



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Host Country Discussion Paper – Slovakia

Aiming high: joint forces for better prevention and control of undeclared work in Slovakia

Peer Review on “Control and prevention of undeclared work in complex chains of economic activity”

Slovakia (online), 4-5 May 2021

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March 2021



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit A1

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Executive summary

This paper focuses on the current legislation and practice of uncovering and addressing undeclared work in Slovakia. It identifies challenges and potential suggestions for legislative improvements to increase the effectiveness of Slovakia's strategic approach to tackling undeclared work.

The overall trend suggests a decline in undeclared work, also in response to legislative changes. It remains unclear whether this decline can be attributed to fewer violations of the rules of illegal work and illegal employment, or to the lack of capacities of enforcement authorities to execute labour inspections.

The current legislation for prevention and control of undeclared work is closely related to the definition of dependent work in the Slovak labour code, which sets the most important benchmark for identifying and defining undeclared work. Furthermore, the dedicated Act No. 82/2005 Coll. on illegal work and illegal employment provides rules for identifying illegal employment. Overall, there is a lack of harmonisation in Slovakia's legal terminology on illegal work and illegal employment with the broader European concept of undeclared work. Illegal employment derives exclusively from the definition of dependent work and the obligation to register a worker for the purposes of social security contributions, tax and health insurance. In contrast, the concept of undeclared work acknowledges a broader range of work options or provision of (bogus) services where under-declared or mis-declared work practices are identified, but remain beyond the scope of prevention and control by state enforcement authorities.

Challenges in the current legislation relate also to the cross-border activities of temporary work agencies and employment of third-country nationals. This is firstly due to the shared responsibility for ensuring employment conditions in the chains of business entities, especially when part of this chain is located in another country. There is an interest of Slovak authorities and employers in strengthening the cross-border cooperation of enforcement authorities and a systematic legal anchoring of this cooperation. The second challenge is the operation of temporary work agencies, now mostly established outside of Slovakia (due to stricter regulation of agencies in Slovakia since 2015), who post workers to Slovak workplaces.

In Slovakia, the key challenges are related to a decentralised set-up of enforcement authorities. There is an attempt to centralise the enforcement competences in the hands of the labour inspectorate, while the administration of fines would be delegated to another state body. To decrease the discretion of a single labour inspector, employers call for a two-stage evaluation/inspection process with a verification from a higher-level enforcement authority. Lastly, Slovakia has a register of employers with a track record of employing persons illegally. The current listing of such illegal employers for five years in this registry is considered too long and prevents these employers to take part in public procurement and receive state support related to the COVID-19 pandemic.

Areas suggested for particular attention during the Peer Review:

- The experiences of other EU Member States with shared employer responsibilities for employing persons in chains of several entities;
- The effectiveness of a centralised vs decentralised structures of enforcement authorities;
- Evidence based practices of prevention and control in complex chains of business entities, especially when some entities are based outside the national jurisdiction;
- The definition of dependent work, how it remains distinct from work provided as a business service; how labour inspectorates acknowledge these differences and are able to control and prevent undeclared work using such concepts;
- The effective process of collecting fines for violating employment regulations.

1 Legal background and trends in undeclared work

1.1 Background and milestones in the Slovak legislation on controlling and preventing undeclared work

Currently, the Slovak legislation does not recognise the term of undeclared work. Instead, illegal employment and illegal work are used. Nevertheless, the term of undeclared work is used in the national policy discussions and research. The concept of undeclared work is distinct from illegal employment and illegal work as it is capturing a broader range of forms of work, which are not necessarily illegal. Cases reported as undeclared, but not illegal, work refer e.g. to cases of under-reported extent of working hours and wages, wage replacements by cash payments, or using contracts for provision of services, including bogus self-employment, for work that meets the conditions of dependent work according to the Slovak Labour Code. Throughout this paper, the terms of illegal work and illegal employment refer to particular legislative stipulations as explained below, while undeclared work refers to a generic category used in research and policy debates.

The strategic approach to controlling and preventing undeclared work (hereafter UDW) evolved throughout the last two decades in the context of Slovakia's economic growth, political will, the incumbent government's attitude and the power or relevant social partners. In addition to domestic factors, the framework for addressing UDW is significantly influenced by the free movement of labour, service provision and exchange of goods within the EU. European institutions and regulations, including intensive knowledge exchange and external expert evaluation, also guide the evolution of policy approaches to UDW in Slovakia.¹

The current incentive to update the policies and regulations related to mitigation of UDW originates from efforts to improve their effectiveness and address both long-term and newly emerged challenges linked to UDW in Slovakia. Suggestions for legislative amendments to the existing regulations on the role of labour inspectorates and UDW are also anchored in the *Plan of Legislative Tasks of the Slovak Government*. This Plan aims at streamlining labour inspections, reducing administrative burden, refining the existing legislation, and aligning it with the needs of actual practice.² Policies aiming at decreasing UDW also indirectly relate to the recently approved *Strategy for Safety and Health Protection at Work*.³

The first effort to address the rising shadow economy and illegal employment occurred in 2000. The first Act on Labour Inspection⁴ allowed the enforcement authorities to verify the employment status of persons working (Bednárik, 2003). With limited regulatory tools available, enforcement authorities could control and request further clarification in cases of suspected illegal work and particular circumstances.

In 2005 the National Council approved the key regulation to date, the Act 82/2005 Coll. on illegal work and illegal employment. After seven amendments between 2005-2021, the legislation currently defines illegal work as *dependent work performed by a natural person for a legal entity or sole proprietor, where (i) there is no labour-law or state-civil-service-law relation established between the two parties pursuant to special regulation, or (ii) the natural person is a third-country national employed in conflict with respective provisions*.

¹ Based on the authors' interviews with representatives of the Ministry of Labour, Social Affairs and Family of the Slovak Republic and the National Labour Inspectorate, February 2021.

² Plan of legislative tasks of the Government of the Slovak Republic, available at: https://www.vlada.gov.sk/data/files/7961_plan-legislativnych-uloh-vlady-sr-na-rok-2020.pdf

³ Strategy for Safety and Health Protection at Work in the Slovak Republic for the years 2021 – 2027 and a program of its implementation for the years 2021 – 2023; approved by the Slovak Government in December 2020; available at: <https://rokovania.gov.sk/RVL/Material/25566/1>

⁴ Act No. 231/2002 Coll., which amended Act No. 95/2000 Coll. on labour inspection.

At the same time, the law determines illegal employment *as employment of a natural person by a legal entity or sole proprietor who makes use of dependent work of (i) a natural person with whom there is no labour-law or state-civil-service-law relation established, (ii) a natural person with whom a labour-law or state-civil-service-law relation is established but the employer has not complied with his/her obligation to notify the Social Insurance Agency, (iii) a third-country national employed in conflict with provisions on employment of third-country nationals and asylum seekers and/or staying in the territory of the Slovak Republic in conflict with legal provisions regulating the stay of foreigners.*⁵

In comparison to the European Commission's definition of UDW, the Slovak legal definition of illegal work and illegal employment is narrower, but more specific.⁶

The **definitions of illegal work and illegal employment are significantly connected to the concept of dependent work.** The introduction of dependent work in the Labour Code (Act No. 311/2001 Coll. and its later amendments) in 2007 was the first milestone for control and prevention of illegal work. The definition of dependent work consisted of nine attributes.⁷ However, the numerous but vague attributes of dependent work resulted in enforcement challenges and complicated also the process of preventing and controlling illegal work. Not all elements of dependent work could be demonstrated empirically. Even if some of the characteristics have been confirmed, the form of employment could still be considered illegal. Revising the definition of dependent work through several amendments of the Labour Code increased the scope of how to identify the dependent work and thereby also illegal work.⁸

However, the key rule is that dependent work may be performed exclusively through a regular employment contract according to the Labour Code and not in a contractual civil law or a commercial law relationship. Since the control and prevention competences are closely linked to the definition of dependent work, this legal definition limits the competences of labour inspectorates to control the self-employed, including the bogus self-employed.

A second milestone in the development of prevention and control of UDW was setting the exact dates for registering an employee in the social insurance system following the Act on social insurance (Act No. 461/2003 Coll.). According to the Act on illegal work and illegal employment, the failure to register an employee for the purposes of social insurance before he/she commences work is considered illegal employment. Establishing the moment of registration began to be a decisive factor for considering work legal or illegal. In 2018, legislation specified the definition of **illegal employment as a situation when the employer did not register an employee within seven days from the beginning of his/her contractual relationship** or at least until the date when the labour inspection commenced (Act No. 82/2005 Coll. and its amendments).

⁵ Act No. 82/2005 Coll. and its amendment valid from 1 January 2020.

⁶ The European Commission defines UDW as 'any paid activities that are lawful as regards their nature but not declared to public authorities'. Source: European Commission: Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Stepping up the fight against undeclared work (COM/2007/0628); Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

⁷ See the Labour Code amendments since 1 September 2007 at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/311/20070901.html#paragraf-1.odsek-1>

⁸ The current definition of depended work in the Labour Code (Act No. 311/2001 Coll. and its later amendments): *work performed in a relationship of superiority of the employer and subordination of the employee, personally by the employee for the employer, according to the instructions of the employer, on the employer's behalf, during working hours determined by the employer, based exclusively on a regular employment contract.*

1.2 Key trends in undeclared work and controlling activities

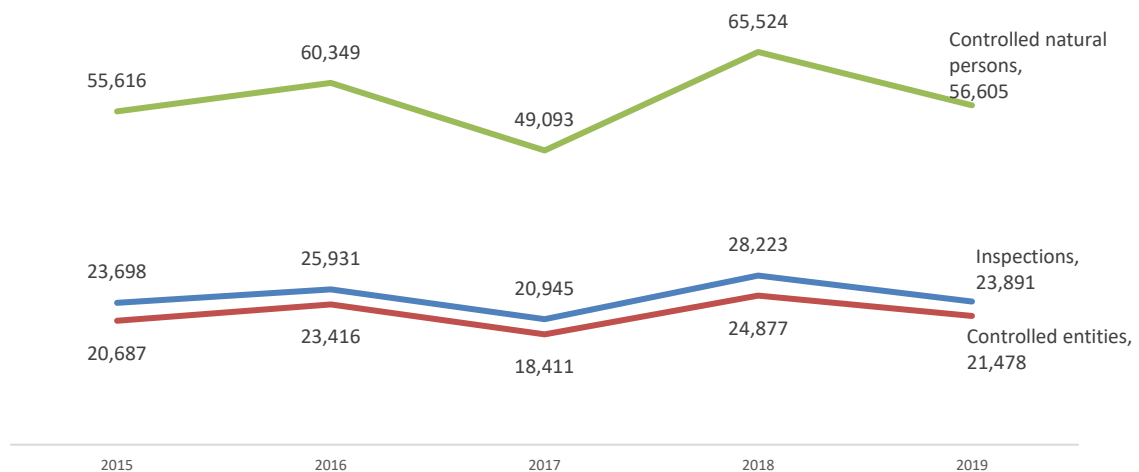
Slovakia ranks among countries with a high employment rate in standard regular employment contracts and a **low share of the working population in non-standard forms of employment.**⁹

Clear evidence on UDW in Slovakia is challenging to obtain. The data available from the pan-European surveys show that **3% of population in Slovakia admitted to have carried out undeclared paid activities** between 2013 and 2019. **This has been decreasing over the last years.** At the same time, experience with envelope wages was reported by 4% of Slovakia's working population in 2019.¹⁰ Based on the self-reported involvement in any undeclared activities, the share of the population decreased across various UDW aspects in the 2007-2019 period. In 2019, it was below or equal to the EU-28 average.¹¹

A representative general population survey from 2014 shows however different results and a significantly higher incidence of UDW. According to this source, 18.1% of respondents admitted that they have carried out some form of 'hidden work' (with men significantly more involved, as 21.4% of men and 15.2% of women reported this). This represents 492 400 economically active persons spending 139 453 000 hours on illegal work on annual basis (Hajnovičová, 2014).

National data from the labour inspectorate also contributes evidence in this area. Figure 1 presents the trend of targeted inspections, controlled entities and persons throughout the years 2015-2019. The overall number of inspections has been stable since 2015.

Figure 1. Number of inspections, controlled entities and persons (2015-2019)



Note: the number of inspections is higher than the number of inspected entities due to repeated inspections in the same entity

Source: National Labour Inspectorate and Central Office of Labour, Social Affairs and the Family

Figure 2 shows that **illegal employment detected through inspections has been declining since 2015.** The share of entities identified as violating the prohibition of illegal employment and the share of illegally employed natural persons is declining since 2017.¹² The latest data for 2019 shows a 35% decrease in detected cases of illegal

¹⁰ Special Eurobarometer 284, Undeclared Work in the European Union, 2007; Special Eurobarometer 402, Undeclared work in the European Union, 2013; Special Eurobarometer 498 Undeclared work in the European Union, 2019

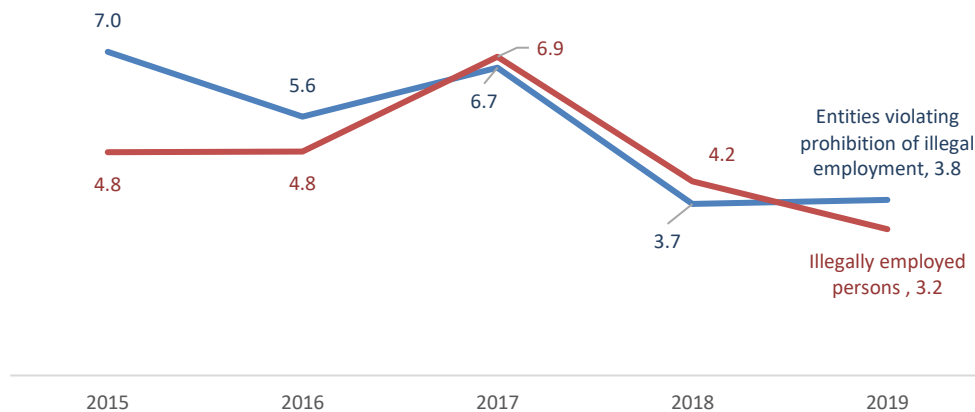
¹¹ Ibid.

¹² National Labour Inspectorate, 2019, Informative report on the search for and fight against illegal work and illegal employment in 2019, Annex, Available at. <https://www.ip.gov.sk/wp-content/uploads/2019/05/Pr%C3%ADloha-za-rok-2019.pdf>; For more statistics see Annex 1

employment compared to the previous year (from 2751 illegally employed persons to 1 791 illegally employed persons).

Placing this finding in the perspective on the number of inspections (Figure 1), evidence shows that the decline in detected cases of illegal employment occurred in conditions where the number of inspections remained stable. This decline is caused by an administrative change in the late registration of employees with the state Social Insurance Agency and a simplification of declared employment procedures of third-country nationals.¹³

Figure 2. Percentage of entities and persons employing(ed) illegally out of controlled entities/persons (in %, 2015-2019)



Source: National Labour Inspectorate and Central Office of Labour, Social Affairs and Family; own calculation.

In addition to general data on illegally employed individuals and employers/entities employing illegally, evidence is available on illegal employment of foreigners in Slovakia. The data collected and provided by the enforcement authorities vary considerably between 2015-2019. While in 2015 the total number of illegally employed foreigners in Slovakia stood at 46 persons, in 2018 the number climbed to 1 170 persons. The latest data from 2019 revealed 529 foreigners illegally employed. **The share of illegally employed third-country nationals represents 80-90% of all illegally employed foreigners in 2016-2019.**¹⁴

¹³ Ibid.

¹⁴ National Labour Inspectorate, 2015, 2016, 2017, 2018, 2019, Informative report on the search for and fight against illegal work and illegal employment; available at <https://www.ip.gov.sk/nelegalne-zamestnavanie-2/>. For more details, see Annex 1.

2 Current legislative framework

The current legislative framework is inflexible in controlling and preventing several types of UDW, in particular, in the posting of workers via chains of several employers. This challenge is even more pronounced if one part of this chain, often including temporary work agencies, is located in another country. Moreover, in the wide scale practice of contracts providing business services instead of an employment contract, the strict definition of dependent employment in the legislation pre-empts the enforcement authorities to control other forms of work beyond employment contracts.

2.1 Limited legislation in defining responsibilities in the chain of several employers

Enforcement authorities in Slovakia have extensive experience with the phenomenon of employer chains. The key challenge is the identification of the recipient of the work performed and the provider of the work supplied. With two entities in a chain, control is possible. However, when the employment, or posting, of workers occurs via several entities in a chain, and these entities formally enter a business relationship, detection and control of illegal employment is difficult in practice. Employees are posted between the different employers and the final beneficiary of their work remains non-transparent. Further complications arise when the business chain has a cross-border element, i.e. one of those entities is based abroad while the entity to which the employees are posted operate in the territory of Slovakia.

The current legislation consists of (a) Act No. 82/2005 Coll. on illegal work and illegal employment, (b) Act No. 5/2004 Coll. on employment services, stipulating the operation of temporary work agencies and employment of third-country nationals in Slovakia, and (c) Act No. 311/2001 Coll. (the Labour Code). While this framework offers limited possibilities to address the challenge of employer chains, the most relevant stipulation is the prohibition of the final recipient of the worker to accept the posted worker if he/she is employed illegally by another entity in the chain:

A legal person or a natural person who is an entrepreneur may not accept work or service which is supplied or provided to him under a contract by a legal person or natural person (hereinafter referred to as a "service provider") through a natural person who is illegally employed,

- a) *for the cross – border provision of a service for a period exceeding 30 days in a period of 12 months from the first provision of the service, or*
- b) *for national supply of work or cross-border supply of work.¹⁵*

This measure is weakened by extending the period from 5 to 30 days. During this period, work or service provided by an illegal employer is not considered illegal (through the amendment of Act No. 82/2005 Coll. as of March 2021). The prolongation of the period hampers the enforcement authorities to detect the illegal employment immediately according to the representatives of the National Labour Inspectorates.

Furthermore, Labour Inspectorates, as enforcement authorities, are required by law to impose a fine on legal or natural persons acting as entrepreneurs for violating the ban on accepting work or service that is provided by an illegal employer. The regulation on fines offers a large discretion to the enforcement authorities, since the fines range between EUR 2 000 and EUR 200 000. In case of two or more natural persons uncovered at the same time in a single case, the fine is at least EUR 5 000.

The precondition for deciding the responsibility of the service beneficiary is the detection of illegal employment by the service provider. Therefore, as part of the labour inspection, the labour inspectorate will first determine whether the service provider has

¹⁵ Act No. 82/2005 Coll. Version in force since 1 March 2021.

violated the rule on the prohibition of illegal employment. If this determination is not possible, the whole process is stalled.

Only the labour inspectorates are able to legally impose and enforce two types of fines; the first one for the supplier for violating the rule on the prohibition of illegal employment and the second one for the customer for accepting a service or work through a natural person illegally employed by the service provider. The customer is obliged to pay a fine regardless of their knowledge of the violation of the prohibition of illegal employment. This is the so-called absolute strict liability. By allowing sanctions for the final recipient in the chain of employers, the law acts to prevent illegal work and illegal employment. This approach assumes that the final recipient knew or should have known about the violation and therefore should not have received services and work from an illegal employer through illegally employed workers.

The national Association of Industry Federations, the peak-level employers' association with a mandate to participate in national tripartite social dialogue, opposes the co-responsibility for illegal employment by Slovak employers where foreign workers are posted via a chain of business contracts.¹⁶ They argue that the time period and opportunities for verification between all business partners in the chain are limited, especially when some of these business partners are located abroad. Also, the co-responsibility is challenging when Slovak employers find themselves under time-pressure when employing new workers on a very short notice. In response to these concerns, the most recent legislation amended the grace period for accepting work or service from an illegal employer, prolonging it from five to currently 30 days without facing fines. Already at the initial period of the Amendment of Act No. 82/2005 Coll. as of March 2021, state enforcement authorities consider the extension of this grace period to 30 days only as a partial solution for tackling illegal work and expect further legislative amendments to reach a comprehensive approach to the issue.

The prohibition to receive work or services provided by an illegal employer is a measure to discourage employers to enter into a business relationship with illegal employers who then post workers to other employers. This **preventive power of legislation is however relatively ineffective, especially when one of the employers posting workers to Slovakia is based abroad**. A further challenge is when in the chain of employers, letterbox companies based in third-countries are involved. The current ability of enforcement authorities to enforce the legislation, e.g., by sanctioning foreign-based entities, or even reaching them via correspondence, is limited.

As the control component is currently not fully effective, this is compensated through a ban on accepting a service or work from entities that might be illegal employers. In turn, employers in Slovakia are expected to be more aware in the selection of their suppliers of services where the posting of workers is involved.

The enforcement authorities in Slovakia call for a stricter approach in executing the control and prevention of illegal work. This may occur, for example, via strengthening the ban on accepting services from an illegal employer and/or illegal employee. Resistance to this stricter approach derives from a higher administrative burden for employers in Slovakia. A counter-argument would therefore be improving the competitive environment of the compliant employers. More specific legislation could target the entities where most challenges occur, including letterbox companies established abroad.

2.2 Differentiating between employment and provision of business services in the complex chains

Relevant in the context of controlling illegal employment is also differentiating between the contracts of employment and provision of business services. Table 1 provides an overview of various legally recognised forms for employment and provision of business

¹⁶ Interview conducted for this paper.

services. The fundamental distinction applies to contracts regulated via the Labour Code and contracts that fall outside of the scope of the Labour Code.

Table 1. Types of work/employment contracts according to Slovak legislation

| Type of legislation | Type of contract | Details of legally stipulated contractual arrangements |
|---|--|---|
| Labour Code (Act 311/2011 Coll. and its amendments) | Employment contract | Full-time open-ended contract (<i>riadny pracovný pomer</i>) |
| | | Fixed-term contract (<i>riadny pracovný pomer na dobu určitú</i>) |
| | | Part-time contract (<i>riadny pracovný pomer na skrátený úväzok</i>) |
| | | Temporary agency work (dočasné pridelenie zamestnancov) |
| | | Working time accounts (<i>Flexikonto</i>) |
| | Work performed outside of a regular employment contract | Job sharing (delené pracovné miesto) |
| | | Work performance agreement (<i>Dohoda o pracovnej činnosti</i>) – regular work up to max. 10 hours per week |
| | | Agreement on work activity (<i>Dohoda o vykonaní práce</i>) – delivering work with a defined outcome, up to 350 hours per calendar year |
| | | Agreement of work activity for students (<i>Dohoda o brigádnickej práci študentov</i>) – regular work up to max. 20 hours per week only for students aged 16-26 |
| | | |
| Non Labour Code regulation | Act 455/1991 Coll. and its amendments on self-employment, Act 40/1964 Coll. and its amendments (Civic Code), Act 513/1991 Coll. and its amendments (Business Code), Act 185/2015 Coll. (Authorship Act), | Self-employment, bogus self-employment on Civil contracts according to the Civil Code (<i>Mandátna zmluva, Zmluva o dielo</i>) |
| | | Business contracts according to the Business Code (<i>Mandátna zmluva, Zmluva o dielo</i>) |
| | | Authorship agreement based on the Authorship Act for delivering intellectual work (<i>Autorská zmluva</i>) |
| | | |

Source: the authors based on Slovak legislation.

Labour inspectorates are authorised to control working conditions of employees performing work based on (a) an employment contract or (b) work performed outside of a regular employment contract, both based on the Labour Code. At the same time,

the labour inspectorates also control compliance with the prohibition of illegal employment closely related to the dependent work concept.

If an employee is performing work based on non-Labour Code regulations; for example, he/she is in self-employment status, this form of work is considered a provision of business services. In such cases, **labour inspectorates are not authorised to control provision of services because they are outside of the scope of dependent employment.** Labour inspectorates can only check compliance with the prohibition of illegal employment related to the essential conditions of dependent work following the Labour Code (Act 311/2011 Coll. and its amendments). If the labour inspector identifies dependent work where formally business services are provided, he/she can subsequently inspect the working conditions. If not, an inspection falls outside of the legal competences of the labour inspectorate.

If work is provided according to the Civil Code or Business Code, it is handled as provision of service and controlled by the Slovak Trade Inspection (Act No. 128/2002 Coll. on State Control of Internal Market in the Consumer Protection Issues). The controls do not encompass any authority related to the regulation of illegal work or illegal employment (Act. No. 82/2005 Coll).

If the work is performed based on Act 455/1991 Coll. on self-employment, the responsible authority is the Trade Licensing (District) Offices under the Ministry of Interior. Offices located in eight regional centres are authorised to control compliance with tax and social security regulations as well as illegal work by the self-employed. Cooperation between the Trade Licensing Offices and labour inspectorates in executing the respective inspections is minimal.¹⁷

Whether work is performed as employment or as business service, the performance is a work/employment or a service relates closely to the definition of dependent work. False self-employment, i.e. bogus self-employment, is a relatively prevalent phenomenon in the Slovak labour market. This is because in the current tax and social security system, it is often more beneficial for persons to work as self-employed while actually performing dependent work. Despite tightening the definition and elimination of several vague features, enforcement authorities still have limited possibilities to prove dependent work in case of bogus self-employment. The Association of Industry Federations has called for greater awareness raising among the self-employed directly in order to limit the widespread practice of bogus self-employment.

2.3 New challenges related to temporary work agencies

Temporary work agencies (TWA) in Slovakia are regulated predominantly by Act No. 5/2004 Coll. on employment services. In the past, TWA were involved in UDW in the chains of economic activities mainly due to them underreporting the wages, working time and wage replacements through (non-taxable) payments in travel reimbursement and subsistence costs. Since adopting a stricter legislation regulating the competences and compulsory registration/licencing of TWA in Slovakia, the market has stabilised and the operation of agencies with unfair practices has been constrained.

The widespread practices of UDW, including mis-declared and under-declared work by agencies have been minimized since 2015 when the legislative changes to Act No. 5/2004 Coll. introduced stricter regulation of agency operation and conditions for employment via agencies (such as work being exclusively based on a regular employment contract, no discrimination between agency workers and regular workers in the employer where agency workers are posted, the co-responsibility for wage payments to the agency workers between the agency and the employer where the agency worker is posted).

In the current legislative framework, temporary work agencies operate exclusively upon a licence granted by the Central Office for Labour, Social Affairs and Family. The license

¹⁷ European Platform for Undeclared Work, 2017, Member State Factsheets, Slovakia.

is provided upon an inspection of comprehensive information on the agency and meeting all preconditions for its operation. Data of the Central Office of Labour, Social Affairs and Family reveal 445 TWA operating in Slovakia in 2020.¹⁸ They assign approximately 50 000 new temporary workers to employers, mostly in the sectors of industrial production, transport and storage. It is expected that the COVID-19 pandemic will further reduce the number of licenced agencies due to the changes in the economic structure.

At the same time, the current legislation allows posting workers not only by licenced agencies, but also by regular employers to other employers who face 'objective operational reasons' for such action. The legislation does not define the objective operational reasons. As a result, some employers do not even have registered business premises but post their employees to temporarily work elsewhere. This indicates a misuse of the current legislation and temporary reassignment of workers without a genuine justification.

A further challenge related to agencies is that the TWAs can conduct multiple business activities in addition to performing labour intermediation under the TWA license. Therefore, the labour inspectorates have difficulties identifying precisely the status of workers employed by such entity engaged in multiple business activities. It is hard to identify in the control activities whether the workers are regular employees or service providers of one of the business activity or temporary workers assigned and working for the same employer.

According to the representatives of the National Labour Inspectorate, two legal amendments would support solving these challenges, with the following rules:

- An employer without an TWA licence cannot temporarily assign an employee to another employer or subsidiary;
- TWA is a business entity that is exclusively licenced to operate as a TWA without the opportunity to engage in other types of activities or services vis-à-vis its customers.

Since the operation of TWA has been significantly sharpened since the 2015 legislative changes, this is one of the few remaining challenges that the legislative changes failed to address. Introducing the above suggested amendments would yield further transparency into the system of posting workers. At the same time, employers may continue to prefer some degree of flexibility. Therefore, experts suggest to accept the second point related to the operation of TWAs exclusively as TWAs. Regarding the first point on posting of workers by employers, experts recommend to define the conditions of such posting instead of prohibiting them in full. For example, posting should be made possible only between two registered entities of the same employer, e.g. in different locations, thus not between a chain of employers. Also posting should be made possible only upon the agreement of the worker being posted and/or employee representatives such as a trade union or a works council if they are established at the concerned employer entity.

2.4 Responsibility of letterbox companies and re-established companies

Letterbox companies receive particular attention because of a likelihood to be involved in evasion of tax obligations and social security contributions, and illegal employment. In such cases, the control authorities often cannot find a contact person and a person responsible for the letterbox company's operation and employment. Labour inspectors already know that some such workplaces are illegal employers, but have problems to deliver the relevant documentation and decisions to the responsible person. Even though the responsible person is known and a contact address is available, no response

¹⁸ Source of the data: Central Office of Labour, Social Affairs and Family; on-demand data; for more data on ADZ see Annex 1.

or comments to the labour inspectorates' procedure cannot be obtained and thus the inspection process is not functional.

In case of Slovakia, the letterbox companies are usually not large employers, but rather companies providing small-scale services, e.g. at hotels; or small entrepreneurs or individuals establishing contractual relationships via bogus self-employment for seasonal workers and workers from third-countries.

Another challenge is the existing opportunity to create a chain of companies even though the company commits multiple offenses. To be fined either for administrative offenses of illegal employment or any other mistakes ultimately does not mean that the same owners or managers cannot establish another company, while the old one has not yet settled obligations vis-à-vis employees and state actors. This is even more challenging with the letterbox companies.

This proved to be problematic in the past when listing a company in the central register of the violators of the prohibition of illegal employment. When one company was explicitly listed as an illegal employer in the central register, the same entrepreneur with the same economic activity could still operate through other companies. Such "illegal employers" received subsidies from the state, or from EU funds simply because they were operating other companies. Such companies could also operate across borders, increasing the scope for illegal employment. For example, Slovak businesspeople can open companies in third-countries, e.g. in Serbia, hire workers there and send them back to Slovakia via Hungary or Czechia. In such complex chains, the control authorities face the challenge to deal with a combination of national legislation of EU Member States and third-countries, which fall outside the scope of the EU jurisdiction.

2.5 Regulating complex chains with the employment of third-country nationals

Employment of third-country nationals in Slovakia is regulated by Act No. 5/2004 Coll. on Employment Services and its last amendment from 2020 (in particular, Section 21 on the employment of third-country nationals with workplace located in the Slovak Republic). This Act sets strict conditions for employing third-country nationals exclusively on regular employment contracts and also defines criteria for posting third-country nationals to work in Slovak workplaces. Nevertheless, interview respondents (in particular the Association of Industry Federations and also trade union representatives) pointed an extensive misuse of Act No. 5/2004 Coll. and also Act No. 82/2005 Coll. on illegal work and illegal employment mainly because of the following factors:

- due to strict regulation of temporary work agencies in Slovakia, third-country nationals are being posted via agencies established in other countries, e.g., Hungary or Poland with more relaxed regulation for agency operation;
- for the same reason as above, workers are posted via a chain of entities, not necessarily temporary work agencies, some of which are established abroad;
- the lack of Slovak employers' control capacities and competences if workers are posted by foreign agencies/employers;
- the lack of systematised cooperation between control and enforcement authorities in Slovakia and abroad.

A range of authorities, including the National Labour Inspectorate, Central Office of Labour, Social Affairs and Family and the Police Force, particularly the Bureau of Border and Alien Police, are involved in inspecting illegal work and illegal employment of third-country nationals. The control competences derive from the cooperation of several ministries in compliance with the legislation and interinstitutional co-operation agreements. In addition, these enforcement authorities cooperate also on an ad-hoc basis. However, the identification of illegally employed third-country nationals is not their primary task, apart from the Bureau of Border and Alien Police departments.

However, the work of the Bureau does not primarily focus on checking illegal employment.

Besides illegal employment, work of third-country nationals in Slovakia is also a source of under-declared work that is not fully illegal in the legislative sense. Legislation allows inspection only concerning the valid employment contract and the formal registration at the social security authority, health insurance institution and the tax authority. However, under-declared work emerges not per se in the form of illegal employment, but in the replacement of the valid employment contract with other types of business contracts that do not guarantee an income in line with minimum wage regulations, social protection, income taxation, health insurance and health and safety standards for third-country nationals.

In the current situation, the authorities also do not distinguish between an illegally employed third-country national without a residence permit (third-country national not registered to live in Slovakia but working illegally in the country) and an illegally employed third-country national with a residence permit (third-country national registered to live in Slovakia but working illegally) (Fraňová and Drozd, 2017).

There are also no enforcement authorities in Slovakia specialised in monitoring illegal employment of third-country nationals in particular economic sectors. Nor is there a special department/section within the labour inspectorate, which would have exclusively dedicated competences to address illegal employment of third-country nationals. These are identified within general inspections targeting illegal employment. Within these general inspections, several identification measures are used, such as inspections of workplaces, joint and security-improving inspections of business entities, and ad-hoc inspections carried out by the Police Force officers. Inspections of illegal employment of third-country nationals are carried out at random intervals. They can be initiated based on the general public's information or by illegally employed third-country nationals themselves (ibid.). Reports of illegally employed third-country nationals may come also directly from Slovak entities where the third-country nationals are posted. However, according to the Association of Industry Federation, Slovak companies are often not aware that the workers posted to their premises are employed illegally, especially when they are posted via a foreign entity. Employers claim to possess no competences and capacities for checking that workers posted from third-countries are employed legally, and are convinced this should be the role of state authorities through the cross-border cooperation with labour inspectorates in the concerned countries.

Uncovering illegal work of third-country nationals shows that co-operation of the Ministry of Labour, Social Affairs and Family with the Border and Alien Police is crucial. Further to this cooperation, electronic access of these authorities to the registry of persons eligible for social insurance and old-age pension schemes, operated by the Social Insurance Agency, proved to be essential. The labour inspectorates and the Central Office of Labour, Social Affairs and Family can access the database during an inspection to check persons present at a particular workplace. In addition, the department of inspection of illegal employment (KOBRA) within the labour inspectorates, established in 2013, exercises control activities also beyond regular office hours during afternoons, evenings, nights, weekends and public holidays (ibid.).

The prevention activities include informational meetings organised by district Offices of Labour, publishing information regarding employment of third-country nationals by the National Labour Inspectorate, and reporting obligation of employers employing third-country nationals in line with the Slovak legislation. Prevention measures targeting employees include information on entry and residence, living and working conditions, and employment in Slovakia. The Migration Information Centre provides free legal, social and work-related counselling including information on administrative procedures, obligations vis-à-vis individual institutions, on legislation concerning reporting/registration obligations in case of changing jobs or terminating an employment contract. Prevention activities target especially economic sectors with a higher presence of third-country nationals (e.g., construction and industrial

production)¹⁹. The Association of Industry Federations views additional prevention measures in strengthening and legislatively underpinning cross-border cooperation between labour inspectorates between Slovakia and other EU member states but also third-countries.

¹⁹ Ibid.

3 Approaches to the control and prevent illegal work and illegal employment

The key challenge for enforcement authorities to control and prevent illegal work is the fact that currently control competences are delegated across several state authorities. In addition, social partners increase the number of actors technically involved in the control and prevention of UDW, including both illegal work and employment but also under-reported and misreported forms of work.

3.1 Centralisation or diversification of enforcement authorities

In Slovakia, there are three different enforcement authorities eligible to control illegal work and illegal employment:

- Labour inspectorates according to the Act No. 125/2006 Coll. on Labour Inspection;
- Central Office of Labour, Social Affairs and the Family;
- Offices of Labour, Social Affairs and Family according to the Act No. 5/2004 Coll. on Employment Services.

The inspection of natural persons present at the employer's workplace is carried out both as a separate labour inspection exclusively inspecting compliance with the prohibition of illegal employment, but mostly as part of labour inspection aimed at occupational health and safety regulations. Since 2020, inspections focus also on the employer's obligation to allow teleworking if the nature of the work allows it.

Since October 2013, special controlling units of illegal employment– KOBRA – have been operating in Slovakia. Since October 2017, the KOBRA unit was transformed into a specialized unit of the Labour Inspectorate (hereinafter "OKNZ - KOBRA"). At the end of 2019, these organisational units consisted of 40 labour inspectors. The specialised teams also operate at nights, during weekends and holidays, and are well-equipped for detection of illegal employment. The share of the results of OKNZ - KOBRA activities in the total number of detected cases of illegal employment is significant, representing in the long-term more than 85% of the total findings of enforcement authorities (relating to the number of detected illegally employed persons).²⁰ KOBRA exclusively focuses on whether the contractual obligations for legal employment have been fulfilled. It is not authorized to control working conditions as such.

The Central Office of Labour, Social Affairs and the Family and district Offices of Labour control illegal work and illegal employment based on written or telephone complaints by natural or legal persons. Furthermore, their control and prevention activities emerge upon order by the General Director of the Central Office for Labour Social Affairs and Family, or the directors of district Office of Labour. The share of controlling activities of these authorities represents approximately 10 – 20% of their overall activities.

The fact that control and prevention competences are divided across three enforcement authorities causes practical challenges. Information and data on inspections and sanctions are not centralised in a single institution, but are distributed across several enforcement authorities. The availability of dedicated experts affects the effectiveness of illegal work detection. Dispersion of the inspections among more bodies does not result in better results. For this reason, the **current legislative proposal suggests a concentration/centralization of control activities under Labour Inspectorates, which would still maintain administrative co-operation with the Central Office of Labour, Social Affairs and Family and the district Labour Offices.** The Central Office of Labour, Social Affairs and the Family and district labour offices would thus be

²⁰ National Labour Inspectorate, 2019, Informative report on the search for and fight against illegal work and illegal employment in 2019.

able to concentrate their capacities on the administration of the pandemic assistance and other urgent tasks.²¹

The concentration of inspections under one enforcement authority, the Labour Inspectorates, would increase the responsibility and capacity within the labour inspectorate's specialised teams. As the inspectorates are also responsible for imposing and collecting sanctions and penalties, the Slovak **Ministry of Labour, Social Affairs and Family considers transferring the administration and enforcement of penalties to another authority**, thereby leaving the labour inspectorates' work dedicated exclusively on control and prevention activities.

3.2 Cooperation and information sharing

Responsible authorities involved in the prevention and deterrence of illegal work and illegal employment cooperate and provide information within their scope of competences. Cooperation occurs at two levels: (a) cooperative implementation of control activities; and (b) information/data sharing. At the level of the Ministry of Labour, Social Affairs and Family, cooperation occurs mainly through consultations on the legislation and policies with other Ministries.

Good cooperation between labour inspectorates and other authorities is essential due to their currently diversified competences in control and prevention of UDW. The functions of the Central Office of Labour, Social Affairs and Family and district Offices of Labour are regulated in Act No. 5/2004 Coll. on employment services. The same Act addresses the conditions for employment of third-country nationals.

Labour inspectorates and labour offices currently conduct planned or ad hoc joint inspections. Inspectors involve representatives from other authorities (Social Insurance Agency, trade licensing offices, health insurance authorities, tax offices, police). Police Force are, among others, obliged to provide necessary protection for inspections upon request of the enforcement authorities if threats to life or health of inspectors or obstruction of controls are anticipated.²²

The Police Force, particularly the Bureau of Border and Alien Police and the regional directorates of the Police Force, assists labour inspectorates and labour offices in controlling illicit work and illicit employment on other occasions. Cooperation and support are two-way. Inspectors specialised in illegal employment support the police persons to "ask to right questions" to identify the illicit employment. The Bureau of Border and Alien Police focuses mainly on searching for third-country nationals residing illegally in Slovakia²³ and further violations of the Aliens Residence Act. The Bureau also has competences in finding and identifying victims of trafficking in human beings, regulated by Act No. 300/2005 Coll. (the Criminal Code). Officers of the Police Force's regional directorates provide the inspection bodies with assistance in carrying out inspections according to Section 3 of Act No. 171/1993 Coll. (Act on the Police Force). As the Police Force units do not belong to enforcement authorities in the sense of Act No. 82/2005 Coll. on illegal work and illegal employment, investigations of the violation of the prohibition of illegal employment are carried out exclusively by the enforcement authorities stipulated in the Act No. 82/2005 Coll.

The Act on cross-border cooperation in the posting of employees to perform work (Act No. 351/2015, in force since 2016) specifies new competences for the National Labour Inspectorate and labour inspectorates in cross-border cooperation with respective authorities in the EU/EEA Member States. The Act also amends Act No. 82/2005 Coll. on illegal work and illegal employment. For accepting services supplied by another

²¹ Based on the interviews with the representatives of the Ministry of Labour, Social Affairs and Family of the Slovak Republic and the National Labour Inspectorate, February 2021

²² European Platform for Undeclared Work, 2017, Member State Factsheets, Slovakia.

²³ Article 251a of the Criminal Code (Act No.300/2005 Coll.) specifies "unlawful employment" of third-country nationals whose stay in the territory of Slovakia is in conflict with the law (illegal immigrants) as a criminal act that may be punished with a prison sentence of up to 3 years.

employer through an illegally employed person(s), an employer is penalised equally as in the case of illegally employing own employees. This also applies in cases with the cross-board element in the chain involving several entities. Therefore, the cooperation with foreign enforcement authorities is inevitable.

An inevitable part of cooperation in addressing illegal employment is also information and data sharing. The labour inspectorates and Labour Offices have shared access to the Social Insurance Agency's electronic database and exploit this for their inspections.

The Social Insurance Agency controls compliance with provisions stipulated in the Act on social insurance (Act No. 461/2003 Coll.), including the registration and reporting obligations of employers and the self-employed within a specific time period. Employment is considered illegal upon failure to register an employee within seven days from the start date of work or registration until the date of the commencement of inspection (Act No. 82/2005 Coll.). The Social Insurance Agency shall not fine the detected violations if the entity has been penalised already by the labour inspectorate or labour office. For these reasons, the cooperation between the agencies is of high importance.

All the enforcement authorities have a mutual obligation to notify the Social Insurance Agency, the Central Labour Office and the respective labour office and/or labour inspectorate, tax office on illegal employment. In cases relating to third-country nationals, the control bodies have to also inform the Police Force. Control bodies also provide information to the respective trade licensing office about the repeated violation of illicit employment prohibition. The National Labour Inspectorate maintains a central publicly available list of natural persons and legal entities that have violated the ban on illegal employment over the past five years (see the sections below).²⁴

Based on the interviews with the Ministry of Labour, Social Affairs and Family and representatives of the National Labour Inspectorate, cooperation between the involved institutions is working effectively, and the competencies are well defined. Nevertheless, **the collaboration and its effectiveness might be enhanced by further digitalisation of the public administration.** The centralisation and linking of the administrative databases would also reduce the administrative burden to labour inspection procedures. Finally, from the perspective of trade unions, a decrease in undeclared work of third-country nationals could be supported by mandatory insurance contributions of the self-employed or persons who work on contracts established outside of the Labour Code. Such insurance contributions would cover cases of work-related accidents and diseases, and would increase the social protection of undeclared third-country migrants working in Slovakia, but also domestic workers working as bogus self-employed and in other forms of under-declared work with limited social security entitlements.

3.3 Limited appeal mechanism vs. multiple appeal procedures

At present, a labour inspection is a standardised and routine procedure carried out according to Act No. 125/2006 Coll. on Labour Inspection. When deficiencies are identified, a protocol from each inspection summarises these shortcomings. If a violation of the prohibition of illegal work or illegal employment has been identified, the protocol also contains the time when the breach was detected and, if proven, the duration of illegal work and illegal employment prior to the inspection date.

The quality of the protocol and an accurate description of the shortcomings is crucial for further action and possible proof of illegal employment. The initial inspection protocol does not end with preparing the document, but proceeds with a discussion/negotiation with the relevant employer if necessary. The employer can comment on the shortcomings identified, either verbally or in writing. Based on the employer's additional

²⁴ European Platform for Undeclared Work, 2017, Member State Factsheets, Slovakia.

information and comments, the inspector will consider changes to the protocol and close the protocol.

The protocol is a final document, which contains the evidence for the labour inspectorate's administrative proceedings to impose fines and sanctions in the case of illegal employment. When the first-level decision on the fines or sanctions is delivered to the employer, they have further opportunities to document the evidence and request modifications. If the single labour inspector does not agree with the modification, the appeal proceeds to the National Labour Inspectorate, which then decides in the second instance. The National Labour Inspectorate's decision can still be sued in a court.

This current mechanism opens up the possibility for the objection to the protocol. When the protocol is already closed, and the employer does not agree with it, the Slovak legislation currently does not provide a mechanism for amendment or revision to inspection findings in the protocol. In turn, employers request a possibility to intervene against the protocol resulting from a single inspection and propose a two-stage inspection discussed below.

3.4 Two-stage inspection for verification of inspection findings

Representatives of the employers' association request already for some time to introduce a two-stage inspection to assure a more objective verification of the initial assessment of the single labour inspectorate. This rationale is based on the doubts on the independence, objectivity, and impartiality of particular inspectors' decisions. The request is also supported by the allegedly different decisions of the regional labour inspectorates in two different regions by evaluating the same or similar workplace situations.

Currently, the inspector acting in capacity of an independent body undertakes the inspection and compiles the report/protocol. If the employer appeals against the report, the inspector draws up the amendment, but there is no opportunity for another assessment by another inspector/authority. Therefore, two-stage inspections would introduce an additional evaluation of violations: one by the assigned labour inspector and one by a higher-level labour inspectorate, before the protocol summarising any documented violations is final.

The Ministry of Labour, Social Affairs and Family, together with the National Labour Inspectorate representatives, are **considering the possibility of legally anchoring the introduction of this two-stage assessment**. However, the responsible authority for the "second-stage evaluator" is not yet clear. The question to decide is whether it should be an inspector at the same level as the first inspector or a chief inspector in the regional inspectorate or even somebody from the highest decision-making level, preferably in the National Labour Inspectorate.

On the other hand, the amendment of the regulation and imposing the duty of the "second-stage evaluator" on the chief inspector might create an inadequate overload of chief inspectors with thousands of cases. This could negatively affect the inspectorate's activities and prolonging the decision-making and remedy processes.

3.5 Main features and challenges of the publicly available registry of violators

The Act No. 82/2005 Coll. on illegal work and illegal employment in Slovakia stipulates the maintenance of a registry of violators. The list of natural and legal persons that violated the Act on illegal work and illegal employment is publicly available and regularly administered by the Labour Inspectorates and Central Office of Labour, Social Affairs and Family. As of 22 February 2021, the register contained 3 677 records of violators with residence in Slovakia.²⁵

²⁵ National Labour Inspectorate, List of natural and legal persons who have violated the prohibition of illegal employment; Available at: <https://www.ip.gov.sk/app/registerNZ/>

According to Act No. 126/2006 on Labour Inspection, the National Labour Inspectorate maintains publicly accessible records of natural persons and legal persons who have violated illegal employment prohibition in the preceding five years. Business name, place of business of natural person and registered office of the legal person, identification number, date of detection of violation of the prohibition of illegal employment, and date of entry into force of the decision on the imposition of a penalty is recorded (Section 6, letter (s)).

The bone of contention in the discussions is the phase/moment for identifying and sanctioning illegal work, when the illegal employer is entered into the registry and the five-year sanction period starts. Currently, an illegal employer is recorded in the registry on the date when the violation has been detected by the enforcement authority. So even though the violation started earlier, e.g. two years before the identification, the duration of the sanction period begins at the date of identifying the violation. Moreover, based on a court case ruling, entering into the registry before a final official decision on violating the prohibition of illegal work and illegal employment is unlawful.

In practice, the date of registering at the phase of illegal work identification is causing dissatisfaction of employers today. Either the illegal employers have been not aware that the sanction period of five-year is still valid and/or that they are excluded and not eligible for any state COVID-19 pandemic support and rescue aid for enterprises and employment maintenance.

The Ministry of Labour, Social Affairs and Family is considering to amend the rules of register entering and possibly loosen the connection of the sanctions in terms of the state support in current public health crisis.

3.6 Far-reaching consequences for illegal employers

Once the illegal employer is in the registry of the violators of the prohibition of the illegal employment, this has several implications that neither employers nor the legislators themselves are often aware of. Resent analysis by the Ministry of Labour, Social Affairs and Family of the regulations related to violation of the prohibition of illegal employment reveals 12 various acts and more than 20 sections that are interconnected to the illicit employment of or directly condition not being listed in the register of violators respectively.²⁶

Among the numerous regulations, the illegal employer is facing further multiple bans and exclusion from state support, participation in market competition, public procurement, apply for and draw support from the European Structural Funds, including state support to mitigate consequences of the COVID-19 pandemic.

At the same time, being publicly listed (and not listed) in the registry of illegal employers has both advantages and shortcomings for the community of employers. Some companies use the public registry to verify the reliability and credibility of future business partners. Other employers criticise such long-term public shaming function and call for making the registry confidential to the state authorities.

²⁶ Analysis of regulation interconnected to the violation of the prohibition of illegal employment; document provided to the CELSI team for the purpose of this report (not published). For the list of the regulations see annex 3.

4 Conclusions

4.1 The impact of the current legislative framework

The current legislation and control approaches to tackling undeclared work in complex chains supports some aspects in the control and prevention activities, but fails to address several key challenges identified in Sections 1-3 above. The government is changing the rules ad hoc, often based on pressures of particular interest groups, notably employers. While flexible responsiveness of the government to emerging issues is reasonable, there is currently a lack of strategic outlook and long-term planning regarding the control and prevention of UDW. In turn, ad hoc legislative changes may challenge the established powers of enforcement authorities, or only yield a limited improvement in addressing the persisting challenges in the area of UDW.

Importantly, the Slovak legislation does not currently acknowledge the term of undeclared work. Instead, regulations use the **concept of illegal work and illegal employment**, and these definitions inform the entire policy framework regulating the control and prevention of UDW. However, the **concept of illegal work** excludes a number of other forms of UDW, especially under-declared and mis-declared work within the legally specified contract options based on the Labour Code or in form of business services. Interview evidence and the authors' earlier research suggest a mismatch between the legislation focusing on illegal work and illegal employment, while most UDW occurs in form of under-declared work. UDW is often manifested in formal contracts where UDW occurs via the underreporting of wages, working time, or social security entitlements. Moreover, this mismatch has important implications for the exercise of labour inspection and control, which is strictly based on the legal regulation on illegal work. This is leaving the state authorities with competences in prevention and control without a possibility to control and prevent other forms of under-declared work.

In addition, a close link of the definition of illegal employment and illegal work with the **concept of 'dependent work' in the Labour Code** limits the competences of labour inspectorates to control and prevent UDW. Although this definition underwent legislative changes and the number of criteria defining dependent work was decreased, the current legal definition does not capture the variety of existing UDW forms. Based on current legislation, inspections target only the form of employment contract, but not 'under-declared work' (e.g. under-declared payment and working time which are widespread in Slovakia). They also do not address mis-declared work via non-standard forms of employment (e.g. platform work mostly in micro-work and personal and household services), or work performed according to other legal regulations than the Labour Code in cases that would qualify for 'dependent work' but are executed under more flexible conditions (bogus self-employment, authorship employment, etc.).

Moreover, the definition of dependent work and possibilities to prove it are not sufficient to prevent **bogus self-employment**. Even though some of the dependent work features are fulfilled, such employment could be still undeclared, under-declared or mis-declared. The prevention of bogus self-employment is currently hampered by a relatively high acceptance of this form of work both by employers and employees, without apparent awareness of the consequences for their social protection and health and safety entitlements at work.

Except for conceptual shortcomings, the applicable legislation provides **limited liability for illegal employment and illegal work in a chain of entities, with multiple subcontracting and various** contracts. The provisions addressing the employers' co-responsibility for illegal employment in a chain of several entities involved is only preventive. The legislation also does not provide effective possibilities for the enforcement authorities to detect the violation of the prohibition of illegal employment in the case of letterbox entities.

In a chain of entities with a **cross-border element, illegal employment controls are even more challenging**. The enforcement authorities face a mixture of different

national legislations among the EU Member States and in the third-countries. Current legislation does not prevent the misuse of the cross-border posting of the workers by an entity established purposely abroad to avoid strict regulations or enable its inspection.

Despite the trend towards stricter regulation on **TWA, new UDW practices in such contexts have emerged**. A worker can be temporary assigned by an agency that might be the same entity as the employer by whom the worker was assigned thanks to the entity's registration for multiple business activities. An employee can be temporarily assigned by an employer who has 'objective operational reasons' for posting workers to another subsidiary even without having formally registered operational premises.

Legislation on third-country nationals working in Slovakia has improved in recent years, and the number of detected illegal workers considerably increased. Simultaneously, the **pressure to make the process of employing foreigners** faster and more effective emerged in the pre-COVID-19 conditions when the Slovak labour market faced labour shortages. The granting of residence permit and related procedures takes approximately 3- 4 months, which is inflexible and inefficient for employers in urgent need to find workers. In result, employers increasingly hire third-country nationals via foreign-established agencies or chains of entities, without any capacity and competence to identify if the regulations on illegal employment are not violated. The challenge is how to shorten the formal registration process of third country nationals in Slovakia, while maintaining a precise verification process.

4.2 Incentives to refine the inspection controls

The collaboration of the three enforcement authorities eligible to control illegal work and illegal employment is well established. Nevertheless, the operation of several enforcement authorities leads to overlapping competences and lack of transparency in practice. **Centralisation of inspections under the labour inspectorates** can be expected to increase the effectiveness. On the other hand, it is proposed that the enforcement of sanctions and penalties needs transferring to another authority to release the inspectorates' capacity to concentrate exclusively on inspections.

The procedure of drafting and finalising the protocol on violation of the prohibition of illegal work or illegal employment provides several instances where the employer can provide additional documents or statement to the protocol. Once the protocol is closed and the employer still has objections, the Slovak regulation does not provide **a mechanism to consider the protocol invalid and no further appeal mechanisms** are set. Employers' associations call for an additional possibility for an employer to intervene.

Employers also call for introducing two-stage inspection to assure higher impartiality and objectivity in the labour inspectorates' evaluation. However, a second-stage evaluator would be challenging to be institutionalised due to the limited capacity of the labour inspectorates.

One of the sanction mechanisms in breaching the prohibition of illegal employment is the centralised and **public registry of violators**. Although employers also value the possibility of verifying business partners, the date when the illegal employer is entered into the register and the five-year sanction period starts is considered too long.

Being registered in the list of violators of the prohibition of illegal employment has a range of **consequences for employers**. Being listed among the illegal employers excludes the natural or legal entity from participating in public procurement processes or receiving state support in the current COVID-19 pandemic.

4.3 Additional challenges to be addressed

Based on previous external evaluation of uncovering UDW and violations of the valid legislative framework (National Labour Inspectorate (2019), the Slovak approach is considered prevalently punitive, focusing on restrictions. The preventive component is

less present. Representatives of the relevant enforcement authorities acknowledge the **role of prevention** and the need for strengthening prevention activities. In the last years, a campaign "Work Legally - Work Safely", including the provision of training activities, was implemented. Such campaigns are considered as an example of effective prevention activities supporting the legally anchored restrictive measures.

A further shortcoming is the **lack of a comprehensive strategy** on preventing and combatting UDW. A common strategy would bring together all the relevant ministries and assign specific tasks, respectively, objectives – targets, that require a holistic approach and joint activities. An informal working group on UDW is currently operating within the Ministry of Labour, Social Affairs and Family. Representatives from several ministries and enforcement authorities are already preparing opportunities for joint discussion of commonly identified issues in UDW.

To conclude, the progress reached in the last decade regarding the regulation and practice of controlling and preventing UDW in Slovakia is perceived positively. The legislation was significantly improved and effective control mechanisms have been established. Nevertheless, this report indicates several remaining shortcomings and limitations in the current legislation relating to UDW. The responsible state agencies and enforcement authorities see opportunities for improvement and fine-tuning the current legislation in order to address UDW issues strategically and more effectively.

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Special Eurobarometer 284 (2007) Undeclared Work in the European Union

Special Eurobarometer 402 (2013) Undeclared work in the European Union

Special Eurobarometer 498 (2019) Undeclared work in the European Union

Strategy for safety and health protection at work in Slovakia Republic for the years 2021 to 2027 and programme of its implementation for the years 2021 – 2023; approved by the Slovak Government in December 2020; available at: <https://rokovania.gov.sk/RVL/Material/25566/1>. [Accessed 28. 02. 2021].

Annex 1 Undeclared work and controlling activities in figures

Table 1. Undeclared work based on Eurobarometers on UDW (2007, 2013, 2019)

| | 2007 | 2013 | 2019 | EU-28/2019 |
|---|------|------|------|------------|
| In the last 12 months, have you paid for any goods or services where you had a good reason to assume that they included undeclared work (e.g. because there was no invoice or VAT receipt)? | 15% | 17% | 12% | 11% |
| Apart from the regular employment, have you yourself carried out any undeclared paid activities in the last 12 month? | 6% | 5% | 3% | 3% |
| Sometimes employers prefer to pay all or part of the salary or the remuneration (for extra work, overtime hours, the amount above the legal minimum wage or bonuses) in cash and without declaring it to tax or social security authorities. Has your employer paid you any of your income in the last 12 months in this way? (envelop wages) | 7% | 7% | 4% | 3% |
| Do you personally know any people who work without declaring all or part of their income to tax or social security authorities? | 39% | 36% | 30% | 36% |

Source: Special Eurobarometer 284, Undeclared Work in the European Union, 2007; Special Eurobarometer 402, Undeclared work in the European Union, 2013; Special Eurobarometer 498 Undeclared work in the European Union, 2019

Table 2. Overview of the inspections of illegal employment by controlling authorities

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|--|--------|--------|--------|--------|--------|
| Inspections | 23 698 | 25 931 | 20 945 | 28 223 | 23 891 |
| Controlled entities | 20 687 | 23 416 | 18 411 | 24 877 | 21 478 |
| Controlled natural persons | 55 616 | 60 349 | 49 093 | 65 524 | 56 605 |
| Entities violating prohibition of illegal employment | 1 448 | 1 311 | 1 226 | 923 | 816 |
| Illegally employed persons | 2 686 | 2 924 | 3 384 | 2 751 | 1 791 |

Note: Note: the number of inspections is higher than the number of inspected entities due to repeated inspections in the same entity

Source: National Labour Inspectorate and Central Office of Labour, Social Affairs and the Family

Table 3. Percentage of the entities and persons employing(ed) illegally out of controlled entities, resp. persons (in %, 2015 - 2019)

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|--|------|------|------|------|------|
| Entities violating prohibition of illegal employment | 7,0 | 5,6 | 6,7 | 3,7 | 3,8 |
| Illegally employed persons | 4,8 | 4,8 | 6,9 | 4,2 | 3,2 |

Note: Note: the number of inspections is higher than the number of inspected entities due to repeated inspections in the same entity

Source: National Labour Inspectorate and Central Office of Labour, Social Affairs and the Family

Table 4. Number of illegally employed foreigners (number, 2015 – 2019)

| | Number of illegally employed foreigners | | | Total |
|-------------|---|-------------------------|--|-------|
| | EU-nationals | Third-country nationals | Third-country nationals without residence permission | |
| 2015 | 58 | 40 | 6 | 104 |
| 2016 | 81 | 178 | 42 | 301 |
| 2017 | 95 | 822 | 288 | 1205 |
| 2018 | 24 | 932 | 238 | 1194 |
| 2019 | 68 | 522 | 7 | 597 |

Source: National Labour Inspectorate and Central Office of Labour, Social Affairs and the Family

Table 5. Evolvement of the temporary work agencies (number, 2015 – 2020)

| Year | Number of TWA with permission to perform the activities |
|------|---|
| 2015 | 478 |
| 2016 | 338 |
| 2017 | 395 |
| 2018 | 385 |
| 2019 | 462 |
| 2020 | 445 |

Source: Central Office of Labour, Social Affairs and Family; on-demand data

Table 6. Number of valid residence permits for foreigners

| Year | 1-6 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 | 2010 |
|-------------------------|-------------|--------|--------|--------|--------|--------|--------|--------|--------|-------|-------|
| Third country nationals | 88 245 | 85 827 | 65 381 | 50 395 | 41 232 | 35 261 | 29 171 | 26 157 | 25 019 | 5 276 | 4 905 |

Source: Presidium of the Police Force Bureau of Border and Alien Police²⁷

Table 7. Temporary residences issued to third-country nationals for the purpose of employment in Slovakia

| Purpose of temporary residence | 1-6 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 |
|--------------------------------|-------------|--------|--------|-------|-------|-------|-------|
| Employment | 27 667 | 26 196 | 15 387 | 9 283 | 7 955 | 2 876 | 2 484 |

Source: Presidium of the Police Force Bureau of Border and Alien Police²⁸

Table 8. The total number of new temporary employees assigned to the user employer

| Year | Number of employees | Out of which were women |
|------|---------------------|-------------------------|
| 2015 | 77040 | 30726 |
| 2016 | 72061 | 22733 |
| 2017 | 56394 | 21541 |
| 2018 | 52155 | 19208 |
| 2019 | 47432 | 14230 |
| 2020 | n/a | n/a |

Source: Central Office of Labour, Social Affairs and Family; on-demand data

Table 9. Number of new temporary agency workers assigned to the user employer according in the most prevalent categories of SK ISCO-08

| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|------------------------|------|------|------|------|------|------|
| Administrative workers | 1039 | 1580 | 1343 | 1241 | 1085 | n/a |

²⁷ <https://www.minv.sk/?rok-2020-1>

²⁸ Ibid.

| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|--|--------|--------|--------|--------|--------|------|
| Workers in services and trade | 1,145 | 1,086 | 1,205 | 1,369 | 1,265 | n/a |
| Skilled workers and craftsmen | 5,211 | 3,850 | 3,179 | 2,974 | 3,421 | n/a |
| Operators and fitters of machinery and equipment | 40,556 | 37,560 | 35,833 | 32,479 | 27,542 | n/a |
| Auxiliary and unskilled workers | 28,384 | 27,418 | 14,032 | 13,025 | 13,651 | n/a |

Source: Central Office of Labour, Social Affairs and Family; on-demand data

Table 10. Number of new temporary agency workers (TAW) assigned to the user employer according in the most prevalent to the sectoral classification of economic activities

| | 2015 | | 2016 | | 2017 | | 2018 | | 2019 | |
|--|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|
| | TAW | F | TAW | F | TAW | F | TAW | F | TAW | F |
| Agriculture, forestry and fishing | 736 | 231 | 190 | 57 | 200 | 34 | 481 | 11 | 1122 | 654 |
| Industrial production | 64,318 | 25,746 | 52,410 | 14,282 | 44,118 | 16,465 | 39,437 | 13,701 | 32,150 | 7,047 |
| Construction | 755 | 96 | 455 | 32 | 702 | 31 | 544 | 1 | 832 | 3 |
| Wholesale and retail, repair of motor vehicles and motorcycles | 3 | 1 | 2,851 | 2,586 | 1,888 | 1,024 | 845 | 726 | 784 | 322 |
| Transport and storage | 5,295 | 1,818 | 3,847 | 983 | 3,138 | 821 | 5,245 | 2,086 | 4,602 | 1,932 |
| Accommodation and food services | 626 | 442 | 746 | 308 | 775 | 481 | 456 | 307 | 650 | 528 |
| Information and communication | 719 | 425 | 788 | 387 | 449 | 268 | 257 | 153 | 388 | 275 |
| Financial and insurance services | 105 | 57 | 2 | 1 | 137 | 124 | 116 | 101 | 132 | 115 |
| Professional, scientific and | | | 92 | 38 | 382 | 181 | 310 | 114 | 344 | 142 |

| | 2015 | | 2016 | | 2017 | | 2018 | | 2019 | |
|-------------------------------------|------|-----|------|-----|------|-----|------|-----|------|-----|
| | TAW | F | TAW | F | TAW | F | TAW | F | TAW | F |
| technical activities | | | | | | | | | | |
| Administrative and support services | 190 | 116 | 795 | 765 | 820 | 669 | 680 | 496 | 774 | 635 |

Note: DAZ = total number of new temporary agency workers; F = out of which are women

Source: Central Office of Labour, Social Affairs and Family; on-demand data

Annex 2 Overview of the relevant legislation

- Act no. 82/2005 Coll. on Illegal Work and Illegal Employment and on Amendments to Certain Acts, as amended by later regulations
- Act no. 125/2006 Coll. on Labour Inspection and on Amendments to Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on Amendments to Certain Acts, as amended by later regulations²⁹
- Act no. 5/2004 Coll. on Employment Services and on Amendments to Certain Acts, as amended by later regulations
- Act No. 311/2001 Coll. Labour code as amended by later regulations
- Act No. 124/2006 Coll. on occupational health and safety and on amendments and supplements to certain acts as amended by later regulations
- Act no. 404/2011 Coll. on the Stay of Aliens and as amended by later regulations
- Act 480/2002 Coll. on Asylum and as amended by later regulations
- Act no. 351/2015 Coll. on Cross-border Cooperation in the Posting of Employees to Perform Work in the Provision of Services and as amended by later regulations
- Directive 2009/52 / EC of the European Parliament and of the Council of 18 June 2009 laying down minimum standards for sanctions and measures against employers of illegally staying third-country nationals
- Act No.461/2003 Coll. on Social Insurance

²⁹ English versions available at: <https://www.employment.gov.sk/files/slovensky/uvod/legislativa/pracovna-legislativa/labour-inspection-act-full-wording-january-2012.pdf>

Annex 3 Regulations related to violation of the prohibition of illegal employment

Act No. 343/2015 Coll. on Public Procurement and on Amendments to Certain Acts

- § 32 par. 1 letter g)

Only a person who fulfils the following conditions for participation as regards personal status may participate in the procurement:

g) has not committed in the previous three years from the announcement or demonstrable commencement of public procurement of a serious breach of obligations in the field of environmental protection, social law or labour law under special regulations, 47) for which he has been legally imposed a sanction,

Act. No. 5/2004 Coll. on employment services and on the amendment of certain laws

- § 21b par. 3 letter a)

The condition for issuing a certificate of the possibility of filling a vacancy, which contains consent to its filling, is that

- a) an employer who is interested in hiring a third-country national, a user employer, if it is a third-country national pursuant to § 21 par. 4 second sentence, or the host entity has not violated the prohibition of illegal employment for a period of five years prior to the application for temporary residence for employment or before the application for renewal of temporary residence for employment; § 70 par. 8 shall apply mutatis mutandis to ascertaining and proving the fulfilment of this condition.

- § 22 par. 2 letter a)

The condition for granting a work permit is that

(a) an employer wishing to recruit a third-country national,

1. did not infringe the prohibition on illegal employment during the five years prior to the application for an employment permit; § 70 para. 8a shall apply mutatis mutandis to ascertaining and proving the fulfilment of this condition.

- § 23 par. 2 letter b)

The office that granted the work permit shall withdraw the work permit if

(b) it is a work permit for the purpose of seasonal employment, even if

1. the third-country national is a jointly assessed natural person of a household who is entitled to assistance in material need, or
2. the employer with whom the third-country national is employed has ceased to meet the condition for the grant of an employment permit referred to in § 22 para. 3 letter a), violated the prohibition of illegal employment or was imposed a fine referred to in § 22 par. 3 letter b); this shall not apply if the Office extends the third-country national's work permit for the purpose of seasonal employment with another employer.

- § 29 par. 3 letter d)

A person may carry out the activity of a temporary employment agency if he is authorized to do so. The condition for obtaining authorization to carry out the activities of a temporary employment agency is that the person

(b) has not infringed the prohibition of illegal employment for a period of three years prior to the application for authorization to carry out the activities of a temporary employment agency,

- § 31 par. 2 letter c)

The headquarters may, on the basis of a proposal pursuant to paragraph 3, suspend the temporary employment agency until the deficiencies have been remedied or revoke the authorization to operate the temporary employment agency. The headquarters shall revoke the authorization to carry out the activities of a temporary employment agency if the temporary employment agency

(c) has infringed the prohibition on illegal employment.

Act No. 528/2008 Coll. on assistance and support from European Community funds

- § 12 par. 5: Assistance and support will not be provided for a period of five years to an applicant who has violated the prohibition of illegal employment of an alien under a special regulation.
- § 24 par. 3: The Beneficiary is obliged to return the contribution or its part provided in the period of 12 months preceding the violation of the prohibition of illegal employment of an alien according to a special regulation.41b)

Act No. 292/2014 Coll. on the contribution provided by the European Structural and Investment Funds and on the amendment of certain laws

- § 33 par. 3: A beneficiary who has violated the prohibition of illegal employment of third-country nationals according to a special regulation 75) is obliged to return the allowance granted in the period of 12 months preceding the date of entry into force of the decision imposing a fine for violating the prohibition of illegal employment within 30 days from the acquisition the validity of this Decision.

Act No. 185/2009 Coll. on incentives for research and development and on the amendment of Act no. 595/2003 Coll. on income tax, as amended

- § 6 par. 3 letter g): The applicant for incentives shall attach to the application for incentives g) a confirmation that the applicant for incentives has not violated the prohibition of illegal work and illegal employment pursuant to a special regulation, 30)

Act No. 583/2008 Coll. on the prevention of crime and other anti-social activities and on the amendment of certain laws

- § 11 par. 4 letter f): The subsidy may not be provided to an applicant who f) has violated the prohibition of illegal work and illegal employment according to a special regulation.3)
- § 12 par. 6 letter e):

Attached to the application is

(e) a solemn declaration by the applicant attesting the authenticity of the signature that:

1. Has settled financial relations with the state budget,
2. Is not in liquidation or enforcement proceedings; this does not apply to a higher territorial unit and municipality,
3. Has not violated the prohibition of illegal work and illegal employment; in the case of an applicant authorized to conduct business, confirmation from the labour inspectorate.

Act No. 423/2015 Coll. on the statutory audit and on the amendment of Act no. 431/2002 Coll. on accounting as amended

- § 3 par. 9 letter d): A natural person has a good reputation for the purposes of this Act, if d) has not violated the prohibition of illegal employment under a special regulation in the previous five years, 11) as evidenced by a solemn declaration,
- § 5 par. 3 letter d): A legal person or an audit company has a good reputation for the purposes of this Act, if d) has not violated the prohibition of illegal employment under a special regulation in the previous five years, 11) as evidenced by a solemn declaration,

Act No. 336/2015 Coll. on the support of the least developed districts and on the amendment of certain laws

- § 8 par. 3 letter d): The regional contribution may be granted to the beneficiary if d) has not violated the prohibition of illegal employment in the previous three years, 3a)

Act No. 539/2008 Coll. on the promotion of regional development

- § 17 par. 3 letter d): An applicant for a subsidy pursuant to § 13 and 14 cannot be a person who d) has violated the prohibition of illegal employment,

Act No. 226/2011 Coll. on the provision of subsidies for the processing of spatial planning documentation of municipalities

- Point 8 of the Annex

Appendices to the application for the provision of subsidies for the processing of spatial planning documentation of municipalities pursuant to § 5 par. 2 of the Act:

8. Confirmation of the relevant labour inspectorate according to § 7 par. 3 letter n) of Act no. 125/2006 Coll. on Labour Inspection and on Amendments to Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on Amendments to Certain Acts, not older than three months, or a declaration by the municipality that it has not violated the prohibition of illegal work and illegal employment pursuant to Act no. 82/2005 Coll. on Illegal Work and Illegal Employment and on Amendments to Certain Acts, as amended by Act no. 125/2006 Coll.

Act No. 523/2004 Coll. on Budgetary Rules of Public Administration and on Amendments to Certain Acts

- § 8a par. 4 letter d): The subsidy pursuant to paragraph 1 may be granted to the applicant if d) has not violated the prohibition of illegal employment pursuant to a special regulation in the previous three years,
- § 8a par. 5 letter d): The applicant proves the fulfilment of conditions under paragraph 4 d) by confirmation of the relevant labour inspectorate 14c) not older than three months that he has not violated the prohibition of illegal employment according to a special regulation, 14b) if the condition under paragraph 4 letter d).
- § 8 par. 11: Legal persons and natural persons - entrepreneurs who have violated the prohibition of illegal employment of third-country nationals according to a special regulation, 14ca) are obliged to return the subsidy under paragraph 1 provided in the period of 12 months preceding the date of entry into force of the decision, within 30 days from the date of entry into force of this Decision.

Act No. 112/2018 Coll. on the social economy and social enterprises and on the amendment of certain laws

- § 6 par. 1 letter k): The status of a registered social enterprise can be granted to an applicant who k) has not violated the prohibition of illegal employment in

the period of three years prior to the application for the status of a registered social enterprise,

- § 8 par. 2 letter c): The Ministry of Labour will revoke the status of a registered social enterprise if the registered social enterprise c) has violated the prohibition of illegal employment.

Annex 4 List of interviews carried out for the purpose of this paper

| No | Stakeholder/organisation | Number of persons | Form and date of the interview |
|-----------|---|--------------------------|--|
| 1 | Representatives of the Ministry of Labour, Social Affairs and Family of the Slovak Republic, Department of Health and Safety Protection in Work | 2 | Online/15.02.2021 |
| 2 | Representatives of the National Labour Inspectorate; members of the European Platform for Undeclared Work | 5 | Online/16.02.2021 |
| 3 | Representative of the Association of Industry Federations; peak-level employers' association in Slovakia | 1 | Online/1.03.2021 |
| 4 | Representative of the Confederation of Trade Unions in Slovakia, Section on Health and Safety at the Workplace | 1 | Informal telephone conversation/28.02.2021 |

