and meals from the agency, often on exploitative terms, such as withholding pay, demanding extensive working hours and/or not respecting the posting of workers requirements).

In the presentation from **the Netherlands** this aspect of offering a full package to mobile workers by the agencies was also highlighted as contributing to the vulnerability of workers hired via temporary work agencies to the exploitation and increased exposure to a range of fraudulent practices (such as poor housing).



In the **care sector**, meanwhile, experience of **UNI Europa** referred to the 'tip of the iceberg' in the social care and household services sector whilst assessing the extent of undeclared work mediated through fraudulent temporary work agencies at the national and cross-border levels.

This is due to the nature of the care sector, across Europe, dominated by many small employers often operating at very local or regional levels. At the same time, the sector employs also mobile EU workers, mostly women, who are often working unregistered and isolated in people's homes. Both features make it extremely hard to assess the problem and reach the vulnerable workers. A particular case of Spanish nurses being recruited by an agency to work in Germany presented in the workshop by Uni Europa illustrates this challenge of identifying fraudulent behaviours and tackling them in practice (see Box 2).

### **Box 2. The case of Spanish nurses recruited by agencies to work in Germany**

Between 2013 and 2015, recruitment agencies recruited Spanish nurses with university qualifications to come and work in Germany. High levels of unemployment in Spain twinned with drastic labour shortages in Germany created a market for different recruitment agencies in Spain. These agencies would set up recruitment events at universities or other places and lure young Spanish nursing graduates with the prospect of receiving language training and working in Germany's big cities such as Berlin, Munich, Frankfurt and Cologne. Qualified nurses would sign an initial contract with the recruitment agency from Germany to work in Germany. Upon arrival in Germany, they would be forced to sign a second contract which contained a penalty clause, stating that



if the workers decided to leave the job prior to the three years, they would have to pay back EUR 8 000 for the language training they would receive.

These practices were widespread with many nurses reporting them to the Spanish Embassy or local consulates. Among others, the complaints concerned the inclusion of reimbursement clauses if the worker left the position before an agreed period. Although not illegal in general, they were often applied in an abusive manner. The Labour Department of the Spanish Embassy provided the following support to address the issue:

- Individual actions: providing assistance, information, translation, mediation with the companies, referring cases to the German Inspectorate and facilitating access to legal aid.
- General actions: joint actions were organised, e.g. with German and Spanish trade unions (especially with the Faire Mobilität), the Federal Employment Agency and the General Council of Nursing Associations. Information was provided in the initial phases of mobility projects and best-practice agreements were signed with regional authorities.

In turn, activists and the German trade union ver.di provided information to Spanish nurses coming to work in Germany.

*Source: Bergfeld, M. (2020) 'Tackling Undeclared Work in the Care Sector'. UNI-Europa.*

*Further links (in German):*

*Mark Bergfeld, Vom individuellen zum kollektiv organisierten Widerstand? Erfahrungen einer spanischen Migrantin in der privaten Pflege in Deutschland, [https://www.labournet.de/wp-content/uploads/2017/12/sorgekaempfe\\_bergfeld.pdf](https://www.labournet.de/wp-content/uploads/2017/12/sorgekaempfe_bergfeld.pdf)*

*<https://www.stern.de/wirtschaft/news/knebelvertraege-in-heimen-wie-spanische-pflegekraefte-in-deutschland-schuften-3959612.html>*

*<https://www.hcm-magazin.de/internationale-pflegeschickraefte-spanier-packen-aus-und-ihre-koffer-ein/150/10739/254246>*

Experiences were shared detecting fraudulent agency work **in Belgium** using the national LIMOSA system where the requirement to register is suspected to have led to the declining number of registered agencies (see Box 3).

### **Box 3. Fraudulent agency work in Belgium**

Participants at the workshop heard how a change in 2017 required temporary work agencies to enter their registration number when registering in the national LIMOSA system, to be able to provide their services in Belgium. It is suspected that this led to the drop in the number of foreign TWAs, as demonstrated in the data below. At the same time, the number of infringements detected by the enforcement authorities among foreign TWAs has remained relatively stable.

#### **Number of temporary agencies in Belgium**

| LIMOSA declarations                  |             |                |           |              |           |         |
|--------------------------------------|-------------|----------------|-----------|--------------|-----------|---------|
| TWA                                  |             |                |           |              |           |         |
|                                      | total       | Netherlands    | Poland    | France       | Portugal  | Romania |
| 2017                                 | 26,403      | 8,597          | 3,138     | 1,838        | 2,754     | 2,701   |
| 2018                                 | 9,234       | 3,079          | 1,084     | 1,038        | 912       | 919     |
| 2019                                 | 6,779       | 2,189          | 826       | 917          | 543       | 368     |
| Number of investigations and results |             |                |           |              |           |         |
|                                      | Infractions | Rectifications | Employees | Pro Justitia | Employees |         |
| 2017                                 |             |                |           |              |           |         |
| 2018                                 | 80          | 895,953 €      | 959       | 80,364 €     | 223       |         |
| 2019                                 | 79          | 387,920 €      | 661       | 177,162 €    | 732       |         |

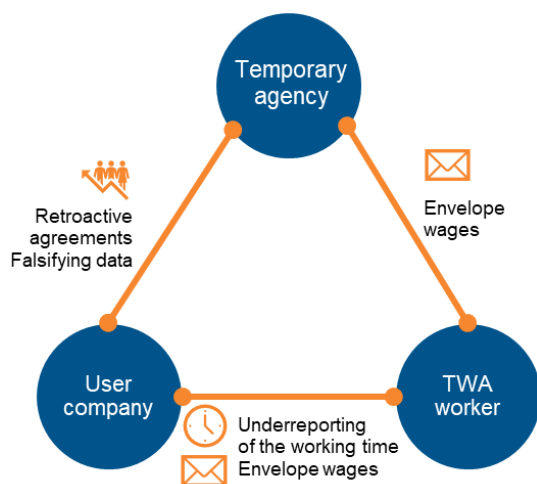
Source: Segers, N. (2020).

This finding on the lack of robust and systematic evidence from the workshop discussions echoes the findings of the report undertaken in preparing the workshop (Pavlovaite et al, forthcoming). The report highlights that the connection between temporary agency work and undeclared work, and specifically how FAW prompts undeclared work, is an area where little research has so far been undertaken. Nor are there any quantitative or qualitative estimates of the extent of fraudulent agency work which prompts undeclared work.

*What are the main types of undeclared work in the temporary agency work context?*

In view of the three-way employment relationship involved in TAW, undeclared work at national and cross-border level can, in principle, occur at several stages of the employment relationship (see Figure 2).

**Figure 2. Undeclared work in the three-way employment relationship involved in temporary agency work**



- **Between the worker and the agency** – where the agency pays envelope wages to the worker to save tax and social security costs, without the explicit involvement or knowledge of the user undertaking;
- **Between the worker and the user company** – where the latter under-reports the working time to the agency to save on fees and may choose to pay envelope wages to the worker for the remaining time worked; and
- **Between the user company and agency** – where the TWA, in secret agreement with the user employer, covers up undeclared work by the employer, by making an agreement for TAW with retroactive effect or by using falsified data.

Source: Pavlovaite et al (2020).

At both national and cross-border level, **the nature of fraudulent agency work prompting undeclared work involves unregistered and undeclared employment**

**of temporary agency workers.** When all three stakeholders - worker, employer and TWA - are registered workers, employers and TWAs, undeclared work practices mostly take the form of **under-declared employment**. However, one or more of these can also be unregistered/unlicensed and when this is the case, undeclared work takes the form of **wholly undeclared work and unregistered employment**.

The workshop discussion reached a preliminary conclusion that unregistered companies – neither registered in sending or receiving country – are constituting the biggest problem as by definition they can only provide undeclared work and are difficult to identify.

There is also sometimes a cross-border dimension to such agencies when they operate as letterbox-company-type chains with complex ownership structures in several Member States and third countries. This makes a risk assessment very difficult and requires early intervention at the national level. For example, inspectors in the Netherlands check for irregularities such as inappropriate housing on-site that may be a sign or 'early warning' of fraudulent agency work. In Luxembourg, inspectors also gather information on suspicious cases, often with the help of social partners and compliant TWAs. In Lithuania, certain criteria - such as complaints submitted to the police - are used to identify TWAs to inspect.

A presentation from **Spain** highlighted that inspections revealed few infringements among registered temporary work agencies. Where such violations occurred, they mostly related to under-declared employment, not reporting all hours of workers, not declaring the training hours, not registering the hours worked in the agriculture sector, and having IT systems geared towards not reporting the full hours worked.

The workshop also highlighted **the new forms of informal labour intermediation**, traditionally undertaken by agencies, appear to be emerging, especially via social media channels, both in the national and cross-border contexts. This was reported by the presentations from **Belgium and Spain** which both highlighted the emergence of 'bogus' employment agencies, unregistered and unlicensed, working very informally through social media channels to provide labour intermediation services traditionally provided by the temporary work agencies (both at the national and cross-border levels).

Overall, the 'creativity' of fraudulent agencies is wide, helping them to stay one step ahead of the authorities. Such agencies change their company status from one sector to another to evade the rules, frequently change names for the same owners, and instead of hiring mobile EU workers can also turn to third-country nationals.

**Third-country nationals** are being involved in fraudulent agency work in the national and cross-border contexts, with unregistered agencies / labour intermediaries operating to bring in labour from outside the EU. They are considered even more vulnerable to exploitation than mobile EU workers, due to the lack of knowledge of their rights, language and legal context in the EU labour markets. This increased use of third-country nationals by temporary work agencies was reported by the workshop participants from **Bulgaria, Poland, Slovakia, and Lithuania**.

*Is fraudulent agency work prompting undeclared work a national or a cross-border problem?*

Another important aspect is how undeclared temporary agency work occurs in the national and cross-border contexts. While no hard data are available, reflections from the workshop discussions indicate that undeclared temporary agency work is a problem in both contexts, although being harder to identify and detect in the cross-border context. This is due to the complexity of the employment relationships between worker, agency and end undertaking, which is amplified when they occur across the national jurisdictions. Another key factor in prompting undeclared fraudulent agency work in the cross-border situations is the activities of 'letterbox' temporary work agencies, unregistered/unlicensed agencies, and 'phoenix' activities, often across long and complex subcontracting chains involving several entities in several Member States and third countries. Additionally, it is often difficult to distinguish between the national and cross-border problems. For example, this relates to

the situations when workers are posted by a TWA from another EU Member State or cross-border workers/EU nationals who are employed by a domestic TWA.

A presentation from **Belgium** demonstrated how fraudulent agencies can take advantage of complexity of employment relationships and differences in the national rules and regulations existing in Belgium and the Netherlands, both those relating to the temporary work agencies and other economic sectors (see Box 4).

#### **Box 4. Fraudulent behaviours through exploiting different national rules in Belgium and the Netherlands**

The biggest difference between the two countries is that temporary work agencies are more strictly regulated in Belgium. Here, they are bound by a set of strict rules, whereas there is no mandatory licensing system in the Netherlands. Moreover, the different provisions of labour law and collective agreements are also exploited by fraudulent agencies.

For example, in Belgium, all sectors are subject to collective agreements which set minimum wages, while in the Netherlands not all employment is covered by collective agreements. However, the construction sector in the Netherlands is covered by a strict collective agreement, it has wages that are significantly higher than the national minimum wage, as well as higher contributions to social security. To avoid being subject to this collective agreement provisions, the companies present themselves in the Netherlands as a TWA and not as construction companies.

There is an additional reason why such companies try to evade the national rules. All construction companies that operate in Belgium have to pay an additional 9% premium on wages. In the Netherlands, there is a collective agreement that obliges the companies to pay this 9% supplement to their workers that work in Belgium. Therefore, Belgian authorities have provided a general exemption for Dutch companies to pay this to a fund in Belgium. So in principle, the fraudulent company in Belgium can be exempted from paying the 9% premium and in the Netherlands they are not considered to be a construction company so they also can avoid having to pay the collective agreement wages.

*Source: Segers, N. (2020).*

Similarly, a presentation from **Norway** highlighted how undeclared work, alongside other violations, occurs in the sectors where temporary agency workforce from abroad is used widely, such as construction, fish processing, healthcare and seasonal agriculture. This also reflects the fact that in the context of cross-border agency work, the employment relationships are complex. As at the national level and also at the cross-border level it is often unclear who in the chain of employment is responsible for compliance with the labour law regulations, and the end user often lacks the duty of care to enforce such rules on the temporary agency workers (see Box 5).

### Box 5. Undeclared agency work in the fish sector in Norway



Due to the seasonal nature of the work (mainly in the winter/spring), the fish industry in Norway employs many foreign workers (mainly from Lithuania, Latvia and Romania). In a particular case described in the workshop, workers from Lithuania were employed via a Lithuanian TWA, working alongside the Norwegian colleagues.

The Norwegian labour inspectorate discovered that workers were not paid minimum wages and for all worked hours (thus engaged in under-registered undeclared work), worked illegal working hours and had no adequate housing. The Lithuanian TWA companies also avoided paying taxes in Norway.

The inspectorate discovered an intricate so-called 'enterprise scheme' with a systematic shift of foreign TWA-type companies, under the same ownership structures. When orders/sanctions from the enforcement authorities were given, the workers were transferred to a new TWA company, under the same owners. The owners of the TWA-'enterprises' companies were located in Lithuania and/or Russia and took care of all practical handling of fish but did not take responsibility for the correct implementation of temporary agency workers' rights.

*Source: Lund, P. (2020).*

## 3 WHAT ARE THE MAIN TOOLS AND APPROACHES ADOPTED AT THE NATIONAL LEVEL?

Enforcement authorities and social partners have recognised the problem and taken **action at both national and cross-border levels** to prevent, deter and detect fraudulent agency work prompting undeclared work (and to incentivise compliance with the existing legal framework).

At both national and cross-border level, the fight against fraudulent agency work prompting undeclared work takes place **within the broader framework of tackling a wide range of potentially fraudulent and abusive behaviours associated with temporary agency work**. The measures tend to tackle multifarious aspects of fraudulent agency work, including – but not limited to – prompting undeclared work. Thus, measures against fraudulent agency work prompting undeclared work are undertaken within a broader approach to tackling social fraud and other violations and fraudulent behaviours encountered in temporary agency work (e.g. disrespect for equal treatment of temporary agency workers in comparison to permanent employees, non-payment of minimum wages, or disregard for occupational health and safety rules). The national solutions found to tackle fraudulent agency work provide the basis for identifying the solutions and preparing the ground for the successful cross-border cooperation to address the fraudulent agency work in the cross-border contexts.

### 3.1 Using the tool of national registers

The workshop participants discussed the national level tool of having a compulsory **registration of temporary work agencies**. Some countries require a registration of the temporary work agency with the authorities, alongside a range of accompanying conditions (such as a permanent representative in the country of registration).

An example provided in the workshop was from **Norway** where all staffing enterprises engaged in the hiring out of labour in Norway have a duty to report these activities to the Norwegian Labour Inspection Authority. The scheme requires staffing enterprises engaged

in activities in Norway, regardless of whether the enterprise is Norwegian or foreign based, to have a permanent representative in Norway, and this representative must be authorised to fully act on the enterprise's behalf in all legal situations.

Similarly, workshop participants heard that **in Spain** a number of conditions have to be fulfilled for an agency to be registered, such as:

- having an organisational structure,
- exclusively offering temporary work mediation (with some exceptions)
- up to date in the fulfilment of its tax or social security obligations,
- financial guarantee to ensure compliance with their salary, compensation and social security obligations to the employees,
- not having been sanctioned (suspension of activity) on two or more occasions,
- include the term 'Temporary Employment Agency' or its abbreviation 'ETT' in its name.

Other countries do not have such registration requirements for the temporary work agencies (for example, **the Netherlands**). However, a recent study undertaken for the Dutch Parliament recommended the establishment of such a national register, to allow for better overview and controls of the temporary agencies (Aanjaagteam Bescherming Arbeidsmigranten 2020).

Those countries who have the registration tend to have a better overview of the existing agencies. However, having such registration can also prompt agencies to take other forms and adopt new business models.

This experience was illustrated by the presentation from **Belgium** where strict rules regarding operating licenses for temporary work agencies are enforced (including that they have no social or fiscal debts, following all regulations, obligation to communicate correctly) and on top of that they have to deposit EUR 75 000 before they can start working. Another recent development is that in the prior declaration of employment in Belgium (in the national LIMOSA system), the companies must indicate in which sector they are active, and since 2017 TWAs must enter their approval number. This requirement was considered to contribute to the drop of temporary work agencies registered in Belgium from over 26 000 in 2017 to 4 000 in 2019. At the same time, the enforcement authorities noted the emergence of new forms of labour intermediation, which has moved online to social media channels, and is much more difficult to detect and regulate.

Furthermore, the participating countries also shared in the workshop their publicly available registers of temporary work agencies as an important information resource to establish which agencies are registered in the countries (see Box 6).

#### **Box 6. Examples of national registers of temporary work agencies**

Bulgaria: [https://www.az.government.bg/intermediaries/temporary\\_employment/](https://www.az.government.bg/intermediaries/temporary_employment/)

Germany: <http://www.spitzenverbaende.arbeitsagentur.de/>

Ireland:

[https://www.workplacerelations.ie/en/publications\\_forms/current\\_employment\\_agency\\_list.pdf](https://www.workplacerelations.ie/en/publications_forms/current_employment_agency_list.pdf)

Poland: [www.stor.praca.gov.pl](http://www.stor.praca.gov.pl)

Norway: <https://www.arbeidstilsynet.no/registre/registrerte-bemanningsforetak/>

Spain: <https://expinterweb.mitramiss.gob.es/sigett/consultaPublicaETT>



### 3.2 Challenges of data sharing and mining tools

Additionally, **data sharing and mining** within the countries between different enforcement authorities (and with non-governmental stakeholders) is an important instrument to identify, detect and sanction undeclared agency work.

Experiences shared from **Iceland** and **Finland** highlighted how existing sharing permissions in the legislation are used to undertake data mining through the co-operation between different authorities. In the words of one participant, “*we do data exchanges whenever the legislation allows*”. In **Iceland**, data mining between authorities and multi-authority cooperation is one of the most fruitful tools to tackle problems in this field but it is mainly helpful with partially undeclared activity of TWAs. When it comes to fully undeclared TWAs the enforcement authorities find cooperation with social partners and user undertakers to be a vital part of gaining information. When dealing with the buyers of TWA services (end undertakings), the enforcement authorities also try to raise awareness building and an open dialogue on their responsibilities.

However, data sharing and mining is not fully exploited currently, partly due to the challenges posed by ensuring compliance with data protection requirements and the rules governing the roles of different institutions. Also, the success of data-driven tools depends on the agencies being registered in the official systems, which is often not the case. Indeed, the presentation from **Spain** highlighted that the existing national detection tools and approaches are effective to detect fraudulent behaviours of registered agencies, data which is available in the official systems and databases. In contrast, such data mining approaches are less useful when confronted with fraudulent agencies, unregistered and informal, operating loosely to offer labour intermediation services online, also using the social media channels.

In this context, the workshop heard how **the Netherlands** used data exchange and mining between the different public authorities and stakeholders outside the government in the temporary agency sector to connect and exchange information and expertise about agency work, also to inform and educate end employers and agency workers. Sharing of data between the institutions also helped to ensure enforcement and restore the correct payment of wages, taxes and social security contributions. Future development focus on how to use the exchange of data for research purposes and approach the challenges of fraudulent agency work pro-actively.

The sectoral experience highlighted **in Luxembourg** related to the enforcement authorities using other available information sources in the sector to feed its risk assessment activities. In particular, it is using the prior notices of work in large building activities in the construction sector as one of the data sources in the detection and sanctioning of fraudulent agency work. The legislation foresees that the person who plans to set up a large temporary construction site is required to submit a prior notice to the labour inspectorate. The notice will allow to identify the work site, the main operators but also the number of workers, companies and independent contractors on the premises. This tool is important in the context of Luxembourg, where many temporary agency workers are working in the construction sector. Thus, before the enforcement authority makes an inspection on site, they consult the prior notice. In this way, they can then detect the companies employed on the site. In a second way they consult information from existing database and to check the workers occupied in the company.

Furthermore, the workshop shared the experiences of capacity building of inspectors, such as **in Belgium** where the inspectors inspect at least 10 TWAs per years, and in **Luxembourg** they receive training in inspection methods for agencies.

### 3.3 Ensuring cooperation with social partners

A particular strand of practical solutions highlighted in the workshop related to **the actions of social partners, both as self-regulation and in conjunction with the enforcement authorities**.



Social partners in several Member States have negotiated **collective bargaining agreements** intended to prevent and protect workers from the risk of becoming involved in undeclared work through a temporary work agency. Social partners have also pursued awareness raising to improve the level of knowledge about fraudulent agency work prompting undeclared work. Effective social dialogue measures have been identified as a successful approach to tackling fraudulent agency work. For instance, as a consequence of extensive collective bargaining coverage, in the Netherlands and Germany, collective agreements now cover most of the temporary agency sector countrywide.

A presentation from **the Netherlands** highlighted the experience of self-regulation by social partners in the temporary agency sector, to ensure the compliance with existing rules, through the institution of SNCU - Foundation for compliance with the Collective Labour Agreement (see Box 7).

#### **Box 7. Social partner self-regulation: SNCU in the Netherlands**

Employers and trade unions have taken joint action and established a self-regulation initiative in the temporary agency work sector, to ensure compliance with the existing collective labour agreement in the sector and prevent the race to the bottom in the sector.

Its main activities are:

- 1) Informing workers in the temporary agency work about their rights
- 2) Monitoring compliance with the sector collective labour agreement
- 3) Acting as a reporting point for violations with the sector collective labour agreement

SNCU competences are based on generally binding statement by the Ministry of Social Affairs and Employment and the sector collective labour agreement.

Further links: [www.sncu.nl](http://www.sncu.nl), including animations in English/Polish

*Source: Nederveen, A. and M. Starink (2020).*

The workshop also heard about the experience of industry self-regulation approaches as reported by the **World Employment Confederation Europe**. As the European level organisation, it has itself adopted a code of conduct for its national members based on shared principles and relying on national level enforcement. Several World Employment Confederation-Europe members have also put in place certification schemes at national level, thus aiding in ensuring compliance with the existing regulatory framework.

### **3.4 Other tools and approaches**

Other available tools identified by the participants included the use of media analysis, social media outreach to workers (also mobile EU workers) and engagement with social partners and employers to identify the fraudulent agencies and labour intermediaries.

In this context, the workshop heard from the experience **in Poland** which uses the tool of media analysis in informing the detection and sanctioning work of enforcement authorities. In each labour office, a dedicated member staff has, amongst their duties, the task of monitoring the local and media outlets and passes this information, including on fraudulent agencies, to the enforcement authorities.

The workshop discussion highlighted how the success of awareness raising and engaging with workers is highly dependent on communicating to them in their own language and using social media. In this context, the experience shared from **Ireland** referred to using available online tools such as Google Translate to provide all the website information from the labour inspectorate in many languages.

**A comprehensive approach to tackling fraudulent agency work prompting undeclared work could be further developed**, including joining-up operations, as well

as data-mining, sharing and analysis, at both national and cross-border level, and considering a fuller range of improved sanctioning and detection, prevention, education and awareness-raising measures.

## 4 WHAT ARE THE MAIN EXPERIENCES OF TACKLING FRAUDULENT AGENCY WORK THROUGH CROSS-BORDER COOPERATION?

The workshop discussed successful examples of cross-border cooperation (such as the working group on agencies in the **Benelux, the Norwegian-Lithuanian** cooperation example, cooperation between **Portugal and France** and the pilot experience between **Luxembourg and France**).

However, it is not yet clear if existing cooperation at the operational level is sufficiently addressing the problem of tackling undeclared agency work in cross-border situations. Developing cross-border cooperation in general takes time and effort to establish trust-based relationships between enforcement authorities who also need to understand deeply the different rules applying to temporary work agencies in other Member States. Within the context of tackling fraudulent agency work, this is even a greater challenge.

### 4.1 Potential of data mining and sharing tools

The focus of cross-border cooperation is **predominantly on improving the incidence of detection, and sanctions against fraudulent agency work** (involving undeclared work and other social fraud).

Enforcement authorities have a range of existing tools such as **data mining, exchange and data sharing** which are typically referred to in the cross-border contexts (e.g. the IMI system in cases related to the posting of workers). Such examples of data and knowledge exchange between enforcement authorities were identified in the report prepared alongside the workshop between France and Bulgaria, France, Portugal and Romania, and Romania and the UK. These examples highlight the value of concrete and practice-oriented exchanges between the authorities, enabling them to develop a better understanding of each other's temporary agency work regulatory framework, operational systems and procedures, leading to joint inspections and better targeting of fraudulent agency work. In general, the data and knowledge exchanges relate to the range of violations in the spectrum of fraudulent agency work (including fraudulent agency work prompting undeclared work).

One of the key conclusions from the workshop discussions is that **the potential of data sharing and mining to address the problem of fraudulent agency work is not fully exploited** and the authorities are not applying the possibilities of data exchange to the optimal extent possible. Additionally, questions remain as to whether the problem and scope of fraudulent agency work is fully understood and whether authorities are applying cooperation possibilities to the optimal extent.

Experiences of **data exchanges in the context of Belgium-Netherlands cooperation** were highlighted in the workshop discussions (see Box 8).

#### **Box 8. Using data exchange as a tool in the cooperation between Belgium and Netherlands (Benelux working group on temporary agency work)**

Before a joint or concerted inspection of possible infringements related to temporary agency work is being implemented, there is a consultation in the meetings of the Benelux working group. The consultation is based on datamining by the National Social Security Office which is enriched with information from the Dutch databases.

When the case for joint /concerted inspection is selected, possible infringements (in both Member States) are defined and the services that are competent are being identified. From then the case moves to the regional inspectorate(s) and there is always one coordinator in the two countries. They take all the necessary decisions and contact all

other participants of their country. At this stage it is especially important to exchange the data of all available databases in both countries on a company and personal level and draw up a roadbook for the inspection(s).

In the roadbook, attention is paid to the differences in legal regulations so that the inspectors know where they must pay special attention to and why this is so important. A broader understanding of partner country legislation is one of the most valuable outcomes of the cooperation. Throughout this whole process of joint /concerted inspection, there has to be significant attention to the formal aspect and the exchange of information. The exchange of data is sometimes complex and requires special attention as in general, the competences of foreign inspections and the data they can consult is a great unknown. The knowledge of the partner competences, data systems and knowledge management are developed over time and takes continuous effort and trust building.

*Source: Segers, N. (2020).*

## 4.2 Experiences of joint / concerted inspections

The workshop also identified and exchanged lessons learnt from other examples of **joint / concerted inspections and institutionalised cross-border cooperation** structures were identified. Such joint enforcement-oriented activities have brought a range of benefits to both sides, revealing the specific characteristics of fraudulent agency work, the concrete challenges of enforcing the regulatory framework, and discovering the scale of tax and social fraud through concrete experience.

A presentation from **Norway** highlighted the benefits of developing cross-border cooperation with the enforcement authorities from **Lithuania** to tackle fraudulent agency work through the tool of a bilateral agreement and concerted action on both sides (see Box 9).

### **Box 9. Tackling undeclared agency work in the cooperation between Norway and Lithuania**

The joint action taken by Norwegian and Lithuanian authorities related to a recent case from the fish processing industry in Northern Norway where in 2019 a temporary work agency from Lithuania was involved in a range of fraudulent behaviours, including undeclared work.

Acting alone, the Norwegian labour inspectorate faced several challenges to detect and sanction such fraudulent behaviours. The Lithuanian workers were instructed to lie to the authorities during inspections regarding the working hours and salary per hour. The inspectors faced language problems in conversations with the workers, who were afraid to talk and to tell the facts. The inspectors also discovered that the cash flow went to bank accounts in Lithuania which could not be verified by Norwegian authorities. The persons behind the TWA system were not in Norway and nobody knew who were the persons registered as the TWA owners (even though the requirements in the registration process is for the agency owners to have a permanent representative in Norway). During inspections, the TWA provided the Norwegian authorities with false timesheets from Lithuania which showed very low income registered, which was clearly a case of undeclared work harming both workers and society.

Norway set up a bilateral agreement for cooperation with Lithuania (and five other countries) in 2017 and the cooperation was funded by EEA grants. The labour inspectorate from Norway has a designated contact person in the Lithuanian labour inspectorate and made use of these pre-arranged possibilities and agreed to cooperate in this case.

This case started in 2019, and is still, at the time of the workshop, being processed by tax and police authorities. The Norwegian labour inspector travelled to Lithuania to discuss the case with the Lithuanian colleagues. There was also participation from

Lithuanian tax authorities in Norway. In a concerted inspection, the Lithuanian Labour inspectorate inspected two of the TWA agencies, and ensured that documents made available for Norwegian Labour Inspection. This allowed for better control of contracts, time sheets, pay-slips, accounting, ownership, and addresses of TWA owners. An important discovery was when the 'hidden' main company behind the TWAs in Lithuania 'surfaced' and contacted the inspectors.

*Source: Lund, P. (2020).*

**Sanctions are an important measure to tackle fraudulent cross-border activity of temporary work agencies** and user undertakings. However, they are not used very often in cross-border contexts and the ability to issue them depends on the degree of cooperation between enforcement authorities across the different legal jurisdictions. Usually, cross-border sanctions relate to fraudulent posting situations and enforcement authorities use the specific Internal Market Information System (IMI) module to cooperate with colleagues in another Member State.

Concrete examples in the framework of **the Belgium-Netherlands cooperation** showcased in the workshop some examples of sanctions applied to the fraudulent use of temporary agency work in cross-border employment situations. The violations were identified during the course of bilateral cooperation and the ensuing sanctions were enforced in their own territory.<sup>4</sup>

Similarly, the experience of **Norway-Lithuania** cooperation discussed in the workshop showed how the concrete results were achieved, and orders/sanctions given by Norwegian authorities would NOT be possible without cross-border cooperation with Lithuania. As a result of the orders from the Norwegian labour inspection of the Lithuanian TWAs, they ended their activities in Norway. Some of the workers were employed by the Norwegian fish plant, thus entering declared employment (from approximately 60 workers in each of the TWA involved around half transferred into declared jobs). In addition, other sanctions/actions were taken, such as administrative fines to the Norwegian fish plants: EUR 25 000 and EUR 45 000 (appealed). The Norwegian labour inspection filed report to the Norwegian police regarding the Lithuanian TWAs (which was in process at the time of the workshop). Norwegian tax authorities also filed report to the Norwegian police regarding the Lithuanian TWAs (also in process).

## 5 KEY LEARNING OUTCOMES

### 5.1 Robust evidence base needs further development

Individual anecdotal **cases and examples of undeclared temporary agency work** have been identified, both at the national and cross-border levels.

However, **robust evidence** on the extent, scale and features of the problem is further **lacking**. This knowledge base needs to be further developed, to put spotlight on the extent of undeclared agency work in the national and cross-border contexts. The key aspects highlighted in the workshop discussion to inform this further development of the knowledge base include:

- How the characteristics of temporary agency may work prompt undeclared work - such as highly competitive price pressures on labour costs, the often more precarious nature of temporary employment, and the complex subcontracting chains involved across borders of several countries;
- How do fraudulent agencies /agency type intermediaries take advantage of the complexity of employment relationships and differences in the national rules and regulations, both those relating to the temporary work agencies and other economic sectors;

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<sup>4</sup> For further information on cross border sanctions in general please see Platform's resource on this topic at <https://ec.europa.eu/social/main.jsp?catId=1495&langId=en>

- Which types of undeclared agency work are most widespread, as it anecdotally appears to occur when the agencies are unregistered and unlicensed and when registered agencies under-report the economic activity and hours worked;
- How precisely third-country nationals are involved and how letterbox-company-type chains operate with complex ownership structures in several Member States and third countries, prompting undeclared work.

## 5.2 Successful national tools

Countries can learn from existing practical solutions about what works well and what does not, to develop their own tailored approaches to tackling undeclared agency work. To start with, the workshop heard about the successes of using the **licencing and registration** systems to foster compliance amongst the agencies. On the other hand, registration can also push the agency activity into other forms, and new forms of labour intermediation are emerging, especially using social media channels. Registration systems also support measures aimed at **data exchange and mining** between the public authorities to detect and sanction undeclared agency work. In several countries, this tool is used extensively to tackle fraudulent agency behaviours, in others, the authorities are not permitted to use this tool due to the existing data protection framework. In any case, authorities using the data systems are limited by the data available within them, mostly on registered agencies and not capturing the new forms of labour intermediaries.

**Actions of social partners** can also be fruitful, both acting independently (such as monitoring the compliance with the agency sector collective agreements or setting standards through voluntary codes of conduct) and in cooperation with the enforcement authorities to share data and information about undeclared work directly from the workplaces. Such actions require building trust and clear understanding of the roles between social partners and the enforcement authorities.

## 5.3 Examples of cross-border initiatives

**Cross-border cooperation** can be effective in prevention, detection and awareness-raising of undeclared agency work. **Examples of data sharing and mining about undeclared agency work in the cross-border context exist**, but their potential is not fully exploited. Question marks exist over the readiness for this deep level of cooperation at the cross-border level. Furthermore, bilateral cases of **joint / concerted inspections, controls and follow up actions**, including sanctions and suspension of fraudulent agency permits, have also been identified and are showing promising results.

## 5.4 Recommendations

Looking further ahead, **at the national level**, support with addressing fraudulent agency work could consist of:

- Expanding knowledge of the nature, extent and size of the issue, developing a wider evidence base in order to target interventions and policy measures.
- Analysing whether and in which ways a national level system for compulsory registration of temporary work agencies can facilitate having a better overview and control over the existing agency market and whether such registration systems are leading to less undeclared work.
- Important aspects to investigate relate to the need to understand the different types of fraudulent temporary agency work, evaluate and analyse the benefits and costs of agency registration and certification and other effective practical tools, and identify good practices tackling fraudulent agency work which are transferable to other national contexts.
- To improve the readiness for data sharing and mining at the cross-border level, national authorities could further strengthen their capacity and capability in this respect. New solutions should be considered to capture those bogus agencies which

are not registered in the official systems of enforcement authorities (examples referred to the media analysis or social media outreach to workers).

To take forward the learning from this workshop, at the European level, focus could be on increasing knowledge about the problem of undeclared agency work:

- Further research at EU level could assess the magnitude and characteristics of the problem to estimate its importance and relevance as an issue of concern.
- Complementing bilateral cooperation through more structural EU level cooperation.



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