

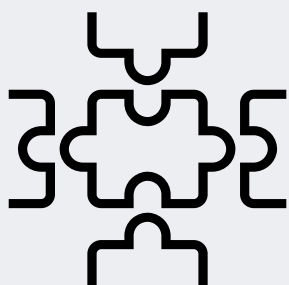
European Platform tackling undeclared work

Thematic review workshop: Tools and approaches to tackle fraudulent temporary agency work, prompting undeclared work
Online workshop, 12 and 13 November 2020

The workshop aimed to engage in mutual learning and exchange on fraudulent temporary agency work prompting undeclared work. The event was hosted online and brought together 37 participants from 19 countries, representing labour inspectorates, customs authorities, ministries of labour and the European level social partners, as well as representatives from Eurofound, the European Commission and the European Labour Authority.

The workshop was an integral part of the Platform's work programme, accompanying the forthcoming study on the topic and a learning resource paper. Participants reflected on (1) the state of play in relation to fraudulent agency work prompting undeclared work (across the EU, in participating Member States and economic sectors). Participants also identified and (2) discussed available practical solutions, tools and approaches to tackle the problem, both within the Member States and through cross-border cooperation.

State of play and challenges



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).

The starting point in the discussion was a recognition that there is a need to further investigate the phenomenon. The issue of fraudulent practices of temporary agency work prompting undeclared work has also received political attention in the context of the COVID-19 pandemic, with the spotlight on working conditions of seasonal mobile workers hired through temporary agencies (see also the Guidelines of the Commission on seasonal workers in the EU, 16 July 2020¹, and Council conclusions on improving the working and living conditions of seasonal and other mobile workers, 9 October 2020²).

Agency work is linked to the increasing flexibility of labour markets where employment via temporary agencies has become an established feature. The share of workers employed by officially registered temporary work agencies (according to Eurostat) was at 2.1 % in the EU-27 in 2019.

¹ 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

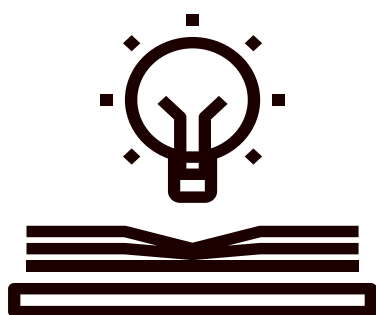
² <https://www.consilium.europa.eu/en/press/press-releases/2020/10/12/improving-the-working-and-living-conditions-of-seasonal-and-other-mobile-workers-council-adopts-conclusions/>



Across the EU, the large majority of temporary work agencies and user undertakings are compliant with the legal framework. However, 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 non-transparent subcontracting chains involved) create potential for fraudulent agency work prompting undeclared work, and significant challenges arise to prevent, detect and sanction such instances, both within and across Member States.

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.

Key messages



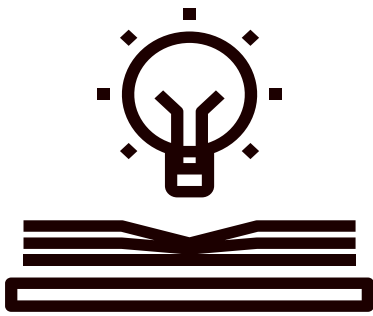
The workshop discussed the specifics of fraudulent agency work and the effectiveness of current national and cross-border practices and experiences to date, as well as possible national and EU level support. The following key messages were identified:

Understanding the scale of the problem

- ▶ Individual cases and anecdotal evidence pointed to the existence of fraudulent agency work prompting undeclared work, both at national and cross-border level, including in the sectors of agriculture, care and construction. This shows the awareness of the problem. However, robust evidence on the scale of the problem and the main characteristics of the fraudulent agency work taking place is notably lacking.
- ▶ In particular, it is difficult to establish whether the undeclared agency work is primarily a case of under-reporting of wages by workers, user undertakings and/or temporary work agencies which are registered. Another possibility of undeclared agency work discussed was when unlicensed/unregistered workers, user undertakings and/or temporary work agencies are common.
- ▶ Undeclared work in this context occurs when the agencies are unregistered and unlicensed. There is also a cross-border dimension with such agencies operating across borders as letterbox-company-type chains, with complex ownership structures in several Member States and third countries. However, such work is far from being solely a cross-border problem; it is also just as much a national 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).



Key messages continued



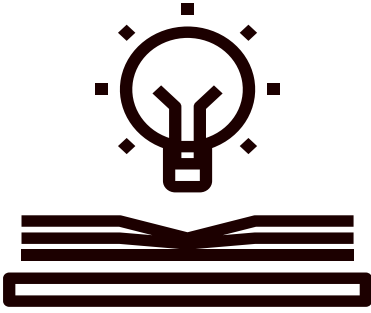
- ▶ Overall, the ‘creativity’ of fraudulent behaviours is stark, helping them to stay one step ahead of the authorities. Such agencies change their company status from one sector to another to evade the rules, and frequently change names.
- ▶ Increasingly, third-country nationals are involved in fraudulent agency work. Here, due to mainly ad hoc intra-EU cooperation in this area, enforcement authorities face even greater challenges to reach out to authorities in third countries.

Tackling fraudulent agency work prompting undeclared work at the national level

- ▶ Currently, 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) (for example, in Belgium, Poland, Spain, Norway). Other countries do not have such registration requirements (e.g. the Netherlands). Those who have 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.
- ▶ Data sharing and mining within the countries between different enforcement authorities (and with non-governmental stakeholders) is an important instrument which is not currently fully exploited. This is also due to the challenges posed by ensuring compliance with the data protection requirements and the rules governing the roles of different institutions. Furthermore, the success of data-driven tools depends on the agencies being registered in the official systems, which is often not the case. For unregistered agencies, enforcement authorities focus on ‘early intervention’ that checks for irregularities (e.g. inappropriate housing).
- ▶ Furthermore, the workshop emphasised the key role of workplace inspections in detecting fraudulent agency work, and shared experiences of capacity building of inspectors, such as in Belgium where the inspectors inspect at least 10 temporary work agencies per year or specific training to inspectors given in Luxembourg on agency inspections.
- ▶ Other available tools identified by the participants included the use of media analysis also for the purpose of identifying the fraudulent agencies, social media outreach to workers and engagement with social partners and employers to identify the fraudulent agencies and labour intermediaries. The success of awareness-raising and engaging with workers is highly dependent on communicating to them in their own language and using social media.



Key messages continued



Tackling fraudulent agency work prompting undeclared work at the cross-border level

- ▶ The workshop highlighted successful examples of cross-border cooperation (such as the working group on agencies in the Benelux or the bilateral agreement between Norway and Lithuania).
- ▶ Developing cross-border cooperation takes time and effort to establish trust-based relationships between enforcement authorities who also need to understand deeply the different rules in other Member States. Within the context of tackling fraudulent agency work this is even a greater challenge. This is due to the complexity of employment relationships and company ownership structures in the cross-border agency work, multiple nature of economic sectors covered and the need for several authorities to be involved on both sides, all usually operating in different languages.
- ▶ Enforcement authorities have a range of existing tools such as data mining and data sharing which are typically referred to in the cross-border contexts e.g. the Internal Market Information system in relation to posting of workers and joint and concerted inspections. Questions remain as to whether the problem and scope of fraudulent agency work is fully understood and if authorities are applying cooperation possibilities to the optimal extent.

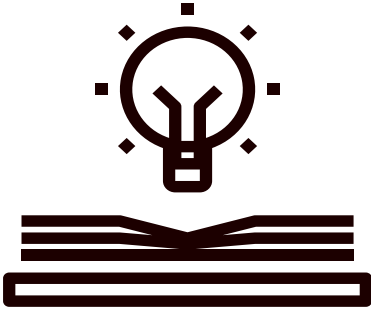
National and EU-level support

At 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.
- ▶ 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 area. New solutions could be examined to capture those bogus agencies which are not registered in the official systems of enforcement authorities (examples referred to media analysis or social media outreach to workers).



Key messages continued



At EU level, support with addressing the fraudulent agency work could consist of:

- ▶ 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. An upcoming European Commission study on the posting of workers (also covering temporary agency work) will also bring results on the topic which will be shared.
- ▶ 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 the agency registration and certification and other effective practical tools, and identify good practices tackling fraudulent agency work which are transferable to other contexts.
- ▶ Complementing bilateral cooperation through more structural EU level cooperation.

Further information: The workshop was an integral part of a larger mutual learning process among Platform members and observers and provided opportunities for exchange and collaboration. The information from the workshop will be fed into a Learning Resource Paper and the final study report. The input documents and presentations from the workshop will be uploaded to the Platform's collaborative workspace.

