

European Platform tackling undeclared work

Thematic review workshop: Undeclared work in the collaborative economy

Online workshop, 19 and 20 May 2021

The workshop explored the current nature of undeclared work in the collaborative economy, typically undertaken by platform workers (online and on-location), and the tools and approaches that can be used to tackle this problem in the EU Member States. The event was hosted online and brought together 37 participants from 17 countries, representing labour and social security inspectorates, ministries of labour as well as European level social partners, and representatives from Eurofound, the ILO, the European Commission and the European Labour Authority.

Participants reflected on (1) the state of play and the main challenges in defining undeclared work in the collaborative economy (across the EU and in participating Member States) and (2) identified tools and approaches to tackle undeclared work in the collaborative economy at national level.

State of knowledge on undeclared work in the collaborative economy



- ▶ There are currently no harmonised definitions of ‘the collaborative economy’, ‘platform work’¹ and ‘digital labour platforms’ at EU level. The absence of a coherent approach in definitions and concepts as the basis for data collection is a key challenge for measuring undeclared work in the collaborative economy.
- ▶ The 2018 Flash Eurobarometer 467 survey finds that 6% of Europeans have offered services via collaborative platforms, with 3% having offered them once or a few times, 2% offering them occasionally and only 1% offering them regularly. Only 10% of these (0.6% of all Europeans) state that providing services via collaborative platforms represent their main source of income.²
- ▶ The 2019 Flash Eurobarometer survey finds that 11% of Europeans who are working undeclared have done so via collaborative platforms for at least part of their activities. The main factors that prompt undeclared work in the collaborative economy are (1) a lack of clarity about the employment status, (2) a lack of clarity around how to provide the service legally, (3) the complexities of the tax system, and (4) the perception that it is complicated or difficult to provide the service legally.³ Furthermore, the increasing flexibility of labour markets, the highly competitive price pressures on labour costs, the often precarious, nature of platform work, and the complex and non-transparent subcontracting chains involved, can also prompt undeclared work.

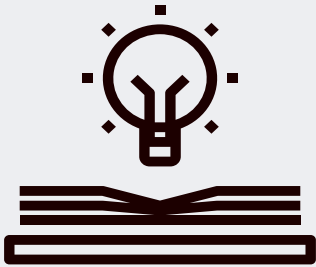
¹ For the purposes of this report, the concept of ‘platform work’ is used, which is understood as services that are carried out by an individual for a user in exchange of a payment, whereby the matching between the demand and the supply of labour is facilitated by an online application or technologies that are owned by an undertaking. The online application is owned and operated by a business, the digital labour platform, and is often using algorithms and (semi-)automated decision-making.

² Williams, C.C. (2020), *Tackling undeclared work in the collaborative economy and related to new forms of work*. Input paper for the plenary meeting of the European Platform tackling undeclared work. Brussels: European Platform tackling undeclared work.

³ Williams, C.C and Puts, E. (2019), *2019 Annual Platform Survey: tackling undeclared work in the collaborative economy and bogus self-employment, data exchange and data protection, and cross-border sanctions*. Brussels: European Platform tackling undeclared work.



State of knowledge on undeclared work in the collaborative economy continued



- ▶ Often there is a significant difference of the status and working conditions between workers employed directly by a platform and those with a business contract.
- ▶ One of the most prevalent forms of undeclared work in the collaborative economy is bogus self-employment. There are numerous (ongoing) court cases on employment status in several Member States, especially in the sectors of food/parcel delivery and personal transportation. Other forms of undeclared work, such as the illegal employment of persons who have no right to reside/work in the country; fraudulent temporary agency work facilitated by digital labour platforms; unreported income from small-scale services; unregistered and unpaid working hours and incorrect classification of waiting or stand-by time; and undeclared work carried out by genuine self-employed platform workers, are also common.
- ▶ Participants identify the delivery sector (food and parcels) and the passenger transportation/taxi services and, though to a lesser extent, the cleaning services, personal care services and accommodation provision as the sectors/types of platform work that are currently most affected by undeclared work in the collaborative economy.

Deterrence measures and recent legislative developments for tackling undeclared work in the collaborative economy



- ▶ Member States have undertaken various legislative initiatives to tackle undeclared work in the collaborative economy and established diverse practices of regulation for platform workers. For instance, Belgium established a specific tax regime for occasional non-professional services provided through registered platforms. In Spain, a recent modification of the Workers' Statute (the 'Riders' Act') was introduced in May 2021 to guarantee labour rights to delivery drivers operating through digital platforms. The law establishes a legal presumption of employment status. Furthermore, legislation in Portugal stipulates that written contracts must be concluded in the personal transportation sector. In some Member States, the lack of relevant legislation and lack of clear definitions of the employment status of people working through platforms remains a challenge.
- ▶ Data sharing is an important instrument to tackle undeclared work. However, data protection requirements and the rules governing the roles of different institutions can hinder the detection of undeclared work. In some countries there are certain procedures in place to overcome these barriers. For example, the labour inspectorate in Slovakia can access social insurance databases if there is a legitimate and justified reason. In Spain, in cases of an ongoing investigation of a company, the labour inspectorate can collect data from different regional authorities to have a complete overview of the situation. In this regard, close collaboration among the relevant authorities (both horizontally and vertically), is essential.



Deterrence measures and recent legislative developments for tackling undeclared work in the collaborative economy continued



- ▶ The data sharing between the tax authorities and the labour and social security enforcement agencies is of particular relevance with a view to detect undeclared work in the collaborative economy as the former are entrusted with the administration of income tax data from companies and individuals, which is often the only possible entry point for identifying platform businesses and individuals engaged in platform work. Data protection rules are often seen as obstacles preventing the sharing of data between the authorities and enforcement agencies.
- ▶ The collaborative economy has both national and cross-border dimensions. Platforms being registered in another country, including in third countries outside the EU, are a considerable challenge that limits access to data and hinders detection of undeclared work.
- ▶ Enforcement agencies also face significant challenges in the detection and identification of persons who are working through platforms. They engage directly online and through automated subscriptions and opening of accounts. The commencement and duration of the work as well as the work allocation and organisation is not reported to the authorities by employers as is often the case in traditional employment. Platform workers often working in unconventional workplaces such as at one's home, in public spaces and streets or in private households of the users which can come with risks. Labour and social protection enforcement agencies may not be mandated to inspect people or conduct risk assessments when not being physically at the formal place of work or when they are moving or present in public places. Entering private homes for inspection purposes may not be possible without the presence of police and/or without a judicial warrant.
- ▶ A common deterrence measure for tackling undeclared work in the collaborative economy is conducting targeted inspections. For example, in Belgium, labour inspectorates can receive orders from judicial authorities, tax authorities, or upon complaints by the public, and proceed to inspect workplaces in cases of suspected undeclared work. In Sweden, an ongoing pilot project focuses on inspecting new ways of organising work in digital platforms including self-employment companies, with regular inspections taking place through the project. Furthermore, in Spain, the labour inspectorate is carrying out a multiannual inspection campaign targeting e-commerce and collaborative platforms specifically.
- ▶ To increase the efficiency of labour inspections in the collaborative economy it is crucial to establish sanctions related to undeclared work and fraudulent activity. In Italy and Spain, following the reclassification of bogus self-employed in the delivery and personal transportation sector, large fines and penalties accompanying the collection of unpaid social security contributions are considered to be an effective deterrence measures.
- ▶ Enhancing the capacity of labour inspectorates and the capabilities of inspectors can also help tackle the issue. In Spain, for instance, an internal guide outlining specific investigation procedures in the collaborative economy has been produced. Similarly, in Belgium, a common methodology for control is being used by the different social inspectorates.

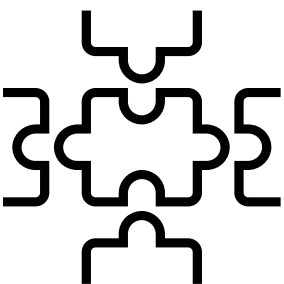


National tools for tackling undeclared work in the collaborative economy using preventative approaches



- ▶ At present, there are limited preventative initiatives across Member States. To launch such measures, further policy action and development of legislation is needed and clarification required regarding the status/classification of people working through platforms.
- ▶ Information campaigns can be useful instruments to tackle undeclared work. In some countries there are preventative campaigns targeting self-employed workers in general, however they do not address platform workers in particular. For example, in Ireland, an awareness-raising campaign aims to inform self-employed workers about the long-term effects of not paying social security contributions (such as lack of pension).
- ▶ Different types of cooperation between digital platforms and enforcement authorities can also have preventative effects. For instance, in Estonia, regulatory changes have been introduced to allow people working through platforms to pay their taxes in a user-friendly way. A cooperation agreement between the tax authority and the platforms allow workers to voluntarily report their earnings via the platforms in order for the tax authority to then pre-fill their annual income tax.
- ▶ The social partners play an essential role in the prevention of undeclared work. In recent years, platform workers have started organising in unions and collective agreements are also in place in certain sectors and Member States. Social partner consultations are also taking place at EU level to explore options for a harmonised legislative approach.

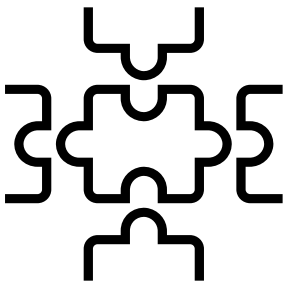
Recommendations to address undeclared work in the collaborative economy



- ▶ Data sharing between labour inspectorates, tax authorities and other relevant stakeholders, including the platforms themselves, is an important instrument that can help tackle undeclared work. This however requires harmonised definitions and concepts. To overcome barriers related to data protection and enable cooperation, political support is paramount. Access to data is also essential to expand knowledge on the nature and extent of undeclared work in the collaborative economy, developing a wider evidence base to target interventions and policy measures. Online platform work requires specific attention in this regard.
- ▶ One of the main forms of undeclared work in the collaborative economy is bogus self-employment. Mutual learning on how different jurisdictions interpret the concept of worker in the platform economy may contribute to a more coherent approach across Member States and reduce cases of bogus self-employment. A possible alternative and indirect policy solution to tackle bogus self-employment could be to reduce the gap in social protection costs between dependent solo self-employed and employees and/or to increase the labour and social protection of dependent solo self-employed. Another avenue discussed was the introduction of a presumption of employment status.



Recommendations to address undeclared work in the collaborative economy continued



- ▶ Mutual learning on inspection procedures and national multi-agency cooperation (especially with the tax authorities), with a view to capacity-building in tackling undeclared work in the collaborative economy, is an area that could merit further exploration.
- ▶ Development of multi-agency approaches to identify, detect and inspect risk and working conditions in unconventional workplaces (for instance, in private homes), with active involvement of public prosecutors and the police if necessary, seems of critical importance in tackling undeclared work in the collaborative economy.
- ▶ Information provision, awareness-raising, and other preventative measures such as the simplification of compliance mechanisms (including those aimed at tackling undeclared work of genuine self-employed) can also be effective tools to tackle undeclared work in the collaborative economy. Close collaboration with the social partners to develop such measures is crucial.

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

