



European Platform Undeclared Work

The Practices of Enforcement Bodies in Detecting and Preventing Bogus Self-Employment

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Executive Summary

This report examines the practices of enforcement bodies in EU Member States in relation to the prevention and detection of bogus self-employment (BSE).

The OECD has described BSE or 'false' self-employment as consisting of 'people whose conditions of employment are similar to those of employees, who have no employees themselves, and who declare themselves (or are declared) as self-employed simply to reduce tax liabilities, or employers' responsibilities'. While many legal systems involve a 'binary divide' between employment and self-employment, a grey area exists between the two that includes 'disguised employment relationships', in which 'an employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee'; and 'dependent self-employment', in which 'workers perform service for a business under a contract different from a contract of employment but depend on one or a small number of clients for the incomes and receive direct guidelines regarding how the work is done'.

The study combined the review of the available academic and policy literature on BSE with case study research in eight EU countries - Greece, Ireland, Italy, Latvia, the Netherlands, Romania, Spain and the UK - which included targeted literature reviews and interviews with national stakeholders. The findings were supplemented by interviews with representatives of European social partner organisations and other stakeholders signalling their interest to contribute to the study.

1 Measurement, extent and causes of BSE

While most countries collect and publish information on the number of self-employed individuals, estimates of the scale and extent of BSE are rare, with few of the case study governments attempting to do so. However, in some cases NGOs and social partners had attempted to make estimates in their particular areas of interest.

Key barriers to estimating the scale of BSE include its low visibility, the limited sharing of information between authorities, and the lack of a common definition of self-employment. However, the Netherlands has attempted to estimate the scale of BSE, and produced findings at the sectoral level.

The drivers of BSE are commonly recognised as including high levels of cash payment, the opportunity to avoid tax and social security payments, inadequate monitoring and inspection, a culture of acceptance amongst some workers and limited alternative employment opportunities. In the case study countries additional factors reported included the rise of the 'gig' economy (which was also leading to BSE being identified outside the more 'traditional' manual sectors), unintended consequences of efforts to promote entrepreneurship, the use of extensive sub-contracting chains and a lack of clarity over the legal distinction between employment and self-employment.

As suggested above, BSE is traditionally found in labour intensive, manual sectors. The case study countries reflected this, with the most commonly reported sectors being construction and transportation. However, business services was also reported by half of the case study countries as an area where BSE is prevalent, and along with ICT showed how the phenomenon is spreading outside the more traditional areas.

2 Legislative frameworks

Legislative measures relevant to BSE are found across the fields of labour law, taxation and social security, although amongst the case study countries legislation rarely related specifically to BSE. Typically legal frameworks relate to the assumption of a single employer and a single employee, although an absence of clear definitions can lead to ambiguities between direct employment and genuine self-employment.

Some of the case study countries had reformed their tax and social security regulations to reduce incentives for BSE. For example, in Romania, changes to the tax system requiring all self-employed workers to pay social contributions were intended

to reduce the fiscal incentive to employ workers on a BSE basis.

3 Enforcement bodies and their capacity

The main enforcement bodies involved in detecting and preventing BSE in the case study countries are those with responsibility for labour law, taxation and social security. However, BSE tends to be addressed as part of each body's general enforcement activities, rather than being the specific responsibility of a single authority. This means that data on the scale and nature of resources specifically directed towards addressing BSE are not readily available.

In the majority of the case study countries, the overall resources provided to enforcement bodies in recent years had been reduced, although it is not possible to determine the impact of this on activities specifically related to BSE. However, in some countries, for example Latvia and the Netherlands, capacity is due to be strengthened specifically in relation to BSE and undeclared work more broadly. Certain countries (such as the UK) have also sought to develop more efficient tools and institutional responses for tackling BSE.

Enforcement bodies often cooperate with each other in addressing undeclared work, including in relation to sharing information and, in some cases, joint inspection activity. However, little evidence was found of cooperation between authorities in the specific context of BSE, although in the Netherlands, for example, closer cooperation and joint working between agencies was reported to have improved the prevention and detection of BSE.

Finally, performance measures relating specifically to BSE also appear to be rare amongst the case study countries, with some noting that BSE had not been treated as a priority by the relevant enforcement bodies.

4 Deterrence and incentive measures

Each of the case study countries were found to use a combination of deterrence and incentive measures in addressing undeclared work and BSE, with:

- Deterrence measures being defined as increases to the costs of non-compliance through increased sanctions, and/or raising the perceived or actual likelihood of detection. Deterrence-oriented activities include proactive and reactive inspections (the former targeted on 'high risk' sectors and the latter from complaints submitted through telephone/on-line reporting mechanisms); and
- Incentive measures being intended to encourage voluntary cooperation and compliance, focusing on awareness-raising and persuasion rather than detection and punishment, and which can be both preventative and curative. Examples identified with a specific focus on BSE included awareness raising campaigns in the Netherlands and the provision of tools, advice and guidance in the UK; and tax and social insurance reforms in Romania and Latvia.

In general, the emphasis amongst the case study countries is towards deterrence rather than incentive measures, although this varies. For example in Italy enforcement bodies are inclined towards detection and sanctioning, whereas the Netherlands has made efforts in relation to both deterrence and incentivisation.

Less direct approaches were also identified, which seek to alter the behaviour of the wider population indirectly by encouraging them to view BSE and undeclared work as illegitimate practices. The UK government's strategy, for example, includes the use of information, awareness-raising and nudge techniques.

In addition to telephone and on-line approaches to raising complaints about BSE, some countries (for example the UK and the Netherlands) provide workers and businesses with on-line tools to check their employment status and their compliance with regulations. The enforcement bodies were found to use a range of criteria when

attempting to distinguish between employment and self-employment, commonly including:

- The number of clients for which the worker provides services;
- Whether the client provides tools and machines; and
- Whether the worker is permitted to determine how their work should be organised.

Barriers to efforts to address BSE amongst the case study countries commonly included the limited capacity of enforcement bodies, although the low priority afforded to BSE, worker complicity and difficulties obtaining proof of BSE were also mentioned.

5 Cross-border activities

Cross-border cooperation by enforcement bodies is common in efforts to address undeclared work, with activities including staff exchange programmes, special projects to enhance cooperation in enforcement activities, and several enforcement bodies developing memoranda of understanding to formalise their cooperation.

However, there is little evidence of cooperation amongst the case study countries focussed specifically on addressing BSE. The widespread cooperation that already exists might offer the opportunity, and provide a foundation for, the development of cross-border activities directed specifically at tackling BSE.

6 Perspectives of the European social partners and stakeholders

The majority of the social partners interviewed considered that BSE is a concern for both businesses and workers across the EU. They identified different issues and had different (and sometime contradictory) perspectives of the role that they could play.

There was agreement, however, on the main sectors affected (construction being the most common example), and that BSE had spread from traditional 'blue collar' work into new industries, in some cases linked to the use of on-line platforms and the rise of the gig economy.

Actions taken by the social partners included efforts to increase their members' awareness of BSE, undertaking research, advising trade unions and government on BSE and organising events, and consultation with stakeholders across the EU. Cooperation between national administrations was seen as key to formulating responses to BSE, and continued campaign activity focusing on transferable best practice.

7 Recommendations

The report provides a series of recommendations for governments and enforcement bodies, and for the Platform members and representatives. These included:

Recommendations for governments and enforcement bodies

- There is a general lack of accurate information about the extent of BSE, which must be addressed if enforcement activities are to be more effective. Where necessary, the remit of enforcement bodies should be expanded so as to enable them to take action in respect of BSE.
- Detailed analyses of existing datasets, and in-depth studies of specific sectors, to provide up-to-date in-depth analysis of the prevalence and character of BSE and enable more effectively targeted enforcement activities should be considered.
- To prevent BSE, legislative frameworks should provide a clear distinction between self-employment, employment and dependent self-employment. Drawing on these distinctions, enforcement bodies should develop tools that enable inspectors (and others) to determine workers' employment status.

- Employers and workers need to be able to report any concerns they might have. Reporting mechanisms should be widely advertised in a variety of languages and be simple to access.
- Governments should review national legislation relating to employment rights, tax and social insurance to determine whether it creates incentives for BSE, and if so examine ways of reducing any such incentives.
- It will be key that enforcement bodies are sufficiently resourced to undertake their activities, and for them to cooperate with each other, share information and coordinate their activities.
- Consideration should be given to ways in which cross border cooperation on BSE might be strengthened, and governments should consider the potential for social partner organisations to support the activities of enforcement bodies.

Recommendations for the Platform

- The Platform can facilitate the sharing of information about approaches in different EU Member States to distinguishing between different forms of employment.
- Platform members should consider what types of information should be shared by enforcement bodies in different countries, and what other forms of cross-border cooperation are required in order to help prevent BSE.
- Finally, little information is available to evaluate the impact of the various approaches to tackling BSE. The Platform should consider commissioning detailed studies to fill this information gap and provide a basis for 'evidence based' policy solutions going forward.

1 Introduction

This report examines the practices of enforcement bodies in EU Member States in relation to the prevention and detection of bogus self-employment (BSE). The OECD (2000: 156) has described BSE or 'false' self-employment as consisting of 'people whose conditions of employment are similar to those of employees, who have no employees themselves, and who declare themselves (or are declared) as self-employed simply to reduce tax liabilities, or employers' responsibilities'. Many legal systems involve a 'binary divide' between employment and self-employment (Countouris and Freedland 2013). Between these two conditions, however, is a grey area that includes 'disguised employment relationships', in which 'an employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee'; and 'dependent self-employment', in which 'workers perform service for a business under a contract different from a contract of employment but depend on one or a small number of clients for the incomes and receive direct guidelines regarding how the work is done' (ILO 2016: 36).

Recent developments in the labour market, including the growth of the gig economy, have encouraged wider recognition of the phenomenon of BSE and the vulnerability of workers who are ostensibly self-employed yet not truly independent (Harvey and Behling 2008, Jorens 2008, Thörnquist 2013). BSE also implies a loss of potential tax revenue. Reductions in tax revenue and tighter constraints on spending since the 2008 financial crisis have further encouraged governments to address false self-employment (Behling and Harvey 2015).

As discussed in this report, enforcement bodies have an important role to play in tackling BSE. They are generally responsible for detecting the presence of BSE and applying sanctions. They are also at the forefront of efforts by governments to encourage awareness of BSE and the risks that BSE presents to workers and businesses.

The content of the report is informed by the academic and policy literatures relating to BSE, and also detailed case studies of eight EU member countries. The case studies were commissioned for the report and covered Greece, Ireland, Italy, Latvia, the Netherlands, Romania, Spain and the UK¹. The case studies include literature reviews and interviews with relevant national stakeholders, and provides coverage of countries where BSE is most prevalent and the inclusion of countries that have taken particularly notable actions to combat BSE. The countries also provide examples from different regions of the EU. The case study findings were supplemented by interviews with representatives of European social partner organisations.

The report is structured as follows:

- Section 2 discusses the measurement, extent and causes of BSE and the sectors in which BSE is most commonly found.
- Section 3 examines national legislative frameworks relating to BSE, highlighting the extent of specific legal provisions and potential gaps and loopholes.
- Section 4 provides information on the enforcement bodies in the eight case study countries, and their respective capacities and responsibilities in relation to BSE.
- Section 5 focuses on the methods and tools used by enforcement bodies when attempting to detect and prevent BSE.

¹ The following organisations were consulted at national level: Greece Labour Inspectorate (SEPE); Ireland NESC, ICTU, WRC; Italy Ispettorato nazionale del lavoro; Latvia State Revenue Service; Netherlands Inspectorate SZW; Romania Labour Inspection, Confederația Națională Sindicală Cartel ALFA; the UK DWP (Fraud and Error Service), GLA.

- Section 6 examines cross-border activities by enforcement bodies and the factors that might enable or frustrate attempts to improve cross-border cooperation.
- Section 7 reports the views of the representatives of the European social partner organisations.
- Section 8 provides our conclusions and recommendations.

2 The measurement, extent and causes of BSE

Key questions addressed in this section include:

Are attempts made to estimate the extent of BSE? If so, which organisations are responsible, how are the estimates made and what are the results? If not, why not?

What are the most important drivers of the BSE phenomenon?

In which sectors of the economy is the BSE phenomenon most common?

Key findings:

Among the case study countries, few government bodies attempt to estimate the extent of BSE. The Netherlands is the most developed country in this respect, although in some countries NGOs/social partners have also made estimates of the extent of BSE.

The key barriers to estimating the scale of BSE include its low visibility, the inability of authorities to share information, and the lack of a clear common definition of self-employment.

Important drivers of BSE include firms' desire to evade legal obligations in relation to tax and employment rights, tax and social security reforms aimed at promoting 'entrepreneurship', complex subcontracting chains, the rise of the gig economy and legal ambiguities relating to the distinction between employment and self-employment.

In most of the case study countries BSE is present in the construction and transportation and distribution sectors.

However BSE is spreading from manual to non-manual occupations. ICT is playing an important role in this regard.

Most governments collect information about the number of self-employed persons and publish the information in the form of official statistics. However, workers who are employed on a BSE basis have low visibility and their status as BSE workers is generally determined on a case-by-case basis. Their number is therefore difficult to estimate with any precision (Wickham and Bobek, 2016).

Estimates of economically dependent self-employed workers (DSEWs) have been produced by Eurofound (2013) and the OECD (2014), drawing on data collected via the European Working Conditions Survey (EWCS). The OECD Employment Outlook (2014: 146) defines DSEWs as:

'own-account self-employed – i.e. independent contractors without employees who either autonomously produce and sell goods or engage with their clients in contracts for services, regulated by commercial law – whose conditions of work are nonetheless similar to those of employees, in the sense that they work mainly or exclusively for a specific client-firm [...], with limited autonomy and often closely integrated into its organisational structure. Even though their degree of subordination is similar to that of an employee, they are usually not protected by employment protection rules because these rules do not apply to commercial contracts. In addition, they typically have the same fiscal and social protection regimes as for the other self-employed, which is typically less burdensome for their employers'.

Eurofound's (2013) analysis of the 2010 wave of the EWCS identified 'economically dependent workers' as those self-employed persons without employees who did not comply with at least two out of three specific criteria: firstly, having more than one client; secondly, being able to hire employees if necessary; and, thirdly, being able to make the most important decisions about how to run the business. On this basis, economically dependent workers were estimated to amount to 0.9 per cent of all

workers in the EU27. The percentage was estimated at between 1 and 2 per cent in Bulgaria, the Czech Republic, Greece, Ireland, Latvia, Hungary, Portugal, Romania Slovakia and Finland, 2 per cent in Italy and 2.5 per cent in Cyprus. Using the same methodology, the OECD's (2014) analysis of the same data reports that the proportion of total dependent employment accounted for by dependent self-employed workers is between 1 and 3 per cent in the Czech Republic Ireland, Lithuania, Slovakia, Portugal and Italy, above 3 per cent in Poland and a little over 5 per cent in Greece (OECD 2014: 153).

Eurofound's (2016a) more recent analysis of the sixth EWCS conducted in 2015, has reported that 13 per cent of all self-employed workers met none or only one of the three criteria used in the 2013 study and, therefore, could not be considered independent (amounting to 1 per cent of all workers in the EU28). Eurofound notes that there is a 'substantial grey zone', in that 30 per cent of those reporting as self-employed and without employees met two of the three criteria (Eurofound 2016a: 24)

Efforts by national authorities to improve on these estimates have been limited. Among the case study countries, the authorities in Greece, Latvia and Romania have not attempted to calculate the size of the BSE workforce and none of the countries collects information that would allow a reliable estimate of the number of cases where BSE involves only one contractor. However, despite the inherent difficulties in calculating the number of BSE workers, some countries have produced estimates. In 2013, the Ministry of Economic Affairs in the Netherlands commissioned a research project, which examined four sectors of the economy. The percentage of self-employed workers working on a BSE basis was estimated to be 3-5 per cent in construction, 9-15 per cent in health care, 14 per cent in (passenger and freight) transportation and 5-10 per cent in business consulting/ICT (Zandvliet et.al. 2013). The estimates were derived from a telephone survey of freelancers working in the various sectors, interviews with representatives of organisations representing self-employed individuals, experts and relevant public authorities. The research allocated scores across 5 indicators to estimate the percentage of self-employed workers who were BSE in each sector. The indicators were:

- A limited number of hours in a work week (less than 15 hours), while self-employment is the main activity;
- A limited number of clients on an annual basis (three or less);
- Solely working for an intermediary organization;
- The working hours were determined by the client;
- The freelancer was restricted in the planning and execution of the final contract.

The accuracy of the figures has, however, been disputed. The authors suggest that migrant workers with spurious contracts are under-represented in the study (Ministry of Finance 2015) while Bouwend Nederland, a body which represents the construction industry, has claimed that 98 per cent of migrant self-employed workers are in BSE (Jorens 2010: 12). Other studies have used different definitions of BSE, resulting in different estimates. For example, the ZZP Barometer used the definition: 'being fired and rehired as self-employed or freelancer'. In this definition one-in-thirteen of the 1,172 self-employed professionals who responded to the survey considered themselves to be in BSE, leading the researchers to estimate that a total of 70,000 freelancers are affected².

In Italy, the most reliable sources of data regarding BSE are the annual reports on the outcomes of labour and social security inspections, drafted by the Directorate-General for Inspection Activities of the Ministry of Labour (from January 2017: National Labour

² <http://www.zzp servicedesk.nl/693/1-zzp-ers-noemt-zichzelf-schijnzelfstandige.htm>

Inspectorate). The 2016 annual report³ indicates that labour inspections aimed at detecting fraudulent flexible or non-standard contracts led to the identification and reclassification of 9,439 BSE cases in 2015. The report includes inspection statistics broken down by economic sectors. In 2015 the sectors that were most affected by the detection of BSE and reclassification of contracts were health care and social assistance (2,156 cases), construction (1,272), rentals, travel agencies and business support services (1,120).

There are also examples of NGOs producing information about the extent of BSE. In the UK, research from Citizens Advice (2015) has drawn on evidence from surveys conducted with self-employed workers, data from the Citizens Advice's management information system (which contains information relating to approximately 2.5 million clients each year) and interviews with self-employed workers. Citizens Advice has estimated that 460,000 workers in the UK were fraudulently self-employed in 2015, corresponding to a tax loss of £314 million (Citizens Advice, 2015).

Trade unions have also conducted research on issues relating to BSE. For example, research by the UK construction workers' union UCATT has focused on BSE in construction. UCATT's report *The Evasion Economy* (Harvey and Behling, 2008) drew on the Labour Force Survey, construction data produced by the Department for Business Enterprise and Regulatory Reform and union/industry data (see also Behling and Harvey 2015, Seely 2016). A further example is the collaboration between the Irish Congress for Trade Unions (ICTU, 2015) and the Think-tank for Social Action and Change (TASC), who have investigated BSE in Ireland, again focusing on construction (see Wickham and Bobek 2016). Finally, a recent EU-funded research project⁴ in Spain, which involved trade unions and women's associations, collected information that suggested that approximately 25,000 of all economically dependent self-employed workers were involved in BSE. This estimate was derived from a survey of 641 self-employed workers.

Although the low visibility of BSE workers is the main barrier to measurement, the case studies mentioned a number of other difficulties, including:

- BSE being a relatively low priority for the authorities (Greece, Latvia);
- Limited capacity and resources on the part of enforcement agencies and social partners (Latvia);
- BSE falling outside of the remit of the labour inspectorate (Romania).

In some cases, attempts to develop better estimates of the number of BSE workers have been hampered by constraints on the ability of authorities to share information. The Italian case study, for example, emphasised the desirability of enabling data sharing by the Social Security Agency and the Tax Agency. In the UK, by contrast, Her Majesty's Revenue and Customs (HMRC)⁵ (which collects detailed information about the tax status and payments of workers and businesses) does share information where appropriate. The barriers to creating estimates in the UK were said to be practical constraints relating to the size and flexibility of the economy.

The government of the Netherlands has commissioned several research projects on the topic of self-employment. One conclusion resulting from these projects has been that the lack of a single clear definition of self-employment creates an additional

³ Document available in Italian: <http://www.lavoro.gov.it/priorita/Documents/Rapporto-annuale-dell-attivita-di-vigilanza-in-materia-di-lavoro-e-legislazione-sociale-2015.pdf>

⁴ EC funded project TRADE – Red Europea de apoyo al Auto-Empleo y al Trabajo autónomo económicamente dependiente (European Support Network to Self-Employment and Economically dependent self-employment) Ref. nº VS/2012/0434. The research project has been carried out in Spain, France, Italy and Bulgaria by several self-employed, trade union and women associations: UPTA; ISF-IRES; CITUB; EFBWW; ANMEYA.

⁵ HMRC is the UK's tax, payments and customs authority, and we have a vital purpose

difficulty when trying to estimate the number of self-employed and BSE workers. The government hopes that recent changes to the legislation (Deregulation Review Labour Relations, DBA), will make it easier to distinguish between the genuine self-employed workers in BSE.

Other new initiatives might prompt a greater interest in measuring the extent of BSE. The UK government has commissioned an independent review of Modern Employment Practices, which will take place during 2017 and has come about partly because of concerns relating to non-standard forms of work, increases in self-employment and the expansion of the gig economy.

2.1 Drivers of BSE

Various drivers of BSE have been reported in the academic and policy literatures, including a high incidence of cash payments, difficulties in distinguishing between self-employment and subordinate employment, inadequate monitoring and inspection powers, work with low visibility (for example telework), cross-national mobility of labour, lack of alternative employment opportunities, and difficulties in securing workers' help in detecting fraudulent use and unclear definitions (Večerník 2011, Cashin 2013: 4, Eurofound 2016b: 20, Wagner and Bernstein 2016: 196). Thörnquist's (2015) study of the road-haulage industry in Sweden has shown how forwarding and transport companies have engaged cheap labour from Eastern Europe, resulting in downward pressure on prices and profits, which has in turn led hauliers to substitute nominally self-employed drivers (from Eastern Europe and outside the EU) for directly-employed drivers.

The country case study reports mentioned some of these factors and also highlighted others:

- A desire by firms to evade legal obligations in relation to tax and employment rights is a common cause of BSE and was mentioned in all of the case studies. By contracting with nominally self-employed workers, firms are able to avoid making social security payments and can avoid a variety of potential costs stemming from employment law (such as sick leave, holiday pay and maternity/paternity leave). Training and equipment costs may also be avoided.
- The rise of the 'gig' economy was identified as an important driver in Greece, Ireland and the UK.
- The reports for Latvia, Spain and the UK mentioned tax or social security reforms directed at promoting 'entrepreneurialism' as potential drivers of BSE. According to a report prepared by the Latvian Ministry of Welfare in 2016, BSE in Latvia has increased since the introduction in 2010 of a 'micro-enterprise tax law', which was intended to encourage start-ups and micro enterprises by providing a more favourable tax regime for micro-enterprises than for larger enterprises. It is believed that some employers dismissed workers, who then registered as micro-enterprise tax payers (Ministry of Welfare 2016: 3), but continued to work for their former employer. In Spain, efforts to encourage 'entrepreneurship' have included reduced social security contributions for the first months of the activity. This appears to have led to a growth in self-employment, but it is believed that BSE has also been encouraged (Serrano García, 2016).
- As emphasised in the Italy and Ireland case studies, complex sub-contracting chains can encourage the growth of BSE. Particularly widespread in the construction sector, extensive sub-contracting can result in workers not knowing which organisation they are ultimately providing work for. This problem can be compounded by the recruitment and labour supply role played by labour intermediaries. Recent figures for Ireland suggest that as many as 200,000 workers are engaged via intermediaries (Maneeley McCann, 2014)

- Uncertainty concerning the legal distinction between employment and self-employment can also encourage BSE. Uncertainty can stem from ambiguities in the law or a lack of awareness on the part of firms and workers.

2.2 Sectors in which BSE is most common

Previous studies have noted that BSE is most prevalent in labour intensive industries such as transport, construction and cleaning (Jorens 2008, Thörnquist 2013). The research with the case study countries supported this, with transportation, construction and business services being the most commonly identified sectors where BSE has been identified. Labour intermediaries and elaborate subcontracting chains are common in these industries and contribute to BSE as they serve to hide workers' employment status (Pedersini and Coletto 2010, Thörnquist 2013).

ICT has created new means of disguising employment relationships and facilitated the spread of BSE to non-manual occupations. Examples provided by the ILO (2013: 18) include undeclared software developers working at home, call centres that operate in private households and parking lots where workers respond to supervisors and have defined hours of work, yet are not regarded as employees.

The sectors in which BSE was most commonly found in the case study countries are listed in Table 1. Some sectors were cited as problematic in some countries, but not others. Agriculture was identified as an important sector in Greece, with large numbers of seasonal workers (often migrants) working without contracts. The case study for Italy highlighted the presence of BSE in call-centres.

BSE is particularly widespread in the construction sector (Jorens 2008). The UK construction union UCATT has estimated that over half of those working in construction are involved in BSE, a figure they attribute in part to the misuse of the Construction Industry Scheme (CIS) by employers and payroll companies (UCATT, Allain et al. 2013). Investigations by the Guardian and UCATT have found that specialist payroll companies have advised firms to use self-employed subcontractors in order to avoid paying tax contributions (see Elliot 2012).

Table 1. Sectors where BSE is prevalent

Sector	Member States
Construction	Greece, Italy, Ireland, Latvia, Netherlands, Spain, UK
Transportation and distribution	Greece, Ireland, Latvia, Netherlands, Spain, UK
Business services (e.g. accounting, business consulting, clerical work)	Latvia, Netherlands, Romania, UK
Health care	Latvia, Netherlands, Romania
ICT	Latvia, Netherlands, Romania
Cleaning	Latvia, UK
Hotels and Restaurants	Greece, Spain
Security	Latvia, Romania
Tourism	Greece, Spain
Agency workers	UK
Agriculture	Greece
Call centres	Italy
Domestic workers	Greece
Retail	Spain
Sewing	Latvia
Telecommunications	Latvia

3 Legislative frameworks relating to BSE

Key questions addressed in this section include:

Across which policy areas do legislative measures to tackle BSE exist? Are there specific legal provisions that are aimed at preventing BSE? What are they?

Are there specific legislative provisions or loopholes that could potentially encourage BSE? Do the rights of employees and self-employed workers differ? In what respects?

Key findings:

Legislative measures relevant to BSE are found across the fields of labour law, taxation and social security. However, laws rarely relate specifically to BSE.

Many countries have legal criteria for distinguishing employment from self-employment, although ambiguity sometimes remains.

Some countries have reformed their tax or social security regulations so as to reduce incentives for BSE. There is evidence that this has been successful in Romania.

This section provides a brief overview of national legislative frameworks and their scope (summarised in Table 2). Measures to tackle BSE exist across the fields of labour law, tax legislation and social security, although the emphasis differs between countries.

Typically, national legal frameworks relating to the employment relationship have been based on the assumption that there is a single employer and single employee. However, BSE exists in the 'grey area' between direct employment and genuine self-employment (Thörnquist 2015). Jorens (2009: 15) notes that some countries provide a statutory definition of both direct and self-employment, while others only provide a definition of the former. In recent years, however, a number of EU Member States (for example, the Czech Republic and Germany) have introduced legislation to more clearly delineate dependent work and the distinction between dependent and self-employed workers.

Table 2: Elements of the legal framework in the case study countries

Elements of legal framework	Countries
Definition of self-employment/legal criteria for distinguishing between employment and self-employment	Greece, Latvia, Romania, Spain, UK (no legal definition but guidance about the criteria to use to determine whether an individual is self-employed)
Model agreements for self-employed workers and clients	Netherlands
Extension of social insurance to dependent workers	Greece, Spain
Presumption of subordinate employment after a given period of time	Greece, Italy
Extension of labour law to dependent workers	Italy
Recent use of tax/social insurance laws to discourage BSE	Greece, Italy, Latvia, Netherlands, Romania, UK

Some EU Member States have also taken steps to extend protections to dependent self-employed workers. In Germany, *arbeitnehmerähnliche Personen* (employee-like

persons) cannot claim unfair dismissal, but do have the same entitlements as employees in relation to access to labour courts, collective bargaining, annual leave and protection against discrimination (ILO 2016: 37). In Spain, dependent self-employed workers have some legal protection in relation to annual leave, collective bargaining and unjustified dismissal.

3.1 The Netherlands

In the Netherlands, self-employed workers are not covered by labour law and have received little protection under social security laws.

The Netherlands has recently reformed its tax legislation in an attempt to reduce the extent of BSE. Prior to the reform, which was initially introduced in May 2016, persons wishing to work as a self-employed person without personnel (own account) needed only to possess a 'declaration of employment relationship' (VAR), which was a statement of self-employed status provided by the Tax Authority. However, concerns that the VAR encouraged BSE led to the introduction of a new Deregulation Labour Relations Assessment Law (*Wet Deregulerend Beoordelen Arbeidsrelaties*, DBA), which is intended to help prevent BSE. The law provides example 'model agreements' between clients and freelancers. If adhered to by the client and contractor, the model agreement ensures that the client does not have to pay social security contributions and tax payments for the worker. The law has made both clients and contractors jointly responsible for the working relationship they have with each other. Before a contract is signed, the contractor and the client must determine together whether the relationship is based on employment or self-employment. Where doubt exists, freelancers and their clients can use a model agreement. Self-employment is regarded as genuine if the client has no authority over the self-employed person and cannot instruct them about how to execute assignments. The law has, however, been unpopular with user companies, who are concerned that they will be liable to pay income tax if they cannot comply with the new rules. In November 2016, the introduction of the new law was postponed. The rules will not be enforced by the Tax Authority until 1 January 2018.

Another important legal measure in the Netherlands is the Action Combating Spurious Labour Contracts (*Wet Aanpak Schijnconstructies*, WAS), which was introduced in July 2015. This legislation is intended to combat bogus labour contracts that seek to avoid minimum legal standards in respect of wages and other payments. Under the law every link in a chain of contracting labour, lending or dispatching work is now legally responsible for the payment of wages, taxes and social security, at the rates established by legislation and collective agreements. The Inspectorate SZW of the Ministry of Social Affairs, together with the social partners in the temporary agency sector, have important roles in relation to the implementation of the law (DG Internal Policies 2016: 153).

3.2 Greece

In Greece, 'self-employed' persons comprise the 'independent self-employed' (or 'liberal professions'), 'freelancers' and 'farmers', who, until recently, were insured by different social insurance funds. Registration in the social insurance scheme is compulsory for the 'independent self-employed' (or 'liberal professions') after the acquisition of the professional license. Whereas, for the 'self-employed farmers', 'freelancers' and the 'dependent self-employed', registration in the social insurance scheme is required only when they begin to work. The dependent self-employed are expected to make full social insurance contributions and are taxed as traders/entrepreneurs rather than as 'employees', which means they have a higher financial burden.

There are no specific legal provisions aimed at preventing BSE in Greece. However, the Greek government has implemented reforms aimed at improving the regulation of

dependent self-employment. The most important recent reforms have been Laws No. 3144/2003, 3846/2010 and 4387/2016.

Law 3144/2003 extended social insurance to categories of worker who could be considered to be in a subordinate employment relationship. Article 17 of Law 3144/2003 obliges the OAEE (the social insurance fund for the self-employed) to insure people employed under fixed-works contracts in public sector bodies, local authorities and certain research and technological institutions. The list of job situations specifically mentioned by the Law includes contractors and subcontractors for building and engineering works, (provided that they are not insured under TSMED, the insurance fund for engineers); home workers paid on a piecework basis; assisting family members (employers' spouses or close relatives, provided that they are not insured under another scheme); sales representatives/insurance brokers (provided that they serve one company only and are employed in selling its products in person); apprentices; taxi drivers who do not own a vehicle or part of one; and certain artistic and sporting occupations.

A further law introduced in 2010 (Law 3846/2010) states, among other things, that in the event of an agreement for services between an employer and a worker for a fixed or indeterminate time, especially in cases of piecework payment, tele-working and home working, the agreement is understood to conceal subordinate employment if the work is carried out for the same employer for nine consecutive months. Law 3846/2010 has shifted the burden of proof in suspected cases of BSE from workers to clients/employers.

In 2011 Greece introduced, on a voluntary basis, 'employment coupons' (Εργόσημο), which enable workers who are occasionally employed as dependent workers (for example, as household assistants) to make social security contributions, which amount of 25 per cent of the workers' payment (paid by the employer). A similar scheme covers occasional agricultural workers, who give 10 per cent of gross pay to the OGA (the social insurance fund for agricultural workers).

Social protections for employees are superior to those received by the self-employed in terms of the level of benefits and pension entitlements. This situation, however, is expected to change as a result of 2017 legislation that will integrate all social insurance funds into a single Unified Social Insurance Agency (EFKA). Employees and the self-employed will be covered by common rules for contribution requirements (a single rate of 20 per cent) and benefits. If a dependent self-employed worker has no more than two clients per year, social insurance contributions will be paid as if they were an 'employee' (i.e. one-third by the 'self-employed' person and two-thirds by the employer).

3.3 Ireland

In Ireland, a worker who is economically dependent, self-employed, a sole trader, or freelance has no protection under employment rights legislation (Dobbins 2009). There is, however, no definition of direct employment or self-employment in Irish employment law. Moreover, Irish legal authorities have emphasised that there is no offence in law relating to an incorrect determination by an employer of the status of an individual and that case law is limited (Irish Times 2015). Decisions concerning employment status are reached 'by looking at what you do, how you do it and the terms and conditions under you were engaged' (Citizens Information 2016).

Where a workers' status is disputed, the Revenue, the Department of Social Protection and/or a court or tribunal will adjudicate on the basis of criteria set out in a Code of Practice (this is described in Section 4).

Ireland's Department of Finance occasionally commissions consultations on subjects relevant to tax compliance and BSE. In January 2016, the Tánaiste/Minister for DSP Joan Burton and Minister for Finance Michael Noonan launched a consultation on the

use of intermediaries and self-employment and their impact on tax and social insurance (see Revenue Annual Report, 2015).

The Irish trade union confederation (ICTU 2015: 12) has identified loopholes, particularly affecting the construction sector, which could potentially be addressed by Revenue. For example, contractors are currently able to use Revenue's computerised system to designate workers as being self-employed. ICTU's report (ibid) called for the following actions:

1. The criteria for a 'principal contractor' should be redefined by Revenue so as to require assets, a business address within the country and a taxation record.
2. Only one 'principal contractor' should be recognised per project. All others should be either a sub-contractor or an employee.
3. No worker without a taxation record should be automatically registered as self-employed unless they satisfy the criteria laid down in the Code of Practice (see Section 4).
4. As the bricklaying and plastering trades are particularly vulnerable to abuse, Revenue should run an anti-abuse pilot project targeting these trades.

3.4 Italy

In Italy, the phenomenon of BSE can be divided into three sub-categories on the basis of the type of contract involved: (i) nominally self-employed workers (VAT registered persons signing contracts for services) who are in fact in bogus self-employment; (ii) employees misclassified as 'quasi-subordinate' workers (iii) 'quasi subordinate' work providers in *associazione in partecipazione* ('joint venture partnership', where workers' contribution to the undertaking is providing their own work, with no power in the direction of the undertaking itself). The last of these sub-categories was recently abolished by a legislative reform.

Since 2000, Italy has introduced three labour law reforms intended to tackle BSE. The first is the so-called *Riforma Biagi* ('Biagi Reform')⁶ of 2003, which improved the regulation of quasi-subordinate contracts (or 'continuous and coordinated collaborations') by requiring that parties define and pursue specific programmes of work. The reform was intended to enable a clearer distinction to be made between genuine and false self-employment (or, more precisely, between genuine and false quasi-subordination). The new rules also provided a mechanism to enable contracts to be reclassified in the event of non-compliance. In addition, some protections (in the field of maternity, sickness and injury) were provided to freelancers.

The Biagi Reform also introduced a certification of labour contracts procedure (see the good practice fiche included in the Appendix). However, the Biagi Reform did not meet expectations as 'project work' contracts were often used fraudulently.

In 2012 a new reform (the *Fornero Reform*)⁷ introduced a stricter connection between the 'project' undertaken by the parties and the specific results that quasi-subordinate workers were expected to achieve. In addition, the *Fornero Reform* introduced a rebuttable presumption of subordinate employment for VAT registered self-employed workers where at least two out of three of specific indicators were present: 1) collaborations lasting longer than eight months in a two-year period; 2) mono-commitment situations (workers receiving more than 80 per cent of their annual income from a single client); and 3) continuous presence of the worker at the client's premises. Where two out of three conditions were present, labour inspectors would assume that any self-employment was fraudulent.

⁶ Legislative Decree no. 276/2003.

⁷ Law 28 no. 92/2012.

However, the regulations relating to 'project work' and the *Forneo Refom* rules relating to legal presumptions were recently abandoned. The so-called Jobs Act (Legislative Decree no. 81/2015), limited quasi-employment contracts, such as contracts of 'continuous and coordinated cooperation' for pursuing specific projects, which were regarded as having encouraged BSE. In addition, it has made direct employment contracts more attractive to employers by providing incentives for new recruitment of full-time employees and by simplifying the rules on dismissals⁸.

Employment law now applies fully to quasi-subordinate employment situations where workers are ostensibly independent but their work and working time are organized by the client. The rights that now apply to these fraudulent collaborations include protection against unlawful dismissal, health and safety protections and wage and social security protections. In order to facilitate transitions from BSE to legal employment contracts, since the start of 2016 employers have been able to conclude an employment contract with a previously falsely self-employed worker while, under certain conditions, avoiding sanctions related to administrative, social security and tax violations. Employers will have to make good any underpayment of wages.

Despite the legislative steps that have been taken to prevent BSE, there are provisions that may continue to encourage BSE. In Italy, Cooperative societies benefit from a special regulatory framework, which permits associates to be registered as self-employed workers or quasi-subordinate workers while working for the cooperative. However, this provision can lead to BSE and other abuses, particularly in the construction sector.

3.5 Latvia

In Latvia, BSE is addressed by the Law on Personal Income Tax, which stipulates the conditions under which an apparently self-employed person should be treated as an employee. According to amendments that came into force in December 2007, the law requires that a worker should be treated as an employee if at least one of six conditions pertain. The conditions are:

1. the individual is economically dependent upon the enterprise to whom he or she provides services;
2. the individual has not taken a financial risk and is not personally responsible for any profit or loss;
3. the individual is integrated into an enterprise to which he or she provides his or her services;
4. the individual's holidays and leave and the procedures for approving them are subject to the internal procedures of the enterprise or the work schedule of other natural persons employed by the enterprise;
5. the work has been done under the management or control of another person, and the individual does not have the possibility to use his or her own subcontractors in the fulfilment of his or her duties; or
6. the individual does not own fixed assets, materials or other assets, which are used in performing work (this criterion does not apply to personal automobiles or separate personal instruments, which are used for the implementation of work tasks).

If undeclared work is detected, the labour code contains a presumption concerning how the employee should be treated in the absence of a written work contract signed by the parties. In this circumstance 'it shall be considered that the employee has been

⁸ Legislative Decree no. 23/2015 established a less restrictive regime for work termination, and Legislative Decree no. 81/2015 established important restrictions to quasi-subordinate contracts.

employed for three months already and that a normal working time and minimum monthly salary has been specified for him or her'. Penalties are then levied against the employer on this basis.

Reforms have also been made in relation to tax regulations. The 'micro-enterprise tax law' is believed to have encouraged BSE, partly because there are no restrictions in relation to the duration of micro-enterprise status. At the end of 2011 a paragraph was added to the law on personal income tax, providing a list of circumstances in which employees or owners of a micro-enterprise should be treated as employees of 'client enterprise'. The conditions are:

1. employees or owners of a micro-enterprise are subjected to the work procedures and orders specified by the person for whom the work is performed;
2. the person for whom the work is performed determines the number of workers and the qualifications they should possess;
3. compensation for a micro-enterprise taxpayer is calculated depending on the hours worked;
4. the person in whose favour the work is performed provides most of the fixed assets, tools and materials.

When enforcement bodies have noticed misuse of micro-enterprise tax, the Ministry of Finance has tried to close loopholes with numerous amendments to the law (Stinka and Bonda 2014). At the end of 2016, the government proposed amendments to the micro-enterprise tax law, which included increasing the tax rate for micro-enterprises from 9 per cent to 15 per cent of turnover, restricting the sectors in which micro-enterprise tax payers are permitted to operate and introducing additional social contribution payments for employees of micro-enterprises. However, the proposed changes were widely opposed by employers' organisations and society in general because the micro-enterprise tax was widely perceived to be a successful tool for encouraging entrepreneurship. As a consequence, the amendments were cancelled, although the Ministry of Economics together with the Ministry of Finance and employers' organisations were given a mandate to draft alternative taxation policy for start-ups. The opportunity to become a micro-enterprise tax payer will remain until 30 June 2017. It is anticipated that new legislation will come into force in 2018 (Saeima of the Republic of Latvia 2016).

3.6 Romania

In Romania, it is mandatory for all new employment contracts to be in writing and be entered into an on-line register of employees (REVISAL) no later than one day before the employee commences his or her employment.

Self-employed workers in Romania are not covered by the Labour Code. If a worker is able to provide documents showing that he or she is working under a commercial contract, the law does not provide a basis for the labour inspectorate to take further actions.

The main legislative measure relating to BSE is the Romanian Fiscal Code. However, BSE is not specifically stipulated in the Code. The definition of dependent activity, as well as the criteria that serve to distinguish dependent from independent work activities, are stipulated in Fiscal Code Law no. 227/2015, updated in Oct 2016. Dependent activity is defined as 'any activity undertaken by a natural person in an employment relationship which generates income' (Article 7.1.). An independent activity is defined as 'any activity conducted by a natural person in order to obtain income' that meets at least four of the following criteria:

1. The individual is free to choose where and how to work and how to organise his or her work;
2. The individual has the freedom to have more than one client;

3. The inherent risks of the business are assumed by the individual;
4. Work is performed by using the individual's own assets (equipment);
5. Work is performed by the individual using intellectual and/ or physical skills, depending on the particularities of each activity;
6. The individual is a member of a professional body, that is responsible for representing, regulating and supervising the profession;
7. The individual has the freedom to directly conduct the activity, with employees or in collaboration with third parties, according to the law.

If, having undertaken an inspection, the National Fiscal Administration Agency (ANAF) of the Ministry of Public Finances finds that the minimum number of four criteria are not met, the taxes due are recalculated in accordance with the rules relating to dependent activity and penalties are applied. However, the requirement to meet only four of the seven criteria is insufficiently stringent to prevent BSE.

The government hopes that tax changes that were implemented in January 2016 will lead to a reduction in the financial incentive to employ workers on a BSE basis. Under the new regulations, all self-employed workers must pay social contributions and rules that had previously allowed self-employed persons to specify the amount of insurance coverage they wished to have (above the minimum level) no longer apply. All self-employed workers must pay social contributions equivalent to 10.5 per cent of their net income. Those wishing to be fully insured are required to contribute 26.3 per cent of their net income.

3.7 Spain

In Spain, the prohibition of BSE is dealt with through general provisions against social security fraud. Spanish legislation (Law 20/2007, Article 11)⁹ defines economically dependent self-employed workers as those who carry out a professional activity mainly for a person or a company and depend on this client for at least 75 per cent of their earned income. The law also stipulates criteria to which genuinely economically dependent self-employed workers should adhere. Specifically, they should not be responsible for other workers; should not subcontract their professional activities; should not perform exactly the same work as direct employees of the client; should have their own resources and tools; and should have total discretion as to how they organise their work. Moreover, Article 12.1 of the Law requires that a written contract between a self-employed economically dependent worker and a client be concluded and registered with the public employment service. Any self-employed worker who fails to meet the above criteria would be considered to be in BSE.

Self-employed workers must be registered for social security purposes. Economically dependent self-employed workers (TRADE) are covered by these regulations. Law 13/2012 on the fight against irregular employment and social security fraud¹⁰, and Organic Law 1/2015 specify the penalties for engaging in social security fraud, which would cover cases of BSE.

3.8 UK

The main types of employment status in the UK are employee, worker and self-employed. Unlike employees, 'workers' are not entitled to statutory sick pay, statutory redundancy pay, notice periods or protection against unfair dismissal. Several criteria are used to distinguish 'workers' from employees. For example, workers are likely to be working for the organisation on an irregular basis and the employer is not obliged to offer them work (nor is the worker obliged to accept it). In practice, however,

⁹ Ley 20/2007, de 11 de julio, del Estatuto del Trabajo Autónomo

¹⁰ Ley 13/2012, de 26 de diciembre, de lucha contra el empleo irregular y el fraude a la Seguridad Social.

distinguishing between self-employed persons and workers, and between workers and employees can be difficult.

Agencies have constructed contracts of self-employment which avoid obligations to deduct tax through PAYE ('pay as you earn' tax deduction through the payroll). Workers are then paid gross sums and can claim tax relief on their expenses (see RossMartin 2016). The Income Tax (Earnings and Pensions) Act 2003 (ITEPA, 2003) placed the responsibility for deducting income tax on the agency that has a relationship with the worker (the worker must be providing personal services).

Agency workers are generally treated as employees for tax purposes unless they are engaged to work via their own personal service companies. Moreover, rules were introduced in April 2000 to address tax shortfalls arising from worker payments through intermediaries. This legislation prescribes that where a relationship is similar to that of a traditional employment relationship the worker concerned should be categorised as 'employed for tax purposes', although this ruling does not have any implications for employment rights or associated worker benefits.

In 2014 the government introduced further legislation (the Finance Act, 2014) to tackle cases of BSE arising through agencies (onshore employment intermediaries including employment agencies, payroll or umbrella companies). The adjusted tax rules require agencies to operate PAYE and pay social insurance contributions for any subordinate workers. It was estimated that this legislation would lead to an additional 200,000 workers being treated as employees (Parliament.UK, 2016).

Since April 2015, agencies must also submit a quarterly electronic return if they have made payments to a worker without making PAYE deductions. The first returns were made to HM Revenue and Customs (HMRC) in July and November 2015. HMRC is using this information to tackle false self-employment through intermediaries (Parliament.UK, 2016).

With regard to employment rights, considerable media attention has been given to *Uber* and *Deliveroo* in relation to the legality of their respective technology-platform business models. In October 2016 Uber drivers won the right to be classed as workers rather than self-employed through the ruling of an Employment Tribunal. This ruling entitled Uber drivers to receive the National Minimum wage and paid holidays.

A further recent and important legal ruling in the UK concerns the plumbing firm Pimlico Plumbers which lost a legal battle over workers' rights in February 2017. The Court of Appeal agreed that one of Pimlico's self-employed/freelance workers was entitled to holiday and sick pay as well as other benefits, even though the court ruled he was also technically self-employed. The decision hinged on an understanding that self-employed contractors should be classed as workers who are entitled to certain employment rights.

4 Enforcement Bodies and their capacity

Key questions addressed in this section include:

What are the relevant Enforcement Bodies? What are their respective areas of competence, and which are most involved in investigations and inspections?

What is the capacity of the enforcement bodies (e.g. staffing and budgets), and have they been increasing/decreasing over time? How does the capacity of the enforcement body affect its strategies and practices?

To what extent, and how, do the Enforcement Bodies cooperate with each other? What factors promote or impede cooperation? Are there any shared resources or examples of joint initiatives?

Do Enforcement Bodies have performance measures for BSE, if so what are they?

Key findings:

The main enforcement bodies involved in detecting and preventing BSE are those that have responsibility for labour law, taxation and social security.

However, BSE tends to be addressed as part of their general enforcement activities, rather than being the responsibility of any single authority.

This means that data on the scale and nature of resources specifically directed towards BSE is not readily available.

In most of the case study countries, the overall resources provided to enforcement bodies have been reduced in recent years, although it is not possible to determine how these cuts have impacted on activities specifically related to BSE.

Some of the case study countries, for example Latvia and the Netherlands, are due to strengthen their capacity specifically in relation to BSE and undeclared work.

Enforcement bodies often cooperate with each other in addressing undeclared work, including in relation to sharing information and, in some cases, joint inspection activity.

However, the case studies found little evidence of cooperation between authorities specifically aimed at BSE.

Performance measures relating specifically to BSE also appear to be rare.

Competence and responsibilities in respect of BSE are distributed across different enforcement bodies. In general, they comprise the agencies responsible for labour inspection, tax inspection and social security. However, the number of bodies involved and the distribution of responsibilities varies between EU Member States, with some systems being more centralised than others. Table 3 below provides an overview of the principal enforcement bodies and their areas of responsibility, followed by more detail for each of the eight case study countries.

The bodies listed in Table 3 are mainly labour inspectorates and tax authorities (the UK does not have a labour inspectorate, but three enforcement bodies have responsibilities that bring them into contact with bogus self-employment issues). Each of the bodies listed has a role in identifying and addressing BSE. With the exception of Romania, where responsibility resides mainly with the tax authority, responsibility for tackling BSE is shared by the enforcement bodies in ways that reflect their particular remits (labour law, tax, social protection). Moreover, BSE tends to be addressed as part of the general enforcement activities of the various bodies, as opposed to being the responsibility of particular units with ring-fenced resources and operational targets.

Table 3. Principal enforcement bodies in the case study countries

Country	Enforcement body	Areas of responsibility
Greece	Labour Inspectorate (SEPE)	Labour law, occupational health and safety
	Institute for Social Insurance (IKA)	Social insurance
	General Secretariat for Public Revenue	Tax
Italy	National Labour Inspectorate	Labour law, occupational health and safety, social insurance
	Agenzia delle Entrate (Tax Agency)	Tax
Ireland	Workplace Relations Commission	Labour law
	Revenue	Tax
	Department of Social Protection	Social insurance
Latvia	State Labour Inspectorate	Labour law, occupational health and safety
	State Revenue Service	Tax
Netherlands	Inspectorate Social Affairs and Labour	Labour law, occupational health and safety, social insurance
	Tax Authority	Tax
Romania	Labour Inspectorate	Labour law, occupational health and safety
	National Fiscal Administration Agency (ANAF)	Tax and social insurance
Spain	LSSI	Labour law and social security
	Social Security Treasury	Social security
	Tax Agency	Tax
UK	HMRC	Minimum wages, tax
	Gangmasters and Labour Abuse Authority (GLAA) ¹¹	Labour law
	Employment Agency Standards Inspectorate	Employment agencies

4.1 Enforcement bodies and responsibilities

4.1.1 Greece

Labour law enforcement activities in Greece are the responsibility of the Labour Inspectorate (SEPE) and the Institute for Social Insurance (IKA), which is the social insurance fund that covers private sector employees and is supervised by the Ministry of Labour, Social Insurance and Social Solidarity.

SEPE's main task is to monitor the implementation of labour legislation in respect of terms and conditions of employment (such as working time limits and pay), the

¹¹ From April 2017

legality of employment, workers' social insurance coverage, and occupational health and safety. SEPE employs approximately 710 labour inspectors.

IKA is the largest Social Security Organisation in Greece. It covers over 5 million workers in dependent employment in Greece or working abroad for an employer who is based in Greece. It also covers workers who offer personal labour and who are not insured with any other main insurance agency. IKA carries out inspections in much the same way as SEPE and checks that social insurance legislation is being complied with. IKA's inspections are carried out by local branches as well as by the Special Insurance Control Services (EYPEA), which are administrative units specifically set up for fighting social security contribution evasion.

A reorganisation of responsibilities is planned for 2017. All functions relating to social security will be transferred to, and integrated with, the tax administration by the end of 2017 in order to improve tax collection. A single register of social security contributors is being created.

With regard to taxation policy, in 2017 Greece established an autonomous revenue agency, the General Secretariat for Public Revenues (GSPR), which is expected to improve the tax and social security payment culture and ensure greater compliance. The specific measures that have been implemented to this end include an increased use of electronic payment methods, a new plan to increase tax compliance, particularly in relation to VAT, identification of undeclared deposits, a voluntary disclosure program with appropriate sanctions, a request that other EU Member States provide data on asset ownership and acquisition by Greek citizens; and tax audits focused on priority cases. In the first instance, the priority tax audits will target professional occupations (e.g. doctors, dentists, veterinarians, lawyers, architects, engineers) and hospitality services in tourist areas.

4.1.2 Ireland

Enforcement activities in Ireland are split between four organisations: Revenue, which is part of the State Agency of the Department of Finance and is responsible for taxation; the Health and Safety Authority, which is responsible for occupational health and safety; the Department of Social Protection (DSP), which is responsible for social insurance; and the Workplace Relations Commission (WRC), which is responsible for employment rights. The implications of BSE for the tax base have led to BSE becoming a priority issue for the DSP and Revenue.

The WRC, which was created by the 2015 Workplace Relations Act, brought together enforcement activities that had previously been divided between a number of separate bodies (the Labour Court, the Employment Appeals Tribunal, the Equality Tribunal, the National Employment Rights Authority and the Labour Relations Commission).

With regard to BSE, the Scope Section of the Department of Social Protection advises on and investigates matters relating to social insurance. Any person or business may apply to have an employment situation investigated to verify that a worker is correctly classified for social insurance purposes. If an investigation is initiated, a social welfare inspector will interview workers and a representative of the employer and submit a report to a deciding officer in the Scope Section prior to a formal decision. Decisions have a bearing on payment for injuries, including decisions on whether the employment is insurable.

4.1.3 Italy

Enforcement activities in Italy have recently been centralised. Prior to the reform, which came into effect in January 2017, enforcement activities related to labour law and social security legislation were divided between the Ministry of Labour, INAIL (National Institute for Insurance against Accidents at Work) and INPS (National Institute for Social Security). They are now the responsibility of a single 'National Labour Inspectorate' (INL), which is under the supervision of the Ministry of Labour, but has organizational and spending autonomy.

The INL conducts all inspections relating to social security, employment rights and, in certain sectors, occupational safety. The inspectorate is also in charge of promoting measures and campaigns aimed at increasing awareness of, and compliance with, social and labour legislation.

A separate body, the 'Agenzia delle Entrate' (Tax Agency), is responsible for tackling tax abuses, with the support of a specialised police force, called the 'Guardia di Finanza' (Financial Police).

4.1.4 Latvia

The principal enforcement agencies in Latvia are the State Labour Inspectorate and the State Revenue Service. The former, which is an agency of the Ministry of Welfare, is responsible for the enforcement of labour law and occupational health and safety. The latter, which is an agency of the Ministry of Finance, is responsible for tax administration and prevention of tax evasion.

The number of employees and inspectors of the Latvian State Labour Inspectorate has not changed significantly since a staff reduction in 2009. In 2015, the State Labour inspectorate had 184 employees (130 of whom were inspectors), enabling the conduct of 10 000 – 11 000 inspections per year (approximately 10 per cent of enterprises). Approximately one-third of inspections are aimed at preventing undeclared work (State Labour Inspectorate 2015, 2016). The State Revenue Service employed approximately 4000 persons and managed 1243 tax audits, 10278 data credibility checks, 5582 thematic checks and 4152 inspections (State Revenue Service 2016).

4.1.5 The Netherlands

A new enforcement body, the Inspectorate Social Affairs and Labour (SZW), was established in the Netherlands on 1 January 2012. The Inspectorate SZW brought together the former Labour Inspectorate, the Work and Income Inspectorate and the Social and Intelligence Investigation Service of the Ministry of Social Affairs and Employment. The merger of these organisations has resulted in enforcement activities being organised in more effective and efficient ways.

The Inspectorate SZW is responsible for detecting and addressing contraventions of employment legislation, such as illegal work or inadequate working conditions. The inspectorate conducts risk analyses and is responsible for inspection, imposing penalties and preventive measures, such as awareness raising. In addition to the Inspectorate SZW, the Tax Authority undertakes investigations into suspected cases of tax fraud. This work increasingly has an international dimension.¹²

BSE and spurious labour contracts are topical issues in the Netherlands, and the enforcement bodies have therefore treated BSE as a priority issue.

4.1.6 Romania

Labour rights and occupational health and safety law in Romania are enforced by the Labour Inspectorate, which sits within the Ministry of Labour, Family, Social Protection and the Elderly. Enforcement in relation to tax and social contributions is the responsibility of the National Fiscal Administration Agency (ANAF) of the Ministry of Public Finances. As of 30 September 2016, the Labour Inspectorate employed 2,297 staff, of which 1,627 were labour inspectors. The labour inspectors are distributed across the central and 42 Territorial Labour Inspectorates operating in each county and in Bucharest.

In accordance with Law no. 227/2015, the ANAF has the authority to check if paid work is provided on an independent or dependent basis, applying seven criteria (see Section 4). If fewer than four of the seven criteria are not met, the taxes due are recalculated in accordance with the tax regulations pertaining to dependent workers.

¹² www.belastingdienst.nl (Dutch Tax and Customs Administration)

The Labour Inspectorate, however, has no authority under the Labour Code to deal with work performed under a commercial contract and hence cases of suspected bogus self-employment.

Prior to carrying out any economic activity, Romanian citizens wishing to become self-employed have to register at The National Register Trade Office. If, during an inspection, a potential bogus self-employed person provides documents attesting to his/her registration, labour inspectors have no competence to investigate further. The only area in which labour inspectors have competence in relation to self-employment is checking that self-employed persons have no employees working on an undeclared basis.

4.1.7 Spain

The key authorities with responsibilities for identifying and tackling BSE are the LSSI (*Inspección de trabajo y seguridad social*); the Social Security Treasury (*Tesorería General de la seguridad social*), responsible for collecting social security contributions; and the Tax Agency (*Agencia Tributaria*). The LSSI and the Social Security Treasury are part of the Ministry of Employment and Social Security (MESS) and are national bodies. The former is responsible for investigating if workers are correctly registered within the social security system. The latter is responsible for collecting social security contributions. The detection of BSE is mainly the responsibility of the LSSI. In 2015 the Inspectorate carried out 3,376 inspections specifically related to BSE and detected 1,574 cases.

The *Agencia Tributaria* is responsible for collecting taxes, although the Basque Region and Navarre which have their own tax agencies. The agency is managed by the Ministry of the Treasury and Public Administration.

4.1.8 UK

The institutions responsible for inspection and enforcement activity in the UK are as follows.

The Employment Agency Standards Inspectorate (EAS), which is located within the Department for Business, Energy and Industrial Strategy (BEIS), works with recruitment agencies, hirers and work-seekers to ensure compliance with employment rights, particularly for vulnerable agency workers, and to ensure that everyone who uses the services of a private recruitment agency to find work is treated fairly (BIS 2016).

Enforcement of minimum wages is the responsibility of the HMRC (the department responsible for tax), which also has Employer Compliance teams that are responsible for ensuring that employers comply with their obligations in respect of tax.

The enforcement of occupational safety and health laws (OSH) in Great Britain is mainly split between the Health and Safety Executive (HSE), which is a non-departmental public body sponsored by the Department of Work and Pensions (DWP), and local authorities in England, Scotland and Wales. In Northern Ireland, the enforcement split is between the Health and Safety Executive for Northern Ireland and local councils in Northern Ireland. In some sectors OSH laws are enforced by the sectoral regulator. Prior to the formation of the GLAA in April 2017 (see below), labour standards in the farming, food processing and shellfish gathering sectors were regulated by the Gangmasters Licensing Authority (GLA), a non-departmental public body sponsored by the Home Office. The GLA administered mandatory licences to labour providers (i.e. employment agencies and 'gangmasters'). In order to attain a GLA licence firms were required to undergo assessments against a range of GLA licensing standards covering health and safety, accommodation, pay, transport and training. The GLA also checked that labour providers were fit to hold a licence and that tax, social contributions and VAT regulations were respected. In April 2017 the remit of the GLA was expanded to cover exploitation across the entire UK economy. The organisation was rebranded as the Gangmasters and Labour Abuse Authority (GLAA)

and given responsibility for investigating all issues of non-compliance within the labour market, but only in England and Wales. The GLAA is able to investigate modern slavery beyond gangmaster situations (GLA, 2016).

Although the primary focus of the GLAA is extreme labour exploitation (including slavery), it also detects cases of BSE, particularly where migrant workers are involved. The GLAA can revoke the licences of any gangmasters found to be involved in BSE practices.

The remainder of this section reviews the capacity and capability of the enforcement bodies in the case study countries, and examples of cooperation and the coordination of activities between them.

4.2 Resources and capacities

Most of the enforcement bodies covered in the case studies have experienced budget and staffing cuts in recent years. In most cases these have been a result of wider cuts in public spending. As responsibilities for BSE are often not located with specific parts of the enforcement bodies, it is not possible to determine how the budget cuts have impacted on activities relating specifically to BSE, although it is likely that general reductions in capacity will have had a negative impact in this regard. However, certain countries, notably Latvia and the Netherlands, are due to strengthen capacity specifically in relation to BSE and undeclared work.

Across the Greek civil service, austerity and Economic Adjustment Programmes¹³ have led to severe wage cuts, curtailment of bonuses, increases in working time, job insecurity and low morale. The Greek government has implemented a recruitment freeze in the public sector and arguably there is an insufficient number of labour inspectors, given that there are more than 700,000 very small firms in Greece. Moreover, neither labour inspectors nor tax inspectors have received training related to the identification of BSE-related irregularities.

The number of employees of the Romanian Labour Inspectorate was reduced by half between 2009 and 2016. The budget of the Labour Inspectorate was increased by 12 per cent between 2014 and 2015, but was subsequently cut by 16 per cent in 2016.

The declining number of labour inspectors employed by Ireland's WRC represents a potential capacity barrier when investigating BSE. The National Employment Rights Authority, which was the immediate predecessor to the WRC, was initially intended to employ 90 labour inspectors, but in practice the number never exceeded 84. Austerity and a freeze on public sector recruitment have negatively affected staffing capacity. At the time of writing the WRC employs 53 labour inspectors.

The Latvian enforcement bodies have also experienced a reduction in staffing (a 20 per cent reduction in 2009). However, the enforcement bodies have recently invested in staff training, improvements in the use of databases and analytical systems (State Revenue Service 2016). During the period 2016-2020, the government intends to enhance the capacity of government departments and agencies to detect and tackle all forms of undeclared work, including BSE (Ministry of Finance 2016).

In the Netherlands, staffing of the Inspectorate SZW between 2013 and 2018 will decline due to funding cuts and a requirement to reduce employment of civil servants. The number of Inspectorate SZW employees will fall to 1,024 (from 1,119 in 2013). The total budget of the Inspectorate will decrease from €103,1 million in 2016 to €95,5 million in 2020.¹⁴ However, the number of inspectors dealing with spurious labour contracts and BSE is to be increased to 52 by 2018 (from 27 in 2013). The

¹³ Information about the Economic Adjustment Programmes is available at: http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/index_en.htm

¹⁴ Inspectorate SZW, *Meerjarenplan 2015-2018*, p. 33

Inspectorate SZW is due to launch a widespread investigation into fraud in health care, which has been commissioned by the Ministry of Health.

A similar reorganisation has affected the Netherlands' Tax Authority. In 2015 the Tax Authority launched a major change program (the Investment Agenda), aimed at reducing costs and improving efficiency. Through automation and a reorganisation of operations, approximately 5,000 (mostly administrative) jobs are due to disappear over a period of six years. However, it is also anticipated that approximately 1,500 people will be hired for higher-level positions in inspection and data analysis.¹⁵

Cuts in government spending have had consequences for the UK's enforcement bodies. The financial crisis and subsequent imposition of austerity resulted in a reduction in resources for the GLA. Between 2010 and 2013 the GLA absorbed a 12 per cent reduction in its Grant in Aid budget (DEFRA 2014). The number of FTE enforcement staff employed by the GLA fell from 60 in 2010/11 to 47 in 13/14. However, during 2014-2015 the GLA budget increased to £4,447,000 while the transformation of the GLA into the GLAA led to a further substantial funding increase in 2017 and a commitment to increase staff numbers from 80 to approximately 110.

Staffing of the EAS has fallen from 30 (including administrative support/call handlers) in 2009-10 to 10.6FTE staff by the end of 2016. In line with staff numbers EAS inspection activity has also declined: targeted inspections fell from 407 over 2011-2012 to 194 over 2015-2016 (with a low of just 23 inspections over 2014-2015, although this reduction was as a result of merging most of the EAS function into HMRC and was latterly reversed, EAS 2016).

HMRC's National Minimum Wage enforcement unit budget has risen in recent years from £5.6 million over 2005/06 to 9.2 million over 2014/15, and 269 FTE staff (National Audit Office, 2016; FOI Release, 2015; BIS, 2015: 7). Resources for compliance and enforcement are planned to increase to £20 million over the 2016-2017 period. In the 2015 Budget the government announced the establishment of a 'Promote Team', whose role is to increase compliance before enforcement becomes necessary (National Audit Office, 2016), and a further team of officers experienced in criminal investigations who will take forward cases involving wilful non-compliance.

In Spain, staffing of the LSSI has fallen only slightly over the past few years, from a total of 1,857 inspectors and sub-inspectors in 2010 to a total of 1,800 workers in 2015¹⁶. However, UDW and BSE are believed to have increased over that time (Sardà, 2014), which implies that resource needs have grown. A total of 193,562 inspections were carried out in 2015, which led to the detection of 86,114 undeclared jobs (20 per cent higher than in 2010).

4.3 Cooperation and coordination

Given that a number of government departments and their agencies have an interest in preventing BSE, it is essential that cooperative relationships are developed. While examples of cooperation were commonly identified in each of the case study countries, they focused on addressing UDW overall rather than having a specific focus on BSE. Cooperation to tackle undeclared work might be limited to informal sharing of data and knowledge or be formalised through the development of memoranda of understanding (MoUs). There are also examples of enforcement bodies collaborating on joint inspection work. Although not all of the examples following have BSE among their specific objectives, all have at least the potential to facilitate efforts to tackle BSE:

¹⁵ <https://belastingdienst-in-beeld.nl/over-de-belastingdienst/waar-werken-we-naartoe/>

¹⁶ Source. Annual report of the Labour and Social Security Inspectorate (2015), available at http://www.empleo.gob.es/itss/ITSS/ITSS_Descargas/Que_hacemos/Memorias/Memoria_2015_w.pdf

- In the Netherlands, the creation of Inspectorate SZW has, by centralising certain inspection functions, reduced the need for cross-institutional coordination and 'joining up'. However, the Inspectorate SZW, the Tax Authority, the Employee Insurance Agency (UWV) and the Immigration and Naturalisation Service work together in an intervention team to identify and deal with cases of fraudulent work - sharing information and conducting joint inspections. The case study for the Netherlands reported that closer cooperation between these agencies, and with municipal business offices and regional development agencies, has led to an improvement in the prevention and detection of BSE (Ministry of Social Affairs (2015: 11).
- The centralisation of enforcement activity in Italy has also improved data sharing and reduced the need for inter-organisation cooperation. The Director of the new National Labour Inspectorate will coordinate and plan all inspection activities in the fields of labour and social security regulations, including the inspections formerly conducted by INAIL (National Institute for Insurance against Accidents at Work) inspectors and INPS (National Institute for Social Security) inspectors. The Director of the National Labour Inspectorate will draft guidelines setting up common procedures so as to ensure proper on-site inspections and uniform inspection criteria. The policies and operating procedures will usually apply to the 'carabineers labour inspection units', which comprise police officers who work in the Territorial Labour Inspectorates. The National Labour Inspectorate should also lead to better sharing of data by the enforcement authorities (INPS and INAIL). However, it is less clear that data sharing with the tax authority will improve as it is not directly affected by the reorganization of inspection and enforcement activities.
- Since the start of the economic crisis, the authorities in Ireland have sought a more coherent approach to enforcement, involving greater coordination of the Revenue, DSP and Workplace Relations Commission (Cronin 2013). Revenue participates in Joint Investigation Units (JIUs), working with the Department of Social Protection's Special Investigation Units and the WRC to combat shadow economy activity. Although not linked specifically to addressing tax lost to BSE, the Revenue Annual Report for 2014 (Revenue, 2015) notes that JIU's carried out 1,490 interventions in that year with tax, resulting in 1,992 new tax registrations. In addition, Garda Siochana provides support for Joint Inspection Units and previously conducted employment permit inspections in collaboration with NERA (the predecessor to WRC).
- Although there are no shared or linked strategies across enforcement bodies in Ireland, sections 31-33 of the Workplace Relations Act (2015) facilitate the disclosure and sharing of information. This might help to prevent BSE in a number of ways. For example, if a local council were commissioning building work, enforcement bodies would be allowed to share information about firms who might be putting in a tender yet have a record of non-compliance.
- In Greece, the fines imposed by SEPE and IKA are communicated to the tax authorities. Moreover, since 2014, inspections at enterprises and work sites have been carried out by joint units composed of EYPEA (Special Insurance Control Service of the IKA) and SEPE (Labour Inspectorate) inspectors operating on the basis of common definitions, criteria and penalty systems.
- The 2015 annual report of the Latvia's State Labour Inspectorate recognises that more information about BSE is required (State Labour Inspectorate 2016)¹⁷. In an attempt to improve the evidence base, the State Labour

¹⁷ State Labour Inspectorate (2016). Valsts darba inspekcijas 2015. gada darbības pārskats. [Annual report of State Labour Inspectorate for 2015]. Available: http://www.vdi.gov.lv/files/vdi_gada_parskats_2015.pdf (accessed 13 January, 2017)

Inspectorate has taken steps to improve exchanges of information and database sharing with the State Revenue Service, the Office of Citizenship and Migration Affairs, the Register of Enterprises, the Information Centre of the Ministry of the Interior, the State Regional Development Agency, the National Health Service and the State Social Insurance Agency¹⁸. The main aim of the data exchange is to collect information about each enterprise to be inspected. The State Labour Inspectorate uses the Register of Enterprises to obtain information about the legal address of the enterprise and its owners and senior managers. The State Revenue Service is able to provide information about the turnover of firms, the number of workers they employ and the date on which they commenced their respective employments. The Office of Citizenship and Migration Affairs has information that allows for the identity of owners and workers to be confirmed.

- The Romanian Labour Inspectorate cooperates with a variety of bodies (for example, the National Agency for Fiscal Administration - General Directorate Fraud Inspectorate General of Police, the Romanian Gendarmerie, General Inspectorate for Immigration, the State Inspectorate in Construction, National Authority Customs, and National Environmental Guard). Protocols for cooperation cover joint controls, exchange of information and best practices and prevention. The Labour Inspectorate and General Inspectorate for Immigration have a common annual action plan for detecting illegal foreign workers and combating undeclared work. The plan sets out information sharing arrangements and joint actions for sanctioning illegal employment of foreigners and combating undeclared work carried out by foreigners. In general, however, strategies relating to BSE are insufficiently 'joined up' in Romania. The main impediment to improving cooperation is that the Labour Inspectorate has no authority in relation to BSE and there are no protocols that enable it to inform ANAF of suspected cases of BSE.
- In Spain, the Tax Agency, LSSI and the Social Security Treasury cooperate in many areas, including BSE. Their cooperation includes information exchange, shared training and joint actions, focusing on high-risk sectors and on the prevention, detections and sanctioning of undeclared work and BSE. A recent 'plan to fight irregular work and social security fraud' (*Plan de lucha contra el empleo irregular y el fraude a la Seguridad Social*), introduced in 2012, strengthened institutional cooperation between the Ministry of the Treasury, the Tax Agency, the Ministry of Homeland, the Ministry for Employment and Social Security (MESS) and other key ministries. A 'fraud box' for receiving anonymous complaints was added to the MESS webpage; A National Office to fight against fraud was also envisaged under the plan, but has not yet been implemented.
- A further example of cooperation in Spain concerns the ability of the LSSI to report to the Public Employment Services cases of undeclared or irregular work, which can lead to guidance and training being provided to workers.
- In the UK during 2014-2015 there was an increase in multi-agency operations, including partnerships with HMRC, UK Visas and Immigration, National Crime Agency (NCA), the UK Human Trafficking Centre (UKHTC), the UK Police Forces and the Health and Safety Executive (HSE)¹⁹. In addition, the UK government recently created a new official post of Director of Labour Market Enforcement

¹⁸ State Labour Inspectorate (2015). Valsts darba inspekcijas darbības stratēģija 2015. - 2016. gadam [Performance Strategy of State Labour Inspectorate in 2015-2016]. Available: http://www.vdi.gov.lv/files/vdi_strategija_10082015_gala.pdf (accessed 13 January, 2017)

¹⁹ See GLA Annual Report and Accounts 2014-15, page 13 - http://www.gla.gov.uk/media/1558/gla_annual_report_accounts-2014-2015.pdf - This document was laid before Parliament in July 2015.

(DLME). The DLME will set the strategic priorities for all enforcement bodies responsible for tackling labour exploitation and report to Secretaries of State for the Home Office and Business, Energy and Industrial Strategy (BEIS). The DLME role is intended to encourage the development of a new 'intelligence hub', which is intended to improve the pooling and sharing of data by the main enforcement bodies. The intelligence gathered will be used to 'identify vulnerable sectors and regions and inform the most effective response' (gov.co.uk).

- Other initiatives are planned in the UK to improve coordination and information sharing. Notably, HMRC is to launch a specialist unit for investigating companies that attempt to avoid employment rights obligations by using agencies or BSE. DWP uses HMRC's Real Time Information (RTI) data system to verify employment status when the individual is claiming to be self-employed for the purposes of benefit payments. RTI provides information about each individual covered by the pay-as-you-earn (PAYE) system. Being in this system would indicate the individual was in an employed situation.

4.4 Advisory groups

Some countries have also created advisory or 'expert' groups to help define the strategic aims of government policy in relation to undeclared work and BSE. These groups bring together representatives of government departments, agencies and the social partners. A number of the case study countries covered by this report have created such groups:

- In Ireland, Revenue chairs a Hidden Economy Monitoring Group (HEMG) (Eurofound, 2009), which is a non-statutory group comprising Government agencies, employers (the Irish Business and Employers Confederation, Retail Ireland, Small Firms Association, Construction Industry Federation) and trade unions (ICTU). This provides a forum for businesses and unions to develop solutions to problems associated with the shadow economy more generally. The HEMG helped to produce a 'Code of Practice for Determining Employment or Self-Employment Status of Individuals' (see Section 4). The HEMG also established new procedures to sharpen the distinction between employment and self-employment in the construction, forestry and meat processing sectors. This was achieved via the introduction of a new form (RCT1) with additional changes to legislation and regulations. The HEMG has the potential to encourage joined up approaches to preventing and responding to BSE, although the body does not meet frequently. Also in Ireland, Revenue and the DSP have established a joint working group in reaction to concerns about Irish law's ability to capture the nuances of modern employment relationships (Irish Times, 2015).
- During 2015 the Board of the UK's GLA set up a new liaison group with worker and NGO representatives. The group includes representatives of bodies such as the Trades Union Congress, the Unite trade union and the Citizens Advice Bureau. The Workers/NGO group supplements an existing liaison group with labour providers and users (GLA Annual Report and Accounts 2015-2016). The liaison groups were established to enable knowledge sharing by the parties and to further collaboration, and meet on an occasional basis.

The purpose of the Worker/NGO liaison group is to identify emerging challenges experienced by vulnerable and exploited people, including challenges posed by BSE. For example, during the November 2015 Worker/NGO liaison group meeting the Citizens Advice Bureau offered to share their research on BSE in the food and construction sectors.

- In 2010 Latvia created a 'Council for Prevention of the Shadow Economy', which includes representatives of the enforcement bodies, other government bodies,

the state and municipal police and the social partners. It operates under the auspices of the Ministry of Finance. Council members share information about their activities and different type of work in the shadow economy, including BSE. Policy makers and the enforcement bodies believe that the cross-institutional cooperation established via the Council for prevention of 'shadow economy' is valuable.

- The Latvian State Revenue Service has signed cooperation agreements with 22 industry associations, which have agreed to provide State Revenue Service inspectors and analysts with information about specific features of their respective industries that facilitate the avoidance of tax.²⁰
- Latvia recently (January 2017) established an Advisory Council of the State Revenue Service. The advisory council includes senior management of the State Revenue Service, representatives of the Ministry of Finance, Latvian Chamber of Commerce and Industry, Employers' Confederation of Latvia, the Latvian Association of Local and Regional Governments, Latvian Academy of Sciences, Latvian Tax Consultant Association and the Foreign Investors' Council in Latvia.
- In 2013 the Tax Authority of the Netherlands initiated the formation of an 'Expert group in combatting Fraud'. The expert group is part of the Manifest Group, a partnership of several major administrative agencies and executive organizations. This expert group (also referred to as 'anti-fraud box') serves to advise the enforcement authorities. They assemble each month to share information on five themes: fictitious employment relationships, BSE, living arrangements fraud, ID fraud and traceless debtors (Ministry of Finance 2013).²¹ ²² In 2013 the Expert Group initiated a pilot project to tackle 'fictitious employment', which involved investigations by the Employee Insurance Agency (UWV) in relation to the employment of migrant workers. In the first 8 months of 2016, €1,0 million worth of fictitious employment was detected.²³ However, no information is available concerning the extent of BSE.
- In Spain, Law 23/2015, which regulates the system of labour inspection and social security, provides for the institutional participation of the most representative trade unions and employers' associations. Trade union and employer representatives are consulted on issues relating to inspection activity planning, including BSE-related activities. However, the extent and consequences of the consultations for enforcement activities related to BSE are not known.

4.5 Performance measures

Very few enforcement bodies have performance measures that relate to BSE. Performance measures in this area are completely absent in Greece, Ireland, the Netherlands and the UK. The studies of Greece, Latvia and Romania noted that BSE has not been treated as a priority by enforcement bodies. The study of the Netherlands emphasised that the uncertain extent of BSE makes it difficult to measure the effectiveness of investigations relating to BSE. The country studies did not reveal any examples of specific targets and key performance indicators being set in relation to BSE.

Some enforcement bodies do, however, have performance measures that relate to undeclared work and that have implications for BSE:

²⁰ Information at homepage of the institution in Latvian: <https://www.vid.gov.lv/lv/sabiedribas-lidzdaliba> (accessed 31 December, 2017)

²¹ Ministry of Finance, DG Belastingdienst (2013) *12e halfjaarsrapportage belastingdienst*

²² CRD-12 (2013) *Inkomensondersteuning/ -voorziening burgers*. Compacte Rijksdienst project 12

²³ Jaarverslag UWV 2016

- In 2016, the State Revenue Service in Latvia had two performance objectives that related to BSE: firstly, to reduce non-registered economic activities and envelope payments; and secondly, to develop a computerised system for the assessment of taxpayers' risk and introduce it in all tax administration processes (State Revenue Service 2016). The State Labour Inspectorate has one general priority that includes BSE and that is to conduct effective inspections of enterprises. Although inspections at enterprises with a high risk of undeclared work remain important, the performance strategy of the State Labour Inspectorate indicates that since 2015 the priority has shifted from the detection of undeclared work to reducing accidents at work (State Labour Inspectorate 2015).
- The Romanian labour inspectorate has three performance measures that relate to the objective of 'reducing cases of undeclared work': firstly, the total number of inspections performed per labour inspector; secondly, the ratio between inspections performed where undeclared work is identified and the total number of inspections; and thirdly, the ratio between the number of people found to be working on an undeclared basis and the number of labour inspectors involved in inspections targeting undeclared work. The Platform's recent mutual support project with Romania has recommended that the overarching strategic objective in relation to UDW be changed from reducing the extent of UDW to 'turning undeclared work into (fully) declared work'.
- The most explicit link between BSE and performance measurement is to be found in Italy. The performance of all Territorial Labour Inspectorates is rated annually. Points are awarded, with value depending on the type of issue involved (e.g. BSE, undeclared work, OSH violations, social security contributions). Territorial Labour Inspectorates are then ranked according to the total number of points awarded. In addition, each year the Directorate-General for Inspection Activities of the Ministry of Labour draws up an annual national report on the outcomes of labour and social security inspections. These annual reports also examine labour inspections aimed at detecting fraudulent flexible or non-standard contracts. In 2015, it was reported that labour inspections had led to the reclassification of 9,439 contracts that had been proven to be forms of BSE and other types of misclassification. The sectors that were affected were health care and social assistance (2,156 cases), construction (1,272), and rental, travel agencies and business support services (1,120).

5 Deterrence and incentive measures

Key questions addressed in this section include:

Is the Enforcement Bodies approach inclined towards deterrence or incentive, and to what extent is BSE treated as a priority issue?

How are investigations and inspections in relation to BSE initiated? Are they mainly reactive or proactive? How are complaints about BSE received?

On which groups of workers/sectors are attentions focussed? What tools exist for determining if they are subject to BSE, and what sanctions are applied if detected?

Which tools/activities/strategies are used to prevent BSE, are approaches 'joined up', and have Enforcement Bodies engaged in awareness raising campaigns?

Are the social partners involved in the detection and prevention of BSE? In what ways and to what extent do they cooperate with Enforcement Bodies?

What factors limit the ability of Enforcement Bodies to detect, and prevent, BSE?

Key findings:

All of the case study countries use a mix of deterrence and incentive measures. In general, emphasis is given to deterrence rather than incentive measures.

Inspections are mostly reactive, initiated in response to complaints received through a combination of telephone and on-line reporting mechanisms. Most enforcement bodies also proactively target inspections on sectors believed to have a high risk of BSE. Normally this is determined on the basis of past inspection evidence.

Some countries (UK and the Netherlands) provide workers and businesses with on-line tools that enable them to check their status and that they are complying with regulations.

Enforcement bodies use various criteria when attempting to distinguish between employment and self-employment, commonly:

- The number of clients for which the worker provides services;
- Whether the client provides tools and machines; and
- Whether the worker is permitted to determine how their work should be organised.

Awareness-raising activities are widespread, although they tend to focus on undeclared work rather than BSE.

Among the case study countries, social partner involvement in tackling BSE is very limited. The Netherlands appears to be the most advanced country in this regard.

Limiting factors referred to amongst the case study countries commonly included capacity, although the low priority afforded to BSE, worker complicity and difficulties obtaining proof of BSE were also mentioned.

Section 5 examines the strategies and practices of enforcement bodies in relation to BSE and the extent to which they treat BSE as a priority. This section discusses actions that are intended to reduce incentives to engage in BSE and those that are concerned with detecting BSE and applying sanctions.

Enforcement is a regulatory activity. Black (2001: 142) defines regulation as 'a process involving the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly defined outcome or outcomes'. Enforcement agencies, including labour inspectorates, are typically able to pursue either a strategy based on deterrence or a strategy based on incentive measures (e.g. advising and persuading). Agencies might choose to emphasise only one of these or pursue both in combination.

Deterrence measures 'increase the costs of non-compliance by firstly, increasing the sanctions for those caught, and/or secondly, raising the perceived or actual likelihood of detection' (Williams 2016: 6). Incentive measures, by contrast, encourage voluntary cooperation and compliance. The emphasis is on awareness-raising and persuasion rather than punishment (Gunningham 2010: 122). Incentive-oriented activities can take two basic forms: 'preventative measures', which might include simplifying regulations, providing advice and support or using tax incentives to discourage BSE; and 'curative measures', which incentivise workers and businesses to cease engaging in BSE (Williams 2016: 7). Activities related to deterrence and incentivisation are undertaken in all of the countries studied, as shown in Table 4, although the emphasis varies. The activities of the Italian and UK enforcement bodies, for example, are inclined towards detection and sanctioning of BSE practices rather than preventing BSE, whereas the Netherlands has made substantial efforts in relation to both deterrence and incentive creation.

Deterrence and incentive measures are 'direct measures' that can tackle BSE by increasing its potential costs to workers and employers and reducing its benefits. 'Indirect measures' by contrast, are directed at altering the behaviour of citizens indirectly by encouraging them to view BSE and undeclared work as illegitimate practices (Williams 2016: 7). Most of the activities undertaken by enforcement bodies represent direct measures, although they do undertake awareness raising campaigns that can be regarded as examples of indirect measures. In practice, however, the distinction between direct and indirect measures is not always clear cut where awareness-raising activities are concerned. This report, therefore, focuses on direct measures while acknowledging that some of the awareness-raising activities referred to have the potential to alter norms and values.

Table 4. Measures taken by enforcement bodies

Activity	Type	Country
Awareness campaigns raising relating to tax compliance and UDW	Direct (Incentive/Deterrence) and Indirect	Greece, Latvia, Romania, Spain
Awareness raising campaigns related to BSE	Direct (Incentive/Deterrence) and Indirect	Italy, Netherlands
Online status check tools	Direct (Incentive)	Netherlands, UK
Tax and social security reforms	Direct (Incentive)	All
Targeted inspections	Direct (Deterrence)	All
Use of financial penalties	Direct (Deterrence)	All
Use of checklists/legal criteria to determine workers' status	Direct (Deterrence)	Ireland, Italy, Latvia, Netherlands Romania, UK
Involvement of social partners	Direct (Incentive/Deterrence)	Italy (limited), Netherlands

5.1 Incentive measures

Incentive measures in relation to BSE mainly fall into two categories: awareness-raising and tax reforms. Most of the initiatives can be regarded as preventative rather than curative.

5.1.1 Awareness raising

Awareness-raising activities are common, but rarely address BSE specifically. In Greece, Latvia, Romania and Spain there have been awareness campaigns relating to undeclared work and tax compliance. Latvia has been particularly active, with campaigns being organised by various institutions – the State Chancellery, Ministry of Finance, Ministry of Welfare, State Labour Inspectorate and State Social Insurance Agency (State Revenue Service 2015) – which have sought to inform society about the use of taxes and alter the attitude and behaviour of taxpayers. In addition, the State Revenue Service has organized campaigns to encourage use of the electronic declaration system and supported campaigns organised by social partners against smuggling and undeclared work (for example, the recent campaign by the Partnership of Latvian Construction Entrepreneurs, entitled 'An envelope is not brick' ('Aploksne nav ķieģelis').

Other countries have launched awareness-raising initiatives that have been **more closely related to BSE**. The Netherlands has been particularly active in this regard, as illustrated in the box below.

Awareness Raising Initiatives – the Netherlands

The launch of the Action Combating Spurious Labour Contracts (WAS) in the Netherlands was accompanied by a communication campaign, initiated by the Ministry of Social Affairs in collaboration with sector organisations. The campaign targeted the public and entrepreneurs, informing them about the requirements, restrictions and risks (introduction of chain liability) associated with the WAS. The government's website (rijksoverheid.nl) sets out the changes resulting from the new Act. Employers' organizations in the construction, transportation and temporary agency work sectors have also organized information dissemination meetings, to which the Ministry of Social Affairs has contributed.

Information provided by public authorities (e.g. Tax, Employee Insurance Agency, municipal business offices, regional development agencies) is posted on a website entitled "'Entrepreneurs' square" (Ondernemersplein). Launched in 2014, the website provided information to entrepreneurs and freelancers on subjects such as taxes and subsidies. In addition, the Ondernemersplein acts as a means by which authorities can provide clear information to the public²⁴.

In April 2016, the Netherlands' Tax Authority launched an 'Entrepreneur check' (OndernemersCheck)²⁵ tool for self-employed workers to enable them to check if they are falsely self-employed. Workers are presented with a series of questions and by answering them they are able to determine if they can be considered an entrepreneur for income tax purposes.

Finally, a practical guide for parties to collective labour agreements (CAO) was published in 2015. The guide provides advice and guidance in relation to the treatment of self-employment in collective agreements, and is intended to help combat disguised employment.²⁶

The UK government has also provided advice and guidance to help prevent BSE, as summarised in the box below.

²⁴ Ministry of Social Affairs (2015) Vierde voortgangsrapportage aanpak schijnconstructies, p. 11

²⁵ www.belastingdienst-ondernemerscheck.nl/.

²⁶ Ministry of Social Affairs (2015) Vierde voortgangsrapportage aanpak schijnconstructies, p. 3-4

Advice and Guidance to Prevent BSE – the UK

The UK government, and social partners, have developed a series of awareness raising and guidance products targeted at preventing BSE.

First, the government's website offers basic guidance for establishing the employment status for an individual for tax purposes. In addition, the revised Check Employment Status for Tax (CEST) tool was launched by HMRC in beta form in March 2017. This ICT tool can be used by individuals/businesses to check whether their relationship is legitimately self-employed/contractor, or employer/worker. It solicits answers to a series of questions regarding the working relationship between worker and client, before providing an indication of the worker's employment status. Depending on the outcome of the CEST check, further clarification on employment status may be sought from the HMRC Status Customer Service Team.

Also in the UK, the charity Citizens Advice provides a self-employment checklist which provides information on the risks and responsibilities associated with self-employment (e.g. tax and social insurance responsibilities). Citizens Advice shares information concerning BSE with the GLA/GLAA.

A further source of advice for workers considering self-employment in the UK is *Safe Advice for Employment and Recruitment (SAFERjobs)* which is a non-profit joint industry and law enforcement organisation established by the Metropolitan Police in 2008 to raise awareness of recruitment fraud and to stop criminal activities carried out by fake employers. SAFERjobs works with government organisations to protect people working in the recruitment sector. Partners include the Metropolitan Police, BEIS, DWP, Trading Standards, City of London Police, the Home Office and Action Fraud (the UK's national fraud and cybercrime reporting centre). Individuals can report cases of suspected fraud through the organisation's website. Information is passed on to the appropriate authorities (e.g. the National Crime Agency) which may subsequently lead to enforcement action (e.g. websites being taken down and the removal of 'fake jobs').

Other examples of awareness campaigns identified in the case study countries included:

- A public campaign run by the authorities in Greece to raise tax consciousness. In 2015 the government widened definitions of tax evasion and fraud and increased the associated penalties. At the same time, the authorities promoted the use of electronic payments, announced that the details of tax avoiders would be published, and implemented measures to identify undeclared bank deposits in Greece and in other countries and collect taxes owed on incomes generated off-shore.
- The Italian authorities have made efforts to raise awareness of BSE and related problems. Territorial labour inspectorates are directed to organise local meetings with stakeholders so as to inform them about new regulations or priority issues concerning compliance²⁷. Recent awareness-raising activities initiated by the Directorate-General for Inspection Activities have included training and outreach activities relating to the new regulations in the field of labour law, social security and health and safety at work introduced by the Jobs Act. In 2015 the Territorial Inspectorates organised 547 meetings with the key labour market stakeholders, such as employers' organisations, trade unions and professional associations. The latest regulations aimed at combating BSE were among of the topics covered in these meetings. The meetings were intended as a preventative measure to promote compliance.

²⁷ The relevant directive is Art. 8, D.Lgs. 124/2004.

5.1.2 Tax and social insurance reforms

There are a small number of examples of countries having reformed their tax regulations or procedures in order to reduce incentives for BSE. The focus has been on simplifying tax procedures in order to encourage voluntary compliance, or reducing economic incentives for BSE. Examples from Latvia, Romania, Ireland and the UK are provided in the box below.

Examples of Tax and Social Insurance Reforms from the Case Study Countries

In **Latvia**, the law on personal income tax was reformed in 2007, simplifying tax regulations for some groups of self-employed persons. The calculation and payment procedures for personal income tax for self-employed persons were simplified, as were procedures for single-entry book-keeping²⁸.

An amendment to **Romania's** Fiscal Code in 2016 reduced the economic incentive for BSE. If a self-employed person is without a second job, is not retired and/or does not have an income lower than the minimum wage, the social insurance contributions they need to make in order to be fully insured are similar to those paid by an employee. This has reduced the economic incentive for BSE. The number of workers reporting as self-employed fell in the first four months following the passing the legislation, while the number of employees and companies continued to increase.

In **Ireland**, Revenue has sought to encourage voluntary tax compliance by simplifying procedures and providing effective customer service. This includes a rule that a new company may receive a visit shortly after registration or may request a visit from a Revenue official to assist with their tax arrangements (European Commission, 2007). Revenue also promotes electronic channels as the default way of doing business with taxpayers (Kennedy 2013).

Modifications to **UK** tax rules by HMRC can be described as preventative measures geared to closing tax loopholes and encouraging legitimate forms of self-employment. The modifications have included greater transparency on who owns and controls companies, with a central registry maintained by Companies House (accessible to law enforcement agencies and tax authorities). The HMRC has also established more than 60 regional taskforces since May 2011 aimed at high-risk sectors (HMRC 2015). The UK government has taken action to discourage the avoidance of employment taxes by employment intermediaries (onshore and offshore). The Finance Act 2014 (Part 1, Ch. 2, Section 16: April 6th) set out new regulations establishing that workers should be treated for tax purposes as holding employment with the agency where the worker provides services to the client (the worker should be taxed under PAYE).

5.2 Deterrence

Deterrence-oriented activities relate to the detection of BSE and the use of penalties. All enforcement bodies conduct both proactive and reactive inspections. Proactive inspections are often targeted on particular sectors that have been deemed to be 'high risk'.

5.2.1 Reporting mechanisms

As much of the inspection work undertaken by enforcement bodies is reactive in nature, it is essential that workers, employers and members of the public have easily available means of reporting a compliant or raising a concern. Reporting mechanisms were identified in each of the eight case study countries, and typically consisted of 'hotlines' and on-line complaints portals. The hotlines typically allow people to report a variety of suspected infringements, including those concerning BSE, although the case studies found no examples of reporting mechanisms that relate specifically to BSE. Examples of the approaches followed in Latvia, the Netherlands, Spain and the UK are shown in the box below.

²⁸ <https://likumi.lv/ta/id/166872-grozijumi-likuma-par-iedzivotaju-ienakuma-nodokli->

Reporting Mechanisms for Undeclared Work/BSE

The websites of the State Revenue Service and State Labour inspectorate in **Latvia** provide information about how to register a complaint. The State Revenue Service has a free helpline and complaints can also be made via e-mail and mobile applications. The State Labour Inspectorate has an anonymous helpline and a special section on its homepage, enabling individuals to make a complaint online. In 2016 the State Revenue Service received 1058 complaints via its helpline and 1564 via email. The number of complaints received has grown in recent years. However, problems related to BSE are very rarely reported.

In the **Netherlands**, the websites of the Inspectorate SZW and Tax Authority provide complainants with several reporting options. It is possible to make an anonymous phone call or complain through a web form set up in different languages.²⁹ In addition, the Ministry of Security and Justice is working on the project called 'Quality and Innovation of law' (KEI), which facilitates access to the civil courts by simplifying and digitizing procedural law. This is intended to provide any self-employed person who believes that they are actually an employee with easier access to the justice system (Ministry of Social Affairs 2015: 11).³⁰

Investigations in the Netherlands can also occur at the request of the social partners. Although the Inspectorate SZW does not enforce compliance of collective agreements as a matter of course, it can conduct an investigation into suspected non-compliance if the social partners request it do so. The findings of the investigation can subsequently be used by the social partners to put pressure on non-complying employers to respect the agreement. The Inspectorate receives additional funding to perform this task.³¹

In 2013, **Spain** made available to all citizens an electronic mailbox ('MBOX of the Struggle Against Labour Fraud'), which enables any person who knows of any breach of the rules relating to labour or social security to provide information to the Labour and Social Security Inspectorate, by filling out a form on the Ministry's website. Workers can also confidentially report suspected fraudulent activity.

In the **UK**, workers who believe that they have been unfairly treated by an employer can call the government sponsored Acas helpline for confidential advice. A single on-line form is also available, allowing workers to report concerns about payment of wages, employment agencies, gangmasters or working hours. Workers can channel complaints to specific agencies, depending on the issue they wish to raise.

5.2.2 Targeted inspections

Most enforcement activity is reactive, with agencies responding to complaints received. However, most enforcement bodies also undertake proactive inspection work targeted on specific high-risk sectors. For example, in 2012 the **Swedish** Tax Agency launched an initiative to regulate foreign self-employed drivers and the hauliers that engaged them (Thörnquist 2013). The focus was on hauliers owning trucks, but with no employed drivers. Within months the Tax Agency discovered over 300 falsely self-employed foreign drivers. Many supposedly self-employed workers were found to possess neither A1 forms nor Swedish tax certificates, which under Swedish law meant that the hauliers engaging them should have paid payroll taxes. The Tax Agency subsequently required that the hauliers involved make back payments (Thörnquist 2013).

The case studies reported several other examples of targeted inspections, as summarised in the box below.

²⁹ https://www.inspectieszw.nl/contact/melden_en_aanvragen/index.aspx

³⁰ Ministry of Social Affairs (2015) Vierde voortgangsrapportage aanpak schijnconstructies, p. 11

³¹ Inspectorate SZW, Meerjarenplan 2015-2018, p. 21

Targeted inspections – examples from the case study countries

In **Greece**, tax inspections target the liberal profession and the hospitality sector in tourist areas. The checks conducted by SEPE involve a sample of companies from all sectors, whereas the checks conducted by IKA focus on sectors known to exhibit high incidences of illegal employment, namely hospitality, personal services, retail, transport, manufacturing, construction, car repair, cleaning and security.

The IT system ERGANI contributes to the targeting of measures to tackle noncompliance and undeclared work (although not BSE as such), by recording all employment flows in the private sector. All employers are obliged to provide electronic reports on recruitment, voluntary departures and dismissals, and data on overtime, part-time and job rotation, firm-level agreements and annual leave. The results are regularly published as part of a drive to tackle undeclared work. Thus far, ERGANI has not been used to target BSE, although it could be used for this purpose, as since January 2017 dependent self-employed workers have been treated as employees if they have no more than two employers per year.

As part of efforts to combat fraudulent employment in the **Netherlands**, a special team from the Inspectorate SZW has inspected 230 employers over the past few years and issued 60 fines to a total of €2.2 million. The inspections were conducted in most high-risk sectors, with two cases being pursued through criminal law.³² Both the Inspectorate SZW and the Tax Authority use risk-assessment and targeting methods, focusing on sectors such as construction, health care, transportation and temporary work agencies. Many migrants work in these sectors. It has been estimated that a large number of foreign self-employed workers are not genuinely self-employed³³, which implies a relatively high risk of BSE. For the risk-assessments the Inspectorate SZW uses risk models and methodologies from different sources, such as inspection data, information/knowledge from other government organizations, research and the practical knowledge of its inspectors and investigators.³⁴ The Tax Authority's approach to risk assessment segments the total base of taxpayers into related groups, such as financial interest, complexity of tax issues, and scale of enterprise.

In **Ireland**, joint investigations involving Revenue Commissioners and the DSP detected almost 200 cases of BSE in the construction sector in 2014-2015 (Irish Times, 2015).

In **Romania**, there have been inspection campaigns focused on the construction industry, private security services, cereal and bakery industry (jointly with ANAF), and the restaurant and food services sector, as well as the CRONOS campaign, targeting under-declared and undeclared work.

In 2012 the **Italian** Ministry of Labour issued a directive to Territorial Labour Inspectorates providing specific guidelines for the activities of the enforcement bodies related to BSE in the construction sector³⁵. The construction industry is commonly a target for the Labour Inspectorate at the local and national level. The outcomes resulting from the actions are not tracked in official reports, but are subsumed within the general data provided in respect of actions related to BSE.

In 2013 and 2014 the Directorate-General for Inspection Activities of the Ministry of Labour ran a joint inspection campaign aimed at detecting cases of VAT holders (self-employed persons with a VAT code) engaged in commitments with a single employer,

³² www.rijksoverheid.nl/actueel/nieuws/2016/11/01/inspectie-szw-krijgt-meer-zicht-op-internationale-schijnconstructies

³³ An employment relationship statement (VAR), which indicates a worker's status as self-employed, is often used to bypass work permit requirements.

³⁴ Inspectorate SZW, Meerjarenplan 2015-2018, p. 4, 14

³⁵ This directive ('Circolare n. 16/2012') can be found at <http://www.dottrinalavoro.it/notizie-c/min-cir-16-lavoratori-autonomi-ed-attivita-in-cantiere>

which is considered a proxy for BSE. In 2015, the Directorate-General launched a further large scale inspection campaign aimed at self-employed workers not registered in professional public registers. The inspections were intended to check compliance with the requirements introduced by the 2012 labour law reform (*Fornero Reform*).

In 2016-17, the Directorate-General for Inspection Activities initiated targeted inspections in the call-centres sector. In addition, a campaign on the abuse of 'vouchers' (occasional workers) was launched in the construction sector following the introduction of the 2015 Jobs Act reform, which prohibited employers from using 'vouchers' in contractual chains³⁶. Workers in supply chains are now required to be either employees or self-employed, with no possibility of employers using casual labour by using 'vouchers'. The 'vouchers' were abolished by Law no. 149/2017, which abrogated the rules associated with Law no. 81/2015.

In **Latvia**, the State Revenue Service and State Labour inspectorate use risk-assessments to identify sectors and enterprises where the risk of tax evasion or undeclared work is greatest. Risk analysis is particularly important as Latvian employees are believed to have a low propensity to complain about infringements of their rights. When assessing risks, the State Revenue Service focuses on enterprises which, for example, pay salaries to their employees below the average for the sector. Information is released about the sectors being targeted, and businesses given time to ensure they are compliant and fulfilling their tax obligations without penalties being imposed. If it is subsequently found that the measures have not achieved desirable results and tax payments do not meet expectations, taxpayers in the sector are subjected to inspections and tax audits, and taxes and fines may be imposed (State Revenue Service 2015).

In addition, the State Revenue Service informs taxpayers if they are included in the 'risk group' via the client's personal homepage on the electronic tax declaration system (EDS) (State Revenue Service 2016). In 2014 and 2015, this approach was used in the car maintenance and repair, dentistry and beauty care sectors (State Revenue Service 2016). As the result, 2,135 new taxpayers registered (mostly in beauty care and car maintenance/repair) and additional taxable income of EUR 10,439,760 was declared (mostly in car maintenance/repair and dentistry). The approach is perceived as successful, although the authorities recognise more needs to be done in relation to the detection of undeclared work and BSE in particular.

In **Spain**, the Social Security Treasury and the LSSI plan joint campaigns to detect BSE. They draw on different databases, e.g. the social security and tax agency databases to identify (through VAT declarations) cases where a worker ceases to be an employee and becomes self-employed. Moreover, the 'Integra' application, which includes records of all inspections carried out, helps identify sectors that appear to have a high risk of BSE. The inspectorate also collects qualitative information from inspectors, and information on infringements, triggers and other relevant data. Finally, in 2015 a 'Predictive Tool' (*Herramienta de lucha contra el fraude*) was developed as an IT application, to improve the detection of fraud (see good practice fiche for Spain).

In the **UK**, HMRC has created a specialist unit for investigating companies with high proportions of self-employed workers, prompted by concerns relating to the gig economy (Financial Times, 2016). The Employment Agencies Standards Inspectorate focuses on businesses that are in sectors deemed to be high-risk. In 2014 the UK government took action against the use of agencies/payroll companies in the construction sector, although according to the construction union UCATT this may have contributed to the rise in umbrella companies. Umbrellas act as an employer to agency contractors who work via fixed-term contract assignments (usually through a recruitment agency), and there have been reports that workers can pay both their own as well as their employer's National Insurance contributions (Guardian, 2016).

³⁶ The recent 'Jobs Act' reform of 2015.

5.2.3 Tools for determining workers' status

Drawing on the law and judicial decision, many enforcement agencies have developed criteria for distinguishing between employment and self-employment (also, see UK good practice fiche, Appendix 1). Typically, the criteria include whether the worker provides his or her own equipment, whether their work activities are directed by the client and whether they work for more than one business.

The main criteria in the UK are 'personal provision of service in exchange for a wage; control over the worker (or a residual right of control); the much debated 'mutual obligations' requirement³⁷; the workers' level of integration; and whether the worker is economically dependent on her employer or accepted the economic risk' (Cruz *et al.* 2016: 12).

In 2012 the Ministry of Labour in Italy directed labour inspectors to do more to tackle BSE in the construction industry. This goal has been pursued by creating specific indicators for the construction industry³⁸. Labour inspectors are directed to check who owns the machines and equipment used by self-employed workers and whether the worker performs labour services for a single client ('mono-commitment').

Where these indicators suggest that BSE might be present, labour inspectors are directed to examine specific types of work that the Ministry of Labour believes are commonly associated with BSE namely unskilled work, basic masonry, woodwork, asbestos removal, erection and dismantling of scaffolds, and machine operating where the machines are owned by the client or by the main contractor in a supply chain.

One of the most detailed and exhaustive set of criteria is that used in Ireland, which is set out in Figure 1 below.

³⁷ Whether the employer is obliged to offer and pay for work and whether the worker is obliged to accept work that is offered. This test is not straight-forward where relationships are intermittent rather than ongoing. Recent discussion has been prompted by the increased use of zero-hours contracts.

³⁸ Directive n. 16/2012

Figure 1. Ireland's Code of Practice for Determining the Employment or Self-Employment Status of Individuals

While all of the following factors may not apply, an individual would normally be an employee if he or she:

- Is under the control of another person who directs as to how, when and where the work is to be carried out.
- Supplies labour only.
- Receives a fixed hourly/weekly/monthly wage.
- Cannot subcontract the work. If the work can be subcontracted and paid by the person subcontracting the work, the employer/employee relationship may simply be transferred on.
- Does not supply materials for the job.
- Does not provide equipment other than the small tools of the trade. The provision of tools or equipment might not have a significant bearing on coming to a conclusion that employment status may be appropriate having regard to all the circumstances of a particular case.
- Is not exposed to personal financial risk in carrying out the work.
- Does not assume any responsibility for investment and management in the business.
- Does not have the opportunity to profit from sound management in the scheduling of engagements or in the performance of tasks arising from the engagements.
- Works set hours or a given number of hours per week or month.
- Works for one person or for one business.
- Receives expense payments to cover subsistence and/or travel expenses.
- Is entitled to extra pay or time off for overtime.

While all of the following factors may not apply to the job, an individual would normally be self-employed if he or she:

- Owns his or her own business.
- Is exposed to financial risk by having to bear the cost of making good faulty or substandard work carried out under the contract.
- Assumes responsibility for investment and management in the enterprise.
- Has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks.
- Has control over what is done, how it is done, when and where it is done and whether he or she does it personally.
- Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken.
- Can provide the same services to more than one person or business at the same time.
- Provides the materials for the job.
- Provides equipment and machinery necessary for the job, other than the small

tools of the trade or equipment which in an overall context would not be an indicator of a person in business on their own account.

- Has a fixed place of business where materials, equipment etc. can be stored.
- Costs and agrees a price for the job.
- Provides his or her own insurance cover e.g. public liability cover, etc.
- Controls the hours of work in fulfilling the job obligations.

Other criteria used to identify whether self-employment is legitimate, or otherwise, in the Netherlands, Romania and Latvia are presented below.

Country	Criteria
Netherlands	<p>Two questions are used to determine if self-employment is bogus:</p> <ol style="list-style-type: none"> 1. Is there an obligation to 'personal work'? There is an obligation to personal work if the freelancer has to do the work themselves and cannot be replaced without consulting the client. 2. Is there a relationship of authority between the client and freelancer? There is a relationship of authority if the client determines how the freelancer performs the work. <p>If a worker is apparently self-employed, but these two questions are answered in the affirmative, it is concluded that BSE is involved.</p>
Romania	<p>Romanian law provides seven criteria for distinguishing genuine self-employment, at least four of which must be met:</p> <ol style="list-style-type: none"> 1. The individual is free to choose where and how to work and how to organise his or her work; 2. The individual has the freedom to have more than one customer; 3. The inherent risks of the business are assumed by the individual; 4. Work is performed by using the individual's own assets (equipment); 5. Work is performed by the individual using intellectual and/ or physical skills, depending on the particularities of each activity; 6. The individual is a member of a professional body, that is responsible for representing, regulating and supervising the profession, and 7. The individual has the freedom to directly conduct the activity, with employees or in collaboration with third parties, according to the law.
Latvia	<p>Latvian law requires that at least one of six conditions are met:</p> <ol style="list-style-type: none"> 1. The individual is economically dependent on the enterprise to whom he or she provides services; 2. The individual has not taken a financial risk and is not personally responsible for any profit or loss; 3. The individual is integrated into an enterprise to which he or she provides his or her services; 4. The individual's holidays and leave and the procedures for approving them are subject to the internal procedures of the enterprise or the work schedule of other natural persons employed by the enterprise; 5. The work has been done under the management or control of another person, and the individual does not have the possibility to use his or her

own subcontractors in fulfilling his or her duties; or

6. The individual does not own fixed assets, materials or other assets, which are used in performing work (This excludes personal automobiles or separate personal instruments used for work tasks).

5.2.4 Penalties

Available information about the sanctions that might be applied in cases of BSE relates primarily to penalties imposed for tax evasion.

- In recent years Greece has taken steps to tackle tax evasion. To that end, the financial crimes squad (ex SDOE, Σώμα Δίωξης Οικονομικού Εγκλήματος) has been reorganised and penalties for tax evaders have been increased. The authorities have invested in new technology (MIS) that makes possible the cross-checking of transactions. The results of checks by SEPE and IKA, and the value of the fines they impose, are communicated to the tax authorities.
- In Ireland, the main penalties imposed by Revenue in cases of tax non-compliance are for late submissions, failure to file a return, late payment and errors/fraudulent declarations. The level of misconduct determines the penalty that applies (penalties vary from 3 – 100 per cent of the tax due). Interest is usually paid on late tax payments, starting from the date when payment should have been made. Offenders who voluntarily disclose their omissions may receive a reduced penalty. Reduced penalties may also be applied if offenders come forward after being prompted by Revenue. When labour inspectors in Italy reclassify BSE relationships, they also impose sanctions on employers relating to the breach of the duty to communicate employment contracts and the obligation to inform employees about the applicable working conditions and entitlements. These sanctions are much lower than those that are applied in cases of undeclared work, which in sectors such as construction appears to have encouraged the spread of BSE.
- In Latvia sanctions applied in BSE cases do not differ from the overall practice when tax evasion or undeclared work has been detected. Sanctions include penalty fees and an obligation to pay lost tax revenue. In cases of undeclared work (including BSE), the State Revenue Service calculates the additional social contributions that need to be paid.
- In Romania, when an ostensibly independent employment situation is deemed to be dependent, the tax agency ANAF recalculates the tax dues in accordance with the tax due for dependent activities and applies penalties.
- In the UK, if HMRC determines that a contractor is actually an employee, it can impose a fine and pursue the business to recover outstanding PAYE deductions where there is no intermediary or if this occurs in the public sector.
- The Tax Authority in the Netherlands can recover taxes and impose a fine of up to 100 per cent of the amount to be recovered. The fine is based on the difference between the reported turnover of the entrepreneur and someone earning the same amount as an employee.
- In Italy inspectors are able to promote 'monocratic settlements'³⁹, which are procedures that are intended to help settle disputes between employees and employers, or between self-employed workers and their clients in cases of BSE. If an agreement is reached by the parties to the employment contract, no sanctions are applied in cases of alleged violations. Monocratic settlements have been effective where short periods of undeclared work have been detected, although less effective in relation to longer duration cases of BSE. The

³⁹ Provided for by article 11 of the Legislative Decree n. 124/2004.

reason is that the courts would be unlikely to decide in favour of employers where a clear case of undeclared work has been detected, which inclines employers to prefer lower cost out-of-court settlements. However, the presence of BSE is more difficult to establish and the potential costs to the client can be considerable, particularly where the relationship has been long term. Enterprises therefore tend to prefer to argue their case in court.

- In Spain, a business that is found to have employed a worker on a BSE basis is required to pay social security contributions from the point at which the worker is detected by the LSSI. The firm could be required to pay up to four years' worth of social security contributions. They will be fined between 3,126 and 10,000 Euros for not having registered the worker for social security. They may also be required to pay the difference between the minimum wage specified in the relevant collective agreement and the actual wage received by the BSE worker, if the latter is a lower figure.
- Not all enforcement bodies are easily able to apply sanctions. If BSE is suspected during an inspection by the Romanian Labour Inspectorate, the labour inspectorate does not have the authority to investigate further in cases where the worker is able to produce documents certifying that they are self-employed. Furthermore, the labour inspectorate does not have a protocol for informing ANAF that possible cases of BSE have been detected. Essentially, therefore, when labour inspectors identify registered self-employed workers who are clearly in a relationship of economic dependency, no further action is taken. However, they are able to apply sanctions where they identify workers who are not registered as self-employed, yet are providing services under a commercial contract rather than an employment contract.

5.3 Involvement of social partners

In principle, the social partners can play an important supporting role to the efforts of the authorities in tackling BSE. They might, for example, contribute to advisory fora or be involved in awareness-raising initiatives. However, the country studies highlighted only a small number of instances of social partner involvement, as shown in the box below.

Involvement of Social Partners

In **Italy**, the social partners are invited to be involved in Observatories, which are organised by the Territorial Labour Inspectorates and intended to help prevent and sanction unfair competition between complying and non-complying worker cooperatives. One of the fields of action for the Observatories is tackling BSE.

In the **Netherlands** the trade unions have been active in trying to curb BSE in the postal sector and have been involved in campaigns to address abuses in the temporary agency work sector (DG Internal Policies 2016: 162-4). The trade unions have run media campaigns to inform the public about precarious work. They are also involved in court cases in which they are hoping for a ban on 'payrolling' practices and are working to improve the collective agreement for the temporary work agency sector. In addition, they are monitoring and opposing the practice of dismissing workers on open-ended contracts and replacing them by fixed-term contracts or BSE (Keune 2013: 70).

Following **UK** employment tribunal rulings against Uber, the trade union Unite announced its intention to set up a bogus self-employment unit to pursue employers who avoid responsibilities by classifying workers as self-employed (union-news.co.uk).

In other countries, the involvement of the social partners is more limited. The Greek social partners have not been involved in activities relating to the detection and prevention of BSE. The Romanian Labour Inspectorate has a number of cooperation

agreements with the social partners, but as in Greece they are not involved in measures to prevent or tackle BSE.

5.4 Constraints on the ability of enforcement bodies to tackle BSE

The country studies highlighted a number of ways in which the ability of enforcement bodies to tackle BSE was constrained. Most of the studies mentioned capacity constraints. The resources available to enforcement bodies are often insufficient and, as described previously, in some cases have been reduced as a consequence of government spending cuts. Some studies (Greece and Latvia) emphasised that BSE has not been treated as a high priority issue by government and the enforcement bodies.

The studies of Romania and Italy noted that obtaining proof of BSE can be a highly time-consuming process. The time involved can be particularly substantial where complex subcontracting arrangements are concerned. Inspection SZW in the Netherlands is increasingly dealing with complex schemes for evading labour law or regulations through subcontracting and outsourcing. These inspections take a long time to complete and require additional staff time.

Workers are sometimes complicit in BSE (perhaps because of difficulties they have in obtaining alternative forms of employment) and do not cooperate with labour inspectors. Related to this problem, the Latvian study emphasised that tax evasion continues to be accepted as legitimate by many citizens and that trust in government institutions and enforcement bodies is low.

In the Netherlands, the problem of obtaining reliable information about BSE is compounded by the tendency of different institutions to use different definitions of self-employment. There is no single legal definition of self-employment (without employees) and the concepts of enterprise and entrepreneur are still defined very ambiguously in legislation. It can therefore be very difficult to determine whether an individual is self-employed or an employee.

The Netherlands study also reported that inspectors are increasingly exposed to aggression and violence when making inspections. As a result, inspections now involve more than one inspector, which creates additional pressure on staff time⁴⁰.

⁴⁰ Inspectorate SZW, Meerjarenplan 2015-2018, p. 35

6 Cross-border activities

Key questions addressed in this section include:

Are inspections and other enforcement activities carried out across borders? If so, what do they consist of and what cooperation arrangements exist?

What are the key factors that facilitate or frustrate cross-border cooperation?

Are social partners involved in any cross-border activities relevant to BSE?

Key findings

Cross-border cooperation by enforcement bodies is common in efforts to address undeclared work, but there is little evidence of cooperation focussed solely on BSE.

Enforcement bodies in different EU Member States exchange information and have, in some cases, reached MoUs

However, the widespread cooperation that already exists might provide a foundation for activities directed at tackling BSE

BSE is a phenomenon which is not restricted to national borders, and has both intra-national and cross-border dimensions, such as through employment arrangements (including BSE) for posted workers which are intended as a means of avoiding tax and social security payments (Thörnquist, 2013, 2015). Wagner and Bernstein (2016) argue that cooperation between enforcement agencies in EU Member States remains underdeveloped in areas including the cross-border payment of social security contributions, detection of letter-box companies and the cross-border payment of fines. The evidence from the country case studies similarly suggests that cross-border cooperation in relation to BSE is also quite limited. Although various forms of cooperation relating to the regulation of employment standards and undeclared work are in evidence, none appear to relate specifically to BSE. They do, however, suggest that there is considerable potential for enforcement bodies to exchange knowledge about BSE and methods for tackling it.

A number of enforcement bodies have been involved in exchange programmes. For example, the Italian and Romanian Labour Inspectorates participate in exchange programmes aimed at sharing good practices, although these are not specifically related to BSE. The UK's GLA experimented with staff secondments that enabled inspectors from other EU member countries to investigate relevant cases in the UK. This initiative represented an expansion of work that the GLA undertook with Europol (GLA, 2013) in 2016 and included the secondment of a labour inspector from Romania.

Some countries have taken part in European projects aimed at enhancing cooperation in relation to enforcement activities. For example, the Italian Ministry of Labour has taken part in several European projects, such as ICENUW (Implementing Cooperation in a European Network against Undeclared Work, 2010) with Belgium, France and Spain and CIBELES (Convergence of Inspectorates Building a European Level Enforcement System, 2011) with Austria, Belgium, France, Germany, Malta, Portugal, Spain and Hungary.

Several enforcement bodies have sought to regularise their cooperation with their counter-parts in the other EU Member States and some have signed memoranda of understanding (MoUs). For example:

- The LSSI in Spain has reached bilateral agreements with enforcement bodies in Portugal, Romania, France and Poland. The agreements mainly relate to undeclared work and illegal working.
- A bilateral agreement was signed in September 2011 by the Labour Ministries of France and Italy. The agreement was intended to improve cooperation in relation to cross-border controls.

- The Romanian Labour Inspectorate has concluded memoranda of cooperation protocols with Spain, Portugal, Hungary, Bulgaria, Greece and Moldova. These cooperation agreements include general provisions for cooperation in the field of labour relations and health and safety at work, including expert consultations, organization of study visits, symposia and seminars, and exchange of information and documentation on key policy issues. BSE is not explicitly addressed.
- The Latvian State Revenue Service has established a number of cross-border cooperative relationships, although they mainly relate to customs and general control of tax payments. By the end of 2016 tax conventions with 58 countries and administrative assistance agreements with 15 countries had been signed. The most regular cooperation is that involving the customs authorities of the Baltic States, which includes information exchange and mutual inspections. Cross border cooperation with the direct aim of tackling BSE has not occurred to date, although the existing cross-border activities have the potential to yield relevant information.
- The UK's GLA has collaborated with labour inspectorates in European countries including Lithuania, Bulgaria, Poland, Romania and Hungary. This is especially relevant when applications for labour supplier licences are made by companies based in these countries.

In March 2016, the GLA and Ireland's Workplace Relation Commission signed an MoU, which is intended to encourage knowledge sharing and collaboration. Particular issues of interest include agencies supplying workers across borders and into jurisdictions where home authorities would otherwise have no powers to act. The MoU between the GLA and WRC is intended to support a formal intelligence gateway to share information and enable joint operations in cases that have a cross-border dimension. The MoU provides clear protocols on responsibilities and possibilities for collaboration with regard to cross-border operations.

- In the Netherlands, the Inspectorate SZW has established MoUs with inspectorates in Romania, Bulgaria, Poland, Czech Republic, Hungary, Portugal and Croatia. The SZW requests information from these inspectorates and collects fines internationally, enabled by the EU's Enforcement Directive on posting of workers.

In addition, during the Dutch EU Presidency, the Inspectorate SZW organized a conference on 'decent work' in February of 2016. The conference focused on the practical implications of cross-border employment and compliance with European and national legislation. Attention was paid to BSE, (e.g. fraudulent forms of contracting work, shared definitions, the need for cooperation), mailbox companies, international cooperation between inspectorates and other aspects that contribute to equal pay for equal work (Ministry of Social Affairs 2015: 5). Conference participants agreed on the need to improve compliance with the law and concluded that sustainable solutions would require: cross-border cooperation, preferably in a multilateral setting; involvement of a range of government departments/agencies and social partners; sufficient staff capacity and training; regulatory efforts aimed at prevention as well as detection and sanctioning; real-time information exchange; multiple tools to tackle complexity, both at the national and EU level.⁴¹

⁴¹ Report of the conference Promoting Decent Work, Better Compliance and Enforcement 8-9 February 2016, Amsterdam, the Netherlands.

7 Tackling bogus self-employment: Perspectives of the European Social Partners and stakeholders ⁴²

Key findings

The social partners believe that BSE is a concern for both businesses and workers

The gig economy, efforts to avoid tax and social security responsibilities and ambiguities in the law were mentioned as drivers of BSE

There is agreement that both detection and prevention-oriented methods are needed

The social partners have taken steps to raise awareness of BSE among their members

Most of the representatives of the European social partner organisations interviewed for this report emphasised that BSE is a concern for both businesses and workers across Europe. However, organisations differed in terms of the problems they identified and the extent to which the social partners should play a role. The ETUC identified BSE as a growing concern which the organization has sought to highlight and address.

7.1 The main sectors affected

Several union organisations (including EFBWW and ETUC) mentioned the relatively high risk of BSE in the construction industry across Europe, although the FIEC emphasised the importance of genuine self-employment for the industry as a means of ensuring flexibility. The ETUC mentioned that BSE has spread from traditional blue collar sectors (e.g. construction) into new industries, including aviation (e.g. airline pilots), engineering, journalism and transportation (e.g. taxi driving). The increase of BSE among taxi drivers has been facilitated by the use of online platforms, as in the case of Uber. Recruitment intermediaries have also benefited from advances in online platform technology associated with the 'gig economy'.

7.2 Perspectives on drivers

The ETUC noted that social policies in many European countries (e.g. the UK) have encouraged self-employment as an opportunity for unemployed workers, and that it was to be expected that BSE would also increase. In addition, the ETUC advised that jobseekers face increasing pressure to enter into BSE as a route into their chosen occupation, and that some self-employed workers mistakenly believe that their employer will provide them with social entitlements. This may reflect a short-term attitude by workers to employment in which access to social protection is either not prioritised or not well understood.

A majority of interviewees believed that avoidance of tax responsibilities is a prime motivation for firms engaging in BSE practices. INTEFP advised that some firms have exploited ambiguities in relation to what constitutes self-employment. EFIP noted that the decline in union organising as well as the rise of online platform work has left many workers susceptible to labour market abuses, including BSE.

7.3 Difficulties for firms and workers

A majority of social partner representatives acknowledged that BSE has negative impacts on both businesses and workers. The ETUC emphasised that falsely self-

⁴² Interviews took place with stakeholders from the following Social Partner organisations: European Trade Union Confederation (ETUC); European Federation of Building and Woodworkers (EFBWW/EFBH); European Construction Industry Federation (FIEC); International Federation of Actors (FIA); Institut National du Travail de l'Emploi et de la Formation Professionnelle (INTEFP); Performing Arts Employers Associations League Europe (PEARLE); and Verband der Gründer und Selbstständigen Deutschland (VGSD).

employed workers generally lack access to employment rights, pensions and unemployment benefits.

EFBWW stressed that any benefits workers gain from BSE are likely to be short-term. BSE workers are less likely to acquire entrepreneurial skills that would support sustained independent self-employment (e.g. book-keeping and marketing skills). In addition, unlike genuine self-employment, in which workers are likely to engage with several clients, BSE involves only one or two clients who have power to set low prices.

7.4 Advice to governments on combatting BSE

Respondents advised that both detection and prevention-oriented methods are required to address BSE across Europe. FIEC called for a combination of sanctions and awareness raising activities. However, the EFBWW and ETUC warned against punishing workers directly (as they are often victims) and instead called for greater checks in relation to the process of registering self-employed workers. The ETUC also suggested that self-employed workers should be required to meet additional criteria in order to register, including (for example) holding professional qualifications relevant to their industry. The qualifications should cover the skills and abilities that would enable self-employed workers to operate independently. Self-employed workers should also be able to demonstrate that they possess insurance coverage.

The FIEC representatives stated that a majority of inspectorates require larger budgets and more resources in order to tackle BSE. Targeted inspections are insufficient. For example, larger construction sites/firms receive a proportionately larger number of investigations compared to smaller sites, even though the latter are also prone to BSE. FIEC also called for an increase in cross-border investigations and the development of strategic partnerships between labour inspectorates in different countries (e.g. more information sharing, memoranda of understanding).

The ETUC has encouraged the 'naming and shaming' of known offenders in order to place 'reputational pressure' on firms. Penalties for proven cases of BSE should be severe enough to act as an effective deterrent. The ETUC also called for more joined-up work by the agencies involved in enforcement, improved awareness-raising campaigns and robust 'whistleblowing' protection for workers who make claims relating to BSE. The ETUC also suggested that tax inspectors should be more vigilant/sceptical when exploring self-employed work arrangements.

Most organisations (the ETUC, FIEC, EFBWW and INTEFP) mentioned problems associated with different national legal definitions of self-employment. Ambiguities over definitions can cause particular problems for posted workers who fall under the legal jurisdiction of the host country where the work is taking place. For instance, while there is no universal definition of self-employment in Polish law, there are detailed rules in French law that allow workers to set up small businesses, be self-employed or freelance as a micro-enterprise (which involves paying taxes and social charges online). Furthermore, regulations relating to tax and social security regulations vary between countries, and migrant workers are often unaware of specific country requirements (interview with INTEFP). More awareness raising activities are needed to inform workers of the employment and social security laws in the country in which they are working.

7.5 Actions by the Social Partners

Strategic actions in response to BSE have varied between the organisations. The ETUC has sought to increase its members' awareness of BSE, and has advised member unions to take on suspected cases of BSE with the aim of proving that self-employed workers are in fact employees under the direction of a superior. The ETUC has also called for investigations of enterprises that are likely to require a large workforce, but which directly employ very few workers (for example, large farms in the agricultural sector). They have also advised national union federations to forge stronger links with national labour inspectorates. This could involve, for example, unions furnishing

inspectorates with relevant information about potential BSE offenders. The ETUC is also encouraging member unions to organise self-employed workers.

In 2008 FIEC and EFBW (i.e. the employer and worker organisations representing the construction sector) published the joint report *Self-employment and Bogus Self-employment in the European Construction Industry*. Findings were disseminated to members with a view to encouraging discussion about the dangers of BSE, its negative impact on workers and role in unfair industry competition. The report has prompted discussion and awareness-raising at national and EU levels. For example, the report provided a basis for greater dialogue on BSE between FIEC and EFBW, while false self-employment arose as a prominent item during the discussions of the Enforcement Directive 2014/67.

Despite national initiatives to tackle BSE in construction, the EFBW representative suggested that attempts to raise and tackle the issue of BSE at EU level have generally been frustrated by a political preoccupation with boosting employment rates through policies aimed at encouraging entrepreneurship.

EFIP has organised events and panel discussions to debate the impact and prevalence of BSE across Europe (e.g. a 2015 event in Munich - *A European Perspective on False Self-Employment*).

Partnerships with other organisations

In terms of collaboration with other organisations, the ETUC works with NGOs at national and European levels. At national level, its collaborations have included discussions with the Migrant Rights Centre Ireland (MRCI) on matters pertaining to domestic workers' rights, while at the European level Mig@Net and the ETUC have discussed means of protecting the rights of exploited workers, including those involved in BSE. The ETUC also meets with the European Anti-Poverty Network on a routine basis. In addition, the ETUC collaborates with labour inspectorates through the UDW Platform, which facilitates meetings. They also liaise with the EU anti-poverty network and with senior labour inspectors via SLIC.

INTEFP mentioned several positive partnerships and collaborations associated with the EURODETACHEMENT project. EURODETACHEMENT is intended to monitor the effectiveness of laws to protect posted workers, who are often the victims of BSE arrangements. Examples include collaboration and information sharing between inspectorates in different countries (e.g. authorities in Finland, Sweden, Lithuania and Latvia).

For the past 4-5 years, FIEC and EFBWW have also been involved in a European level project on the posting of workers via EURODETACHEMENT. The EFBWW advised that collaborations with unions representing artists and the entertainment industry have been fruitful. An example is the publication in 2016 of *The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working*, a joint report of FIA (International Federations of Actors), FIM (International Federation of Musicians), EFJ (European Federation of Journalists) and UNI MEI (UNI Global Union – media, entertainment and arts sectors), and co-funded by the European Commission (DG Employment).

7.6 Lessons learned and future steps

With respect to future steps and strategies the ETUC stressed the importance of cooperation between different national administrations (e.g. government employment policies, the role of national labour inspectorates) in formulating responses to BSE. The ETUC is currently conducting research on 'letterbox companies', which will include research on the precarious work arrangements of truckers. The research is likely to explore ways in which union involvement might further assist the fight against BSE.

FIEC and the EFBWW advised that they will continue to campaign against BSE and report on campaigns led by both sides of the social partnership with a view to

reporting best practices that may be transferable. The EFBWW has also suggested that it may be possible to tackle BSE through public procurement regulations, citing the 2014 EU Directive on public procurement as a means for countries to develop better criteria for encouraging direct employment. In a 2015 study - *Social consideration in Public Procurement: A political choice!* - the EFBWW noted that the EU Directives on public procurement (2014/24/EU; 2014/25/EU; 2014/23/EU) introduced requirements intended to ensure higher social standards for work sourced through public procurement.

8 Conclusions and recommendations

8.1 Conclusions

8.1.1 Introduction

This section provides the conclusions and recommendations of the study, with the conclusions structured to reflect the key research questions, and recommendations provided for Member States and enforcement bodies and for the Platform.

Many EU Member States are relatively active in tackling undeclared work. The findings of this report suggest that actions to tackle BSE in the eight case study countries are, by comparison, less developed and that public authorities (including enforcement bodies) in some countries regard BSE as a relatively low priority. In addition, a key finding of the study is that steps to address BSE were commonly set within wider efforts to address undeclared work, rather than being discrete activities in themselves. This has hampered the contractor's ability to address some of the study questions, for example in identifying the level of resources dedicated to addressing BSE specifically.

8.1.2 The measurement, extent and causes of BSE

Very few of the case study countries covered in the report have taken steps to estimate the extent of BSE. The Netherlands has been the most active country in this regard, having commissioned various research projects focused on BSE. Even so, there is a need for much more accurate information about the extent of BSE and its demographic and sectoral distribution. This report has echoed previous research (Jorens 2009, Thörnquist 2013, 2015) in demonstrating that BSE is a common problem in the construction and transportation sectors. However, it has also highlighted the spread of BSE in non-manual sectors, such as ICT, business services and health care. The relative scale of the problem across sectors is, however, unknown and it is not clear how quickly BSE is spreading. More accurate information is required if enforcement activities are to be effectively targeted.

The report has pointed to a number of drivers of BSE, including legal ambiguity in respect of the distinction between employment and self-employment, complex subcontracting arrangements, and tax and social security rules that create incentives for engagement in BSE. The report has also found that policies that promote entrepreneurship can have unintended consequences in relation to BSE. This issue would benefit from further investigation.

Where budget constraints severely limit the ability of authorities to commission new research, it is particularly important that the best possible use is made of the information that is available. Enforcement bodies can provide information about cases where BSE has been detected and their inspection activities can generate information that can inform strategies to address BSE. Trade unions and NGOs can also be valuable sources of information and, in some countries, have published reports on the topic of BSE.

8.1.3 Legislative frameworks relating to BSE

Legislative measures relating to BSE mainly relate to labour law, tax legislation and social security regulations. Self-employed workers are typically not covered by labour law, although Italy has extended partial coverage to dependent self-employed workers. Some countries have also closed the gap between employees and self-employed workers in relation to tax and social insurance obligations. Evidence from Romania suggests that this may have helped to encourage a shift from self-employment to direct employment, with potentially beneficial consequences for BSE. Again, rigorous evaluations of policy interventions are required if effective tools for addressing BSE are to be identified.

8.1.4 Enforcement bodies and their capacity

The main enforcement bodies across the case study countries involved in detecting and preventing BSE are those with responsibility for labour law, taxation and social security, with the number of bodies, and the degree of centralisation, varying between them. However, as described in the Introduction, BSE tends to be addressed as part of their general enforcement activities, rather than being the responsibility of any single authority.

This has a series of implications, including that for the most part data on the scale and nature of resources specifically directed towards BSE is not readily available, and specific performance targets related to BSE are rare.

In most of the case study countries, the overall resources provided to enforcement bodies have been reduced in recent years, although it is not possible to determine how these cuts have impacted on activities specifically related to BSE. Reductions in the numbers of inspectors and the wider capacity of enforcement bodies are considered to have had a negative impact on efforts to tackle BSE. However, in two case study countries, Latvia and the Netherlands, capacity was expected to be strengthened specifically in relation to BSE and undeclared work.

Enforcement bodies often cooperate with each other in addressing undeclared work, and examples were found amongst the case study countries in relation to the sharing of information and, in some cases, joint inspection activity. However, the case studies found little evidence of cooperation between authorities specifically aimed at BSE.

Finally, performance measures relating specifically to BSE also appear to be rare, with the most explicit being in Italy where performance measures of the labour inspectorate include a recognition of the detection of BSE.

8.1.5 Deterrence and incentive measures

All of the case study countries were found to use a mix of deterrence and incentive measures. In general, emphasis is given to deterrence rather than incentive measures.

Tax and social insurance reforms aimed at reducing incentives for BSE represent **incentive-oriented measures**. Another form of incentive measure is awareness raising. Information campaigns and other awareness-raising activities are common, but typically focus on undeclared work and tax compliance rather than BSE specifically. However, some of the case study countries (such as Italy and the Netherlands) have been relatively active in raising awareness of BSE. There are examples of authorities providing firms and workers with on-line tools that enable them to assess their own employment status or the status of those who work for them. Good examples are the 'Entrepreneur check' (OndernemersCheck) in the Netherlands and HMRC's Check Employment Status for Tax tool in the UK. The Netherlands has also developed 'model agreements' for clients and freelancers, which provide them with a basis for ensuring that they comply with tax regulations. Tools such as these should alert firms and workers to the consequences of BSE and direct them to sources of further information when doubts remain.

Actions aimed at improving compliance have also included legislative reforms that more clearly delineate dependent work and the distinction between dependent and self-employed workers. A lack of clear definitions of self-employment and employment creates obvious difficulties when trying to estimate the extent of BSE. It is also a source of uncertainty for firms and workers and hampers the ability of enforcement bodies to tackle BSE. Some countries have therefore reviewed and revised their national laws and codes of practice so as to create greater clarity in relation to the legal status of workers. Greece, for example, has introduced a presumption of subordinate employment if work is carried out for a single employer for nine consecutive months and has shifted the burden of proof from workers to clients/employers. The Netherlands has also increased the onus on firms to take

responsibility for correctly classifying workers and complying with labour, tax and social security regulation. The development of more complex supply chains and contracting arrangements has increased the scope for disguising employment relationships, but recently introduced legislation has made every business involved in a chain of contracting labour, lending or dispatching work legally responsible for paying wages, taxes and social security contributions. A further example is provided by the UK, where employment agencies are now responsible for tax and social insurance contributions relating to the workers with which they contract. Where more than one agency is involved in the contractual chain, the UK agency that contracts with the end-client has responsibility.

Improving the clarity of definitions of employment and self-employment, and the differences between the two, can also help enhance the **deterrence-oriented activities** of enforcement bodies. Tools, such as Codes of Practice, that help enforcement bodies to determine the employment status of a worker are widely used. In general, these tools have their basis in legislation and case law and conform to the ILO Employment Relationship Recommendation (R198).^{43 44} The criteria used by enforcement bodies in determining a worker's status generally measure the extent to which the worker is economically dependent on the client(s) for which they provide services. Typically, the criteria include whether the worker provides his or her own equipment, whether their work activities are directed by the client and whether they work for more than one business. However, it is rarely the case that all criteria need to be met and some case studies expressed doubts about the stringency of tests.

The deterrence-oriented activities of enforcement bodies are often targeted on specific sectors that are believed to have a high risk of BSE. It appears that risks are determined on the basis of evidence (e.g. inspection reports) collected by the enforcement bodies over time. There were a number of examples of enforcement bodies determining risks and selecting target sectors by using data from other agencies to supplement their own intelligence. Information exchange creates the potential to develop more accurate understandings of the causes and extent of BSE and the possibility of developing shared or complementary strategic objectives and joint operations by enforcement bodies. There are numerous examples of countries seeking greater cooperation by the ministries and agencies with responsibilities relating to labour law, tax and social insurance. Operational cooperation in the form of joint inspections appears to be becoming more common, although attempts to develop cooperation at a strategic level are less in evidence. In some countries (for example, Italy and the Netherlands), the need for coordination has been reduced through a centralisation of inspection activities. Arguably, efforts to tackle BSE and other irregularities and infringements are hampered where responsibilities for enforcement are distributed across a relatively large number of bodies (as in they are in the UK, for example).

The case studies highlighted a number of **constraints** affecting the ability of enforcement bodies to tackle BSE, including workers being complicit in BSE and, in some countries, the difficulty of challenging widespread belief in the legitimacy of BSE. Most of the studies emphasised that the resources available to enforcement bodies are not sufficient. This problem has been exacerbated by public spending cuts that have resulted in smaller budgets and reduced staffing for enforcement bodies. Resource

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http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535

⁴⁴ R198 states that 'the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties'.

constraints have particular implications for BSE, given that obtaining proof of BSE can be extremely difficult and time-consuming. Potentially, this can lead to BSE being given low priority.

Budget cuts have increased the need for inspections to be carefully targeted on high-risk sectors. While inspections were found to be largely reactive, initiated in response to complaints received through telephone and on-line reporting mechanisms, more targeted approaches were also followed. Targeting is a common practice in sectors believed to present a high risk of BSE, and for some countries there is evidence that it has resulted in many cases of BSE being detected, new tax registrations and, therefore, increased tax revenue.

8.1.6 Cross-border activity

While cross-border cooperation between national enforcement bodies is common in efforts to address undeclared work, little evidence of cooperation focussed solely on BSE was identified amongst the case study countries. Cooperation around undeclared work between enforcement bodies in different EU Member States often includes the exchange of information and, in some cases, establishing formal arrangements such as MoUs.

This existing level of cooperation does, however, provide a foundation for activities directed at tackling BSE, and has the potential to be taken forward.

8.1.7 The role of the European Social Partners

In principle, the social partners can play an important supporting role to the efforts of enforcement bodies. They represent a potentially valuable source of information and advice and, as in the Netherlands, might initiate investigations into BSE.

In most of the case study countries, however, the extent of their involvement is relatively small. It appears that their involvement is most substantial in countries that have strong traditions of social dialogue and extensive collective bargaining, for example the Netherlands and Sweden (Thörnquist 2013, 2015).

8.2 Recommendations

Although this report has highlighted a substantial number of practices, and measures intended to address BSE either directly or as part of wider efforts to address undeclared work, little information is available about their effectiveness and the relative benefits and costs (and unintended consequences) of actions directed at compliance and deterrence. However, a number of general observations and recommendations can be made, which would apply to EU member countries to varying extents.

8.2.1 Recommendations for governments and enforcement bodies

- There is a general lack of accurate information about the extent of BSE. Tackling the information gap is essential if enforcement activities are to become more effective. Detailed analyses of existing datasets, and in-depth studies of specific sectors, to provide up-to-date in-depth analysis of the prevalence and character of BSE and enable more effectively targeted enforcement activities should be considered.
- Where necessary, the remit of enforcement bodies should be expanded so as to enable them to take action in respect of BSE.
- In order to prevent BSE, the legislative framework should provide a clear basis for distinguishing between self-employment, employment and dependent self-employment.
- Drawing on legal distinctions, enforcement bodies should develop tools that enable inspectors (and others) to determine workers' employment status.

- Employers and the self-employed workers with whom they enter into contracts should be provided with easily accessible tools for determining the nature of their relationship. They should have access to information about the potential penalties associated with BSE.
- Employers and workers need to be able to report any concerns they might have. Reporting mechanisms should be widely advertised in a variety of languages and be simple to access.
- In line with the ILO's Employment Recommendation (R198), procedures should be available to enable employers and workers to settle disputes relating to the existence of an employment relationship. The procedures should be swift, inexpensive, fair and efficient
- Governments should review national legislation relating to employment rights, tax and social insurance in order to determine whether it creates incentives for BSE. Governments should examine ways of reducing any such incentives and possibilities for extending employment and social protection to self-employed and dependent self-employed workers.
- The respective responsibilities of businesses involved in sub-contracting arrangements should be clarified and clearly communicated. Companies could be encouraged to strengthen their vigilance in relation to BSE practices on the part of suppliers and subcontractors. More information is required concerning the potential benefits of requiring all businesses in a sub-contracting chain to be responsible for preventing BSE (as in the Netherlands).
- Targeted investigations based on assessments of risk appear to produce positive results. However, the financial and staff resources of enforcement bodies have declined in recent years, further hampering the ability of enforcement bodies to tackle BSE. It is key that enforcement bodies are sufficiently resourced to undertake their activities if progress is to be made.
- It is also essential that enforcement bodies cooperate with each other, share information and coordinate their activities.
- To date, cross border cooperation by enforcement bodies into different EU Member States has been limited as far as efforts to tackle BSE are concerned. Consideration should be given to ways in which cross border cooperation might be strengthened, including through the use of common resources such as the Internal Market Information System (IMI).
- Governments could consider the possibility of including specific BSE-related indicators in the performance measures of enforcement bodies.
- Governments should consider the potential for social partner organisations to support the activities of enforcement bodies (by, for example, providing advice and information; conducting their own awareness-raising campaigns and addressing BSE through collective agreements).

8.2.2 Recommendations for the Platform

- The Platform can facilitate the sharing of information about the approaches followed in different EU Member States in relation to distinguishing between different forms of employment. The Platform can draw attention to the potential value of definitions based in legislation, and the improved transparency that might be provided by Codes of Practice, model agreements and other means of enabling workers and employers to fully comprehend the nature of the relationships into which they enter. The Platform can also find out why some countries have developed hybrid categories in their employment legislation and the consequences for BSE and protection of workers.

- Platform members should consider what types of information should be shared by enforcement bodies in different countries, what other forms of cross-border cooperation are required to help prevent BSE, and the potential benefits of bilateral agreements/MoUs in this regard.
- The Platform can further examine the ways in which the social partners are involved in improving detection and compliance and how their involvement might be strengthened.
- The Platform can look at new forms of work and find out how platforms and the sharing economy (i.e., the 'collaborative economy') have altered relationships between organisations and workers, and whether these have increased the prevalence of undeclared work.
- Very little information is available by which to evaluate the impact of the various approaches to tackling BSE. Although this report has covered a variety of activities, it has been able to provide only a limited account of 'what works' in practice. The Platform should consider commissioning detailed studies to address questions such as: (i) how does the involvement of social partners in enforcement activities affect the incidence of BSE; (ii) how might subcontracting chains be better regulated to reduce BSE; (iii) how might ICT be used to tackle BSE; (iv) should performance measures be used to encourage enforcement bodies to target BSE; and (v) how does the extension of labour law or social protection coverage to dependent workers affect the incidence of BSE?

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APPENDIX 1: Good Practices Fiches

IRELAND

Title of the policy or measure (in English)	Hidden economy monitoring group (HEMG)
Case study/good practice name	HEMG
Country	Ireland
Sectors	Originally agriculture/fishing. Now covers all sectors, particularly those susceptible to undeclared (including BSE) work.
Target Groups	Vulnerable workers and/or those complicit in driving illegal work arrangements.
Short sentence summarising the measure	The HEMG was established was a discussion forum pooling a variety of social partners in order help reduce the level of undeclared work in Ireland.
Background	
Background context driving the implementation of the measure	HEMG was established under Ireland's social partnership framework with a view to securing better compliance with work regulations through enforcement/inspection.
When was the measure implemented? (including start date and end date/ongoing)	The HEMG was established in 1990. It was expanded in 2006 under the Towards 2016 partnership agreement. The measure is ongoing.
Names(s) of authorities/bodies/organisations involved	Representatives of Ireland's tax authorities, the Office of the Revenue Commissioners, Workplace Relations Commission, the Department of Social Protection, the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers' Confederation (IBEC), the Small Firms' Association (SFA) and the Construction Industry Federation (CIF).
Scope of the measure (a pilot project, nationwide, regional wide)	Nationwide.
Type of (policy) measure	Discussion forum.
Key objectives of the measure	The objective of the HEMG is to help reduce the level of undeclared work in Ireland.
Specific measure	
Description of how the	A standing forum for pooling views of the authorities/bodies involved with a

measure operates in practice	view to establishing solutions to wicked problems associated with the informal economy. The HEMG has played a role helping to provide greater clarity with respect to employment status. In particular, and with specific reference to addressing BSE, the HEMG group helped review and amend the application of the Code of Practice for Determining Employment or Self-Employment Status of Individuals.
Which groups are targeted by the measure?	All areas of the economy, though high-risk sectors in particular including those with known instances of BSE.
What resources and other relevant organisational aspects are involved?	Staff time is required. Limited resources may explain the lack of meeting reports/publications resulting from the HEMG.
What are the source(s) of funding?	No specific/named source of funding.
Evaluation and outcome	
Has the measure achieved its objectives?	<p>Limited evidence. The HEMG was reviewed by Eurofound in 2009 in a summary which also highlighted an interest/remit of the HEMG as a means of tackling Bogus Self-Employment (BSE).</p> <p>Although data on its use or impact are not available, the Code of Practice for Determining Employment or Self-Employment Status of Individuals continues to be used by the relevant departments and enforcement agencies in Ireland (e.g. relating to Revenue, Department of Social Protection). This may be considered an achievement of the HEMG with direct relevance to addressing BSE.</p>
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	No evaluation currently available.
What are lessons learnt and the key conditions for success?	Dialogue with the social partners is required for holistic joined up policy making and responses to wicked problems associated with the informal economy. The impact of the HEMG may have suffered as a result of the Irish Government's abandonment of social partnership agreements following the 2007/2008 financial crash.
Level of transferability (e.g. other countries/groups/sectors)	Highly transferable where political/departmental will exists, particularly so where dialogue with social partners is desired.
Contacts	

Sources	http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Towards2016PartnershipAgreement.pdf http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/hidden-economy-monitoring-group-ireland
Metadata and key words for online search	Hidden Economy Monitoring Group Ireland

ITALY

Title of the policy or measure (in English)	Certification of labour contracts or contracts for services.
Case study/good practice name	
Country	Italy
Sectors	Voluntary procedure: all sectors. Compulsory procedure: sectors in which services are performed within confined spaces or spaces with risk of pollution.
Target Groups	Labour contracts (employment contracts, self-employment contracts, quasi-subordinate contracts), contracts (and subcontracts) of provision of services (mainly in outsourcing services).
Short sentence summarising the measure	<p>Certification of employment, self-employment and quasi-subordinate contracts is a voluntary legal procedure whose main function is to reduce legal disputes regarding the classification of employment contracts.</p> <p>The compulsory procedure aims to set high safety standards in dangerous works (confined spaces and in spaces with risk of pollution) so that only qualified enterprises (and qualified employees) can operate.</p>
Background	
Background context driving the implementation of the measure	<p>In Italy, the classification of employment contracts is very important as different contracts provide different rights and levels of protection. The certification of contracts was introduced in 2003 with the aim of reducing uncertainty and ensuring compliance with the regulatory framework.</p> <p>In 2011, the certification procedure was extended to become compulsory only in particular sectors where services are performed within confined spaces or spaces with a risk of pollution due to several fatal accidents generally related to failures in risk assessment, personal protective equipment and training mainly during the execution of contracts or subcontracts for services.</p>
When was the measure implemented? (including start date and end	Starting date: October 24 th 2003. Compulsory procedure implementation: November 23 rd 2011.

date/ongoing)	The measure is ongoing.
Names(s) of authorities/bodies/ organisations involved	<p>The bodies that can provide certification services are appointed by law. These certifying bodies are called certification panels or boards. Certification panels may be set up by:</p> <ul style="list-style-type: none"> • Territorial Labour Inspectorates • Ministry of Labour • Provinces, on the bases of local and territorial autonomy • Universities and University Foundations, under the supervision of a professor of labour law • Bilateral bodies (set up by unions and employers' associations) • The Professional Association of Labour Advisors
Scope of the measure (a pilot project, nationwide, regional wide)	Nationwide.
Type of (policy) measure	Preventive measure.
Key objectives of the measure	
Specific measure	
Description of how the measure operates in practice	<p>Upon receipt of the certification request and all the necessary documents the competent commission undertakes a review of the documentation (and investigate if necessary) and finally decides whether to award the certification or not. The procedure should take no longer than 30 days but this may be extended if the commission needs to carry out further investigations.</p> <p>The compulsory procedure is limited to contracts related to activities to be performed within confined spaces or with a risk of pollution. If the contract (labour or commercial) meets the conditions set by Decree (Decree of the President of the Republic (D.P.R.) no. 177/2011), the contract must be certified before its execution starts.</p>
Which groups are targeted by the measure?	<p>All contracts are concerned, but quasi-subordinate/self-employment contracts and sub/contracts for outsourcing services are specifically targeted.</p> <p>The compulsory procedure targets non-standard labour contracts and contracts (and subcontracts) of provision of services.</p>
What resources and other relevant organisational aspects are involved?	The activation process involves a significant amount of back office work.
What are the source(s) of funding?	Private funding
Evaluation and outcome	

Has the measure achieved its objectives?	Objectives have been partially achieved as it has been mostly used in some specific sectors (such as the call centre 'sector') and where certification is compulsory. The compulsory procedure appears more effective also because the legal responsibilities of the business enterprise and of the main contractor persuades them to carefully evaluate whether a contract must be certified before its execution starts
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	Commissions inform the Government about the number and types of procedures activated each year, divided by sector and type of contract. Unfortunately, there is no public data or information regarding the outcomes achieved.
What are lessons learnt and the key conditions for success?	Voluntary and compulsory procedures could be of considerable use (and therefore the certification could grow) if connected with: <ul style="list-style-type: none"> • Special benefits for the parties (e.g. being considered qualified for executing certain type of works) • Giving more consistency to the legal value of the certification • Strong labour inspection campaigns on BSE centred where contracts are not certified could also be put in place.
Level of transferability (e.g. other countries/groups/sectors)	The measure, with appropriate modifications, could be transferable to other countries in order to prevent forms of bogus employment and to improve health and safety conditions in the workplace.
Contacts	http://www.lavoro.gov.it As an example of internal regulation: http://www.certificazione.unimore.it/site/home/certificazione.html
Sources	Legislative Decree no. 276/2003. Decree of the President of the Republic (D.P.R.) no. 177/2011.
Metadata and key words for online search	Certification, contracts, provision, litigation.

LATVIA

Title of the policy or measure (in English)	No specific title.
Case study/good practice name	The council for prevention of the 'shadow economy' (Ēnu ekonomikas padome) and "Action plan of public authorities for combatting 'shadow economy' in 2016-2020"
Country	Latvia
Sectors	Macroeconomics, combatting the 'shadow economy'

Target Groups	Society in general, entrepreneurs
Short sentence summarising the measure	The measure relates to inter-institutional supervision, planning, coordination and analyses of activities to prevent the shadow economy. This also includes action plans, according to the needs of relevant bodies.
Background	
Background context driving the implementation of the measure	Under a need to revitalise the economy, as part of structural reforms the Latvian Government decided to address the issue of reducing the shadow economy.
When was the measure implemented? (including start date and end date/ongoing)	<p>Since 2010, on-going</p> <p>Several complementary documents adopted:</p> <p>“Action Plan to Reduce Shadow Economy and Promote Fair Competition 2010-2013” (not in force)</p> <p>“Action plan of public authorities for combatting ‘shadow economy’ in 2016-2020”</p>
Names(s) of authorities/bodies/ organisations involved	From 16 September 2014 until 1 October 2017, the council has comprised the following 19 members (4 of them are representatives of social partners): prime minister (chair), minister of economics, minister of finances, minister of interior, minister of welfare, minister of transport, minister of justice, minister of health, minister of agriculture, prosecutor general, head of the Corruption Prevention and Combating Bureau, head of the State Labour Inspectorate, head of the State Revenue Service, chief of the State police, head of the Health Inspectorate, president of Employers’ Confederation of Latvia, head of the Latvian Association of Local and Regional Governments, head of Free Trade Union Confederation of Latvia and president of Latvian Chamber of Commerce and Industry.
Scope of the measure (a pilot project, nationwide, regional wide)	Nationwide action plan.
Type of (policy) measure	Complex measure. Improvement of direct and indirect control of the ‘shadow economy’.
Key objectives of the measure	Combatting the ‘shadow economy’ in various sectors by improvement performance in all policy areas.
Specific measure	
Description of how the measure operates in practice	<p>The council coordinates prevention activities across all sectors, analyses the results of previous activities, takes measures to fight the shadow economy and evaluates the effectiveness of the measures. This includes the ratification of an action plan to fight the ‘shadow economy’.</p> <p>The action plan is a policy document that summarises all measures planned to tackle the ‘shadow economy’ between 2016 and 2020 in the following</p>

	<p>areas:</p> <ul style="list-style-type: none"> • combating 'shadow economy' in the fields of construction, trade, services, transportation etc.; • strengthening capacity of enforcement bodies (exchange of information, effective use of ICT etc.); • efficient penalty system; • awareness rising campaigns; • tax efficiency;
Which groups are targeted by the measure?	Society in general, entrepreneurs.
What resources and other relevant organisational aspects are involved?	No information.
What are the source(s) of funding?	Budget of respective organisations and partners (self-financing).
Evaluation and outcome	
Has the measure achieved its objectives?	Performance/ evaluation indicators were not specified in neither previous, nor current action plan.
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	No assessment conducted
What are lessons learnt and the key conditions for success?	No assessment conducted.
Level of transferability (e.g. other countries/groups/sectors)	High level of transferability to other countries; however, a list of relevant institutions should be specified for each country respectively.
Contacts	<p>Ministry of Finance,</p> <p>Sandra Bormeistere, +371 67095489; Sandra.Bormeistere@fm.gov.lv</p>
Sources	<p>http://www.fm.gov.lv/lv/sadalas/tautsaimniecibas_analize/tautsaimniecibas_analize/enu_ekonomika/enu_ekonomikas_apkarosanas_padome_/ (LV)</p> <p>http://www.fm.gov.lv/en/s/macroeconomics/shadow_economy/ (EN)</p> <p>http://www.fm.gov.lv/files/presesrelizes/EEAP_prezentacija_07012016.pdf (LV)</p>

ROMANIA

Title of the policy or measure (in English)	Changes in the Fiscal Code
Case study/good practice name	Changes in the Fiscal Code – a tool to classify the independent activities and a new level of taxation for authorised natural persons (self-employed workers).
Country	Romania
Sectors	All sectors
Target Groups	All entities which carry economic activities
Short sentence summarising the measure	In July 2015, seven criteria defining the independent activity were introduced into the Fiscal Code. This was followed by the introduction of a new taxation level for self-employed workers, which was announced in September 2015 and implemented in January 2016. The new level of taxation reduces the difference in the tax rates that apply to employees and the self-employed.
Background	
Background context driving the implementation of the measure	Until July 2015, the Fiscal Code used four criteria to define dependent activity. Yet, it was difficult to make a clear distinction between dependent and independent activities. For this reason, seven new criteria to define an independent activity were introduced into the new Fiscal Code in July 2015. This measure was adopted in a context in which there was a large difference between the tax rates that applied to employees and employers and those that applied to self-employed persons.
When was the measure implemented? (including start date and end date/ongoing)	July 2015/ Ongoing – The seven criteria used to define the independent activity were introduced into the new Fiscal Code. January 2016/ Ongoing – The new level of taxation in place for self-employed workers was introduced into the new Fiscal Code.
Names(s) of authorities/bodies/ organisations involved	National Agency for Fiscal Administration (ANAF)
Scope of the measure (a pilot project, nationwide, regional wide)	Nationwide
Type of (policy) measure	These are fiscal measures, introducing a tool for classifying economic activities as dependent or independent and a new level of taxation for self-employed workers.

Key objectives of the measure	The objective is to ensure that the level of taxation is correctly calculated by those carrying economic activities and probably to reduce the financial incentive to employ workers on a BSE basis.
Specific measure	
Description of how the measure operates in practice	<p>From January 2016, all self-employed have to pay social contributions (i.e. those having another job, retired people, and those having an income lower than the minimum wage are not anymore exempted as were in the previous period). Also, the income for which the self-employed wish to be ensured is no longer optional.</p> <p>The definition of dependent activity, and new criteria to define independent activity were introduced by Law no. 227/2015 into the new Fiscal Code. As such, dependent activity is defined as “any activity undertaken by a natural person in an employment relationship which generates income” (Article 7.1.). An independent activity is defined as “any activity conducted by a natural person in order to obtain income, which meets at least four of the seven criteria mentioned in the law: (1) The individual has the freedom of choice of where and how to work, as well as the freedom to choose the work program; (2) The individual has the freedom to have more than one customer; (3) Inherent risks of the business are assumed by the individual; (4) Work is performed by using individual’s assets; (5) Work is performed by the individual through the use of intellectual and/ or physical skills; (6) The individual is member of a professional body; (7) The individual has the freedom to conduct the activity directly with employees or in collaboration with third parties according to the law”.</p> <p>If after an inspection performed by the National Fiscal Administration Agency (ANAF) of the Ministry of Public Finances the minimum number of four criteria is not met, the taxes due are recalculated in line with the regulation in place for the dependent activity, plus penalties.</p>
Which groups are targeted by the measure?	<p>All entities carrying out economic activities (including self-employed persons) for the criteria which distinguish between dependent and independent activities.</p> <p>The self-employed workers for the new level of taxation in place.</p>
What resources and other relevant organisational aspects are involved?	Specialised staff from ANAF.
What are the source(s) of funding?	National budget.
Evaluation and outcome	
Has the measure achieved its objectives?	After the new legislation was announced, the monthly growth rate of the active self-employed workers started to decrease, whilst the growth trend for other forms of companies remained positive. Simultaneously, the number of former and inactive self-employed workers recorded each month increased. Before the new legislation, 50% of Romanian counties reported between 22

	and 60 closed or inactive self-employed workers per month. After the new legislation was announced, only 21% of Romanian counties reported between 22 and 60 closed or inactive self-employed workers per month, 64% between 60 and 150 and 15% over 150. Thus, the evidence suggests that the new legislation led to a decrease in bogus self-employment in Romania (figures calculated using data from the Romanian National Trade Register Office).
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	No public report is available with the effects produced by the changes in the Fiscal Code.
What are lessons learnt and the key conditions for success?	No assessment has been carried out.
Level of transferability (e.g. other countries/groups/sectors)	This is a transferable measure. Other countries could introduce similar criteria/ tools to assess if an economic activity is dependent or independent as well as efforts to diminish the financial incentive of bogus self-employment.
Contacts	
Sources	Romanian Fiscal Code, Available at : https://static.anaf.ro/static/10/Anaf/legislatie/Cod_fiscal_norme_2016.htm Romanian National Trade Register Office, Active Self-employed workers, Available at: http://www.onrc.ro/index.php/ro/statistici?id=244
Metadata and key words for online search	Fiscal reform, Independent activity, Taxation

SWEDEN

Title of the policy or measure (in English)	Tax control in the road haulage industry for hire and reward
Case study/good practice name	The Swedish Tax Agency controlling undeclared work in the road haulage industry, including e.g. false self-employment and illicit and incorrect use of staffing agencies.
Country	Sweden
Sectors	The road haulage sector for hire and reward (the trailer transport segment).
Target groups	Haulage companies providing trailer transport services; Swedish hauliers as well as foreign hauliers operating in Sweden.
Type of measure	Deterrence: improve detection
Short sentence summarising the	The Swedish Tax Agency carried out a project in 2014-2016 aimed to control

measure	the compliance of the regulations on taxes and social insurance contributions among a sample of Swedish hauliers as and foreign hauliers operating in Sweden.
Background	
Background context driving the implementation of the measure	Over the past ten years, the prevalence of undeclared work in road haulage, for example by using false self-employed drivers, especially drivers from other EU Member States or from countries outside the EU, has become an increasing problem in the Swedish road haulage industry. Reports from the social partners, the authorities and researchers also indicate violation of cabotage rules, violation of regulation on driving and resting time, and abuse of staffing agency workers to press down labour costs. These practices have generated external social costs and considerable losses of tax revenues in society. Against this background, the Tax Agency decided to carry out special controls in the road haulage industry to map out the assumed problems in this sector, and to see how these problems could be handled.
When was the measure implemented? (including start date and end date/ongoing)	The project started in 2014 and ended in 2016.
Names(s) of authorities/bodies/organisations involved	The Swedish Tax Agency.
Scope of the measure (a pilot project, nationwide, regional wide)	Nationwide pilot project. In practice, most of the hauliers investigated were located in the south of Sweden nearby the big harbours.
Type of (policy) measure	Control measures directed towards selected companies in the road haulage industry on the basis of special criteria indicating tax evasion.
Key objectives of the measure	<ul style="list-style-type: none"> • To prevent and combat various forms of undeclared work in the road haulage industry, including false self-employment and illicit and incorrect use of staffing companies. • To spread information and knowledge of regulations on taxes and social security contributions among the actors in this market. • To raise unpaid taxes and correct tax rates for hauliers/employers who unconsciously or consciously did not comply with the regulations on taxes and social security contributions, and, in the same way, to raise unpaid income tax among drivers as well.
Specific measure	
Description of how the measure operates in practice	<p>The project started on a broad basis. Initially, the Swedish Tax Agency looked at haulage companies in which the turnover had increased, at the same time as the employed labour force had been reduced.</p> <p>Regarding foreign hauliers, the Tax Agency concentrated on hauliers who applied for a large amount of value added tax (VAT) refund. In cases where</p>

	<p>the VAT for their diesel costs covered, in principle, their driving, the Tax Agency could assume that they had driven in Sweden only, and thus an inquiry was made whether they should have declared income taxes and/or VAT tax in Sweden. The control concerned whether or not they declared the workforce they used, and if so, whether they made tax deductions from the drivers' remuneration, and paid payroll tax. Regarding companies registered abroad, which the Tax Agency considered as posted workers, the Agency checked if they were registered at the Work Environment Authority in accordance with the Swedish Act on Posting (2013:351) and the so-called Enforcement Directive (2014/67/EU).</p> <p>In relation to drivers, who acted as nominally self-employed sub-contractors, the control measures concerned whether they had Swedish F-tax certificates (showing that they paid their own payroll tax). Regarding foreign drivers, the Tax Agency also checked if they had valid A1 forms (showing in which country they were socially insured). Moreover, the Agency controlled how long time the drivers had worked in Sweden to estimate whether they were obliged to pay Swedish income tax.</p>
Which groups are targeted by the measure?	Hauliers/employers and staffing companies registered in Sweden and foreign hauliers and staffing companies operating in Sweden; Swedish and foreign drivers working in Sweden.
What resources and other relevant organisational aspects are involved?	The project was carried out within the ordinary budget.
What are the source(s) of funding?	Government budget.
Evaluation and outcome	
Has the measure achieved its objectives?	<p>According to the project leaders, the project achieved its main objectives. It informed the hauliers about their legal obligations, as well as the drivers' legal rights and obligations (for example the social rights genuinely employed workers are entitled to).</p> <ul style="list-style-type: none"> • The project revealed considerable problems with tax evasion. 39 of the 49 haulage companies that were subject to the special investigation and control failed the test. This meant that the Tax Agency had to increase the tax rate with in total 44 million SEK for these companies. • The project spread information and knowledge in society about the problem of undeclared work in the road haulage sector, including various measures used to circumvent existing fiscal and social laws and regulations in order to press down labour costs. The project leaders also personally informed the government (minister of infrastructure) about the results. • It is reasonable to assume that the information and knowledge provided by the project may have contributed to a Government Bill in December 2016 on mandatory monthly tax declarations for employers for each individual employee (Governmental Bill 2016/17:58, cf. the Nacka Project).

	<ul style="list-style-type: none"> The project may also have contributed to a directive from the government to the Swedish Transport Administration (Trafikverket) to look at the possibilities to increase the purchasers' responsibility for fair freight transport services.
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	
What are lessons learnt and the key conditions for success?	<p>An important lesson learnt is the importance of understanding the complex social and economic relationships involved in the practice of various forms of undeclared work in the road haulage industry in order to circumvent national and supra-national (EU) laws and regulations. For example, the use of disguised employment and long subcontracting chains, the use of staffing companies as goalkeepers, and the use of foreign hauliers and the complex relationships behind the use of drivers from countries with lower taxes and social security fees.</p> <p>It is necessary to make in-depth analyses of these complex relations to understand the problems in the industry.</p>
Level of transferability (e.g. other countries/groups/sectors)	<p>The Swedish Tax Agency has made similar studies in other industries, for example, in the cleaning, construction and the hotel and restaurant industries.</p> <p>The road haulage project, as well as the other projects, have helped to spread general knowledge in society about fiscal laws and regulations. This also means that it has become more difficult for companies, employers and workers to claim that are not aware of existing rules and regulations.</p>
Contacts	<p>Inger Herding, Tax Accountant, Swedish Tax Agency (Region West). inger.herding@skatteverket.se</p> <p>Ulrika Karlsson, Tax Accountant and Regional Coordinator, Advanced Economic Criminality, Swedish Tax Agency (Region West). ulrika.karlsson@skatteverket.se</p>
Sources	<p>Interview with Inger Herding and Ulrika Karlsson (project leaders), Swedish Tax Agency, 21.02.2017.</p> <p>Government Bill 2016/17:58. 'Uppgifter på individnivå Arbetsgivardeklarationen'.</p> <p>Karlsson, Ulrika and Herding, Inger (2016) Åkeriverksamhet i Sverige 2015. Dnr. 410-115937-16/123. Stockholm: Skatteverket. Svenska Dagbladet 13.12.2016. 'Finansministern vill kunna spåra utländska fordon'. (Sandra Johansson). https://www.svd.se/finansministern-vill-kunna-spara-utlandska-fordon/om/svd-granskar-akerinaringen</p> <p>Sternberg H, Filipiak M, Hofmann E et al. (2015) Cabotagestudien: A study on trucking deregulation in Scandinavia and beyond. Report. Packaging Logistics,</p>

	<p>Lund University.</p> <p>Thörnquist, Annette (2013) False (Bogus) Self-Employment in East-West Labour Migration: Recent trends in the Swedish construction and road haulage industries. TheMES, Themes on Migration and Ethnic Studies, No. 41. Linköping: Linköping University Electronic Press. http://urn.kb.se/resolve?urn=urn:nbn:se:liu:diva-95803</p>
Metadata and key words for online search	Road haulage, Sweden, false self-employment, staffing agencies, tax evasion, special tax control.

SWEDEN

Title of the policy or measure (in English)	Measures against undeclared work and economic criminality in public procurement.
Case study/good practice name	The Nacka Project (Nackaprojektet) against undeclared work and economic criminality in public procurement.
Country	Sweden
Sectors	The municipal sector
Target groups	All contractors and sub-contractors contracted by Nacka municipality or by the municipal companies in the building and construction sector, and eventually also in other sectors. The staff at the municipality's department for procurement.
Type of measure	Prevention
Short sentence summarising the measure	<p>The Nacka project' meant that the municipality required the contractors who won a tender to comply with a regulatory system including 1) the so-called ID06-system* or a similar system for daily identity and attendance control of all individuals at the worksites, and to 2) once a month send the sealed ID06 records, as well as individual declarations of taxes and social fees paid for the individual workers at the worksite, to the Swedish Tax Agency for cross-control. The project presupposed organized cooperation with the Tax Agency, which also should make unannounced checks at the worksites. The municipality made unannounced controls as well.</p> <p>* The Swedish Construction Federation (Sveriges Byggindustrier) had introduced the ID06 system for identity and attendance control in 2006, when seven member associations immediately adopted the system. http://www.id06.se/userfiles/files/dokument/ID06%20eng.pdf</p>
Background	
Background context driving the implementation of the measure	<p>There was an increasing problem with undeclared work and economic criminality in the building and construction sector in Sweden.</p> <p>In the autumn of 2008, Nacka municipality arranged a conference on 'White Jobs'* in cooperation with the social partners. Among the invited guests at</p>

	<p>the Nacka conference was the Swedish Tax Agency, which recommended public purchasers to launch projects to combat undeclared work in public procurement.</p> <p>* Some years earlier, the Swedish Trade Union Confederation (LO) had launched a campaign called 'White Jobs'.</p>
When was the measure implemented? (including start date and end date/ongoing)	The Nacka Project started in April 2009 and ended in December 2010. However, the measures introduced still remain.
Names(s) of authorities/bodies/organizations involved	The Nacka Municipality; The Swedish Construction Federation (Sveriges Byggindustrier); The Swedish Building Workers' Union (Svenska Byggnadsarbetareförbundet); The Swedish Tax Agency (Skatteverket), the Swedish Economic Crime Authority (Ekobrottsmyndigheten). The Swedish National Council for Crime Prevention (Brottsförebyggande rådet, Brå) and the police authority were involved in the planning of the project as well.
Scope of the measure (a pilot project, nationwide, regional wide)	Pilot project; regional wide (the municipality)
Type of (policy) measure	
Key objectives of the measure	<p>The overall aim of the Nacka Project was to eliminate the possibilities to practice undeclared work and other forms of economic criminality in the building and construction sector (in the context of public procurement). Thus, the project aimed to remove distortions in competition and encourage and support fair competition and fair entrepreneurship. This also meant that the project forestalled economic losses for the municipality and its inhabitants.</p> <p>The project did not address the problem of false self-employment specifically, but the control measures implied in the project made it more difficult to practice this form of circumventing taxes and social security contributions as well.</p>
Specific measure	
Description of how the measure operates in practice	<p>The regulatory system can be described as a three-stage model consisting of strict requirements on:</p> <ul style="list-style-type: none"> • Daily identity control and attendance control at the worksites in accordance with the 'ID06-system'. This meant that the contractor must guarantee that all individuals at the worksite were registered in a sealed attendance record, and wear an individual and visible bandage or identity card, which also showed in which company the worker was employed. • The contractors should once a month send the sealed attendance records to the Swedish Tax Agency, as well as a declaration of the payment of taxes and social security contributions for each worker at the worksite. The Tax Agency could thereby discover deviations between the two registers and identify workers for whom the contractor had not paid

	<p>tax and social security contributions.</p> <ul style="list-style-type: none"> • The Tax Agency and the municipality should carry out unannounced random checks at the worksites. <p>If a contractor or sub-contractor used salaried workers for whom they did not pay preliminary income tax and pay-roll tax (social fees), the Tax Agency could discover undeclared work and disguised employment, and require the employers to pay the tax debts. Moreover, Nacka municipality could fine the company.</p>
Which groups are targeted by the measure?	<p>Contractors and sub-contractors; employers and workers.</p> <p>The staff at the department for procurement in Nacka Municipality. The municipality educated the civil servants who should handle these issues in accordance with the new routines. Representatives for the Swedish Tax Agency and other project partners assisted in this education as well.</p>
What resources and other relevant organisational aspects are involved?	
What are the source(s) of funding?	
Evaluation and outcome	
Has the measure achieved its objectives?	<p>The municipality evaluated the project in 2011.</p> <p>According to the civil servants at the department for purchasing, a majority of the contractors were positive to the project, and they appreciated that it had become easier to compete on equal terms. They also meant that the companies accepted the extra administrative work the new routines generated without objections. The purchasers considered that the contractors generally wanted to do things right.</p> <p>The cooperation with the Tax Agency seemed also to have worked well, but the contractors called for easier information on how the regulations should be adapted to shorter assignments.</p> <p>Regarding the costs for the contracted projects, the purchasers meant that they were about the same as before. Nor had the number of companies bidding for a contract decreased. It should be mentioned though that Nacka municipality carried out control of contractors also before the project started, and several contractors had already introduced the ID06-system as well.</p> <p>The municipality's and the Tax Agency's unannounced checks at the worksites showed that nearly all of the contractors and sub-contractors handled their tax obligations properly. The Tax Agency's monthly cross-checks of the attendance records and of the employers' declarations of taxes and social security contributions for the individual workers made it easier to discover fraudulent actors at an early stage.</p> <p>The Swedish Tax Agency, as well as the civil servants in Nacka municipality, meant that the manual work needed for the implementation of the project</p>

	<p>was time-consuming. Therefore, they emphasized the need for system support to facilitate process.</p> <p>The main result of the project was that it became considerable easier to discover and stop unfair competition. The tax Agency's cross-checks of the attendance records and the contractors' tax declarations for the individual workers were essential in this context. Hence, the project also reinforced communication and cooperation between the municipality and the Tax Agency.</p> <p>The project illustrated the importance of cooperation between different authorities and organizations in the struggle against undeclared work and economic criminality. It also illustrated the importance of strict regulations, and a control system, which both contractors and their sub-contractors had to stick to.</p> <p>Another important component in the project was the main contractor's responsibility for the whole subcontracting chain.</p>
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	<p>The assessment methods consisted of a web-based survey, which was sent to 22 civil servants working with public procurement in Nacka municipality, and 90 contractors engaged during the project period. 12 civil servants and 35 contractors answered the survey. Thus, there was a relative low response rate of the survey. In addition to the survey, the evaluation also relied on oral information. Among other things, the project team made interviews with the Swedish Tax Agency.</p>
What are lessons learnt and the key conditions for success?	<p>The importance of a broad cooperation between municipalities, governmental authorities and the social partners in the struggle against undeclared work and other forms of economic criminality.</p> <p>The importance of having an interdisciplinary approach to the complex problems of undeclared work and economic criminality.</p> <p>The need for a law on monthly tax declarations of paid taxes and social security fees for each individual worker at a worksite, including the Agency's Tax Agency's control of these documents.</p>
Level of transferability (e.g. other countries/groups/sectors)	<p>Nacka Municipality extended the rules and routines for procurement elaborated in the project to other sectors as well. The policy of a broad cooperation between different authorities and the social partners, as well as the interdisciplinary approach, can in principle be used in other municipalities as well. The Nacka project provided a good example.</p>
Contacts	<p>Jan Landström, säkerhetssamordnare (Security Coordinator)</p> <p>Nacka kommun, Stadsledningskontoret. jan.landstrom@nacka.se</p>
Sources	<p>Interview with Jan Landström, Nacka Municipality 08.02.2017.</p> <p>Booklet about the Nacka Project (<i>Nacka kommun tar ställning mot svartjobb i byggsektorn</i>). Nacka Municipality, 2009.</p> <p>Booklet about the evaluation of the Nacka Project (<i>Nackaprojektet, en insats för att förhindra svartjobb i byggsektorn. Två år senare – hur 79ard et gått?</i>)</p>

	<p>Nacka Municipality, 2011.</p> <p>Power-point presentation of Nacka Municipality's work against corruption and economic criminality (Jan Landström, 22 September 2015).</p> <p>http://skl.se/download/18.d600fc114fdb8c08aa4146/1444832231686/Nacka-Trygghetsdagen-22-sept-2015.pdf</p> <p>Government Bill 2014/15:6. <i>Minskat svartarbete i byggbranschen</i> (Reducing undeclared work in the building and construction sector).</p> <p>http://www.regeringen.se/49bb12/contentassets/97139075468244dda8a20c23d4304eb9/minskat-svartarbete-i-byggbranschen-prop.-2014156</p>
Metadata and key words for online search	Nacka municipality, public procurement, building- and construction sector, undeclared work, attendance control, tax control, interdisciplinary approach

SPAIN

Title of the policy or measure (in English)	Predictive Tool (Herramienta de lucha contra el fraude)
Case study/good practice name	
Country	Spain
Sectors	All sectors
Target groups	All target groups
Type of measure	Prevention
Short sentence summarising the measure	The "Anti-fraud tool" (<i>Herramienta de lucha contra el fraude</i>) is a set of IT tools, that allow massive data cross checking and analysis (Social Security Treasury, Tax Administration, etc.) for inspection planning by assessing the need for Spanish Labour and Social Security Inspectorate (LSSI) campaigns and providing relevant information to support these campaigns. It also analyses the LSSI database (INTEGRA) to assess the results and efficiency or the different campaigns and actions.
Background	
Background context driving the implementation of the measure	There was the need to improve fraud detection with new and better IT applications
When was the measure implemented? (including start date and end date/ongoing)	The measure started to be implemented in 2015 and is still on-going.

Names(s) of authorities/bodies/organisations involved	Spanish Labour and Social Security Inspectorate
Scope of the measure (a pilot project, nationwide, regional wide)	Nationwide
Type of (policy) measure	Online tool/Data sharing
Key objectives of the measure	<p>The project has the following objectives:</p> <ul style="list-style-type: none"> • Defining different fraud patterns taking account of different fraud typologies, identifying models and profiles; • Better defining the identification mechanisms of persons/companies potentially in fraud, so as to provide useful tools for inspection planning; • Improving friendly data management so as to ease and improve analysis by the LSSI.
Specific measure	
Description of how the measure operates in practice	<p>The tool consists in massive data analysis which affects several phases of the anti-fraud process.</p> <ul style="list-style-type: none"> • In the detection phase, the tool allows for early detection of fraud behaviours and identification of emerging patterns of fraud; • In the selection phase, the tool allows for simplification and more accuracy of the selection, thus increasing effectiveness and reducing burden on persons/companies not in fraud; • Research and analysis is also improved thanks to the availability of all data in one unique system. • As regards massive/extensive inspection activities, the accumulation and automatic analysis of the information allows to increase both the amount and quality of extensive activities. In some fraudulent cases, the tool allows to better prove the fraud.
Which groups are targeted by the measure?	Companies and individuals
What resources and other relevant organisational aspects are involved?	Different data bases (Social Security Treasury, Tax Authorities, etc.) and LSSI data base (Integra)
What are the source(s) of funding?	Budget of the Ministry of Employment and Social Security
Evaluation and outcome	

Has the measure achieved its objectives?	This is an ongoing project, there are no quantitative data readily available. However, the first analyses that are being performed show its potential. These results are not published.
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	No evaluation carried-out
What are lessons learnt and the key conditions for success?	No evaluation has been carried out to date.
Level of transferability (e.g. other countries/groups/sectors)	Could be transferred to other countries where the Labour Inspectors have access to other Administration data and the IT resources (tools, and staff)
Contacts	Begoña Buces Deputy Director for Inspection in Social Security, irregular economy and immigration Tel. 91 363 11 61/60/ Fax 91 363 06 79 Email: ITSSSGIT@meyss.es
Sources	Annual Report 2015 of the LSSI, available at http://www.empleo.gob.es/itss/ITSS/ITSS_Descargas/Que_hacemos/Memorias/Memoria_2015_w.pdf Integrated Objectives' Plan of the LISS, 2016, available at http://www.ccelpa.org/wp-content/uploads/2016/09/PLAN-INTEGRADO-ITSS-2016.pdf
Metadata and key words for online search	"Herramienta de lucha contra el fraude" + "Inspección de trabajo y de la seguridad social"

UNITED KINGDOM

Title of the policy or measure (in English)	HM Revenue & Customs Check Employment Status for Tax (CEST) tool
Case study/good practice name	Check Employment Status for Tax (CEST)
Country	UK
Sectors	All sectors
Target groups	All workers
Type of measure	Prevention

Short sentence summarising the measure	The Check Employment Status for Tax (CEST) tool enables anyone to check the employment status of an individual or group of workers (whether employed or self-employed) for tax or National Insurance contributions (NICs).
Background	
Background context driving the implementation of the measure	HM Revenue & Customs had been criticised for providing ineffective tools for establishing employment status of individuals and subsequently invested in a new (user-friendly) online tool.
When was the measure implemented? (including start date and end date/ongoing)	As a precursor to CEST the Employment Status Indicator (ESI) was created in 2014. The Check Employment Status for Tax tool is a new version which was trialled in a public beta form from 2 March 2017.
Names(s) of authorities/bodies/organisations involved	HMRC
Scope of the measure (a pilot project, nationwide, regional wide)	Nationwide
Type of (policy) measure	Online tool
Key objectives of the measure	The objective of the CEST tool is to provide a user-friendly and accurate online service which can clarify the employment status of an individual or group of workers (i.e. clarification of likely employed or self-employed status).
Specific measure	
Description of how the measure operates in practice	CEST helps to establish if someone is employed or self-employed by taking respondents through an interview. The system asks key questions related to the requirement for personal service, the degree of control they work under, their level of financial risk and their integration into the engager's business.
Which groups are targeted by the measure?	All workers are targeted, though the tool is especially useful for anyone engaging workers who need to clarify the employment relationship.
What resources and other relevant organisational aspects are involved?	The government resource includes a feedback option. Help in the instance of technical difficulties when accessing/using the tool is also available.
What are the source(s) of funding?	Government funding.
Evaluation and outcome	

Has the measure achieved its objectives?	The updated CEST is user-friendly and in this sense it has achieved its objective.
Assessment method (including indicators used to measure its impact), and the outputs and outcomes achieved	An evaluation has not been carried out.
What are lessons learnt and the key conditions for success?	Online self-classification tools (i.e. such as ESI and CEST) are likely to benefit from ongoing adjustments and modernisation based on their uptake and their perceived accuracy.
Level of transferability (e.g. other countries/groups/sectors)	There is considerable potential for transferability. However, such devices are likely to require country-specific tailoring in reflection of the distinct tax/worker status arrangements within different countries (e.g. the IR35 arrangements in the UK case).
Contacts	HMRC may be contacted directly. There is also an CEST online tool feedback form available: https://www.tax.service.gov.uk/contact/beta-feedback-unauthenticated?service=off-payroll An online services helpdesk is available on: 0300 200 3600.
Sources	https://www.gov.uk/guidance/check-employment-status-for-tax
Metadata and key words for online search	Check Employment Status for Tax