



Methods and instruments to gather evidence of undeclared work

December 2023



European Platform
tackling undeclared work



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Executive summary

Aims and objectives of the study

This study delves into the multifaceted issue of undeclared work in EU Member States, aiming to fill the existing knowledge gap on the methods and instruments to gather evidence of undeclared work. To date, a comprehensive understanding of the evidence types, associated challenges, and successful strategies for addressing this problem has been lacking. This study seeks to expand knowledge in this area, identify best practices, and foster mutual learning among Member States.

The objectives of the study are to:

- ▶ Identify the **types of evidence** gathered to prove the different types (i.e., unregistered employment, under-declared employment, or bogus self-employment) of undeclared work in the Member States;
- ▶ Identify the common **challenges** when gathering evidence to prove the undeclared work;
- ▶ Explore the common **reasons for appeals** and/or **lack of success** in proving the existence of undeclared work in court; and
- ▶ Identify **legal presumptions** established by law in the different Member States and applicable to undeclared work.

Methodology

The study is based on desk research and a survey filled-out by the members of the European Platform tackling undeclared work (the Platform). The survey was completed in mid-June 2023 and consisted of two parts – one section with closed questions (short version of the survey) and another section with open questions (long version of the survey). A total of 14 countries contributed to the survey.

The short survey was completed by Cyprus; Denmark, Estonia, Germany, Greece, Slovakia, Slovenia, and Sweden. The full survey was completed by Belgium, Czechia, Finland, Iceland, Lithuania, and Spain.

Types of evidence gathered to prove undeclared work

The survey revealed the types of documents and information collected, and their acceptability as proof for administrative and/or criminal sanctions in cases of **unregistered employment** (e.g. an employment relationship that is not registered with the authorities when it should be), **under-declared employment** (e.g. violations of regulations on working time, position, work duties, remuneration, minimum wage, social security contributions), or **bogus self-employment** (i.e. misclassification of a dependent employment relationship as self-employment). Respondents also explained the types of information, facts, and documents considered to be valid evidence of violations in atypical types of work (e.g., teleworking, remote work, or domestic work).

The key survey findings are summarised below.

For **unregistered employment**:

- ▶ The evidence **commonly collected** by labour inspectorates includes employee details, employer-maintained staff lists, registries of working hours and overtime, timesheets, and documents identifying owners and subcontractors.



- ▶ The evidence most **widely accepted by courts** (potentially leading to administrative sanctions) comprise pay slips, bank pay-in slips or pay stubs, timesheets, registries of working hours and overtime, employee details, labour and service contracts/agreements and portable documents A1 or work permits.
- ▶ The evidence most **widely accepted by criminal courts** to prove unregistered employment includes employee details, working time registries and overtime records, payslips or bank pay-in slips and/or pay stubs, timesheets, and portable documents A1 or work permits.

For under-declared work:

- ▶ The evidence **commonly collected** by labour inspectors consists of registries of working hours and overtime, and timesheets.
- ▶ The evidence most **widely accepted by courts** to prove under-declared work includes timesheets, registries of working hours and overtime, time-schedules, chronograms of on-site operations, estimated number of required workforce for each working day by the company/employer, payslips, bank pay-in slips and/or pay stubs, and employee timecards.
- ▶ Similar evidence is **accepted by criminal courts** for imposing criminal sanctions for under-declared work, such as timesheets, pay slips, bank pay-in slips and/or pay stubs, registries of working hours and overtime, time-schedules, chronograms of on-site operations, estimated number of required workforce for each working day by the company/employer, and the employee timecards.

For bogus self-employment:

- ▶ The evidence most commonly **collected and accepted** by respondents' institutions, other authorities and national courts are staff list/registries, employee details, labour or service contracts/agreements, commercial information on companies (e.g. registered office or commercial/administrative/judicial incidents), registries of working hours and overtime, commercial contracts, subcontracts, receipts and other financial documents for deliveries to customers. Other items frequently accepted as proof for administrative sanctions are pre-contractual documents (i.e. job description), uniforms with the logo or name of the employer that workers wear, payslips, bank pay-in slips, and/or pay stubs, time schedule/chronogram of on-site operations, including the estimated workforce required, details on company vehicles, paper documents with the logo or name of the employer or digital information, employee timecards, the site access and exit logs, internal company regulations, and portable documents A1 or work permits.
- ▶ Attributes such as timestamps, electronic signatures, and paper signatures are the most frequently required for imposing **administrative sanctions**, while record numbers are rarely required as proof for administrative sanctions.
- ▶ For **criminal sanctions** for bogus self-employment, the leading items most commonly accepted as evidence are employee details, labour or service contracts/agreements, and staff/list registry kept by the employer.

For violations in **atypical work arrangements** criminal courts most often **accept** as proof the information from worksite access and exit logs, physical objects seized, video surveillance and closed-circuit television (CCTV) footage, photographs, and witness statements.



Challenges in gathering evidence to prove undeclared work

The survey respondents listed the **key challenges** encountered **during inspections and the process of gathering evidence**.

- ▶ **Limited capacity of public authorities**, which often face difficulties accessing private property, especially on construction sites, or establishing the place, day, and time of work in remote or online work settings, mainly due to lack of working time registry and the technical challenges in accessing information stored in computer equipment;
- ▶ **Employees** are often afraid to cooperate with inspectors or law enforcement authorities due to various factors such as feeling guilty to work under-declared, receiving undue unemployment benefits, fear of retaliation and of losing their work permits, language barriers, or lack of awareness of who the actual employer is;
- ▶ **Employers** may use tactics aimed at stalling inspections, delaying access to work sites, requesting extensions to provide documents or information, and sometimes even refusing to provide required documents and often obstructing inspectors' tasks by using algorithms/applications and computer programmes or falsify the content of work registers outright. Employers may also use schemes to hide the actual nature of business and labour relationships, e.g., letterbox companies, temporary work agencies, non-transparent supply chains of contractors.

The survey respondents stressed that the **misclassification of a dependent employment relationship as self-employment is the hardest to prove** during inspections.

The survey respondents indicated **little or no experience with online inspections**. This may reflect legal reasons, e.g., only evidence from on-site inspections might be legally allowed to prove the existence of undeclared work. Other reasons could be the need for more efficient exchange of information among relevant public authorities and the interlinking of their databases and registers (respondents noted the lack of access to databases and/or missing data in other institutions' databases).

The survey respondents identified several **challenges** in proving the existence of undeclared work **in court proceedings**. **Common reasons for appeal and/or a lack of success** include:

- ▶ **For unregistered or under-declared employment**, the lack of evidence found during the inspection, employees' reluctance to talk or cooperate, and difficulties in proving work relations or labour law violations when the employee is not working during the on-site inspection.
- ▶ **Witnesses change their testimony** in front of the courts and the **courts accept the new testimony** rather than the inspectors' statements, and/or employers present new evidence in court that was not provided during the investigation.
- ▶ The requirement to **prove all attributes of dependent work** (Czechia) or the requirement to prove working time violation during several successive days through several successive inspections (Spain).

Legal presumptions applicable to tackling undeclared work

Various legal presumptions exist to reverse the burden of proof, typically from the labour inspectorate to the employer. Presumptions are used when there is a legitimate reason to suspect undeclared work, allowing institutions to provide initial evidence, which employers must then contest. Employers charged with criminal offenses are presumed innocent until proven guilty, and statutory presumptions are typically rebuttable.



The following legal presumptions have been identified:

► **Existing employment and/or its duration/terms**

Presumptions on existing employment and its duration/terms are the most common and are found with different variations in all Member States. They often apply to open-ended or temporary contracts, employee status, and more. For instance, in **Greece**, an oral or written part-time contract not declared within eight days is considered a full-time contract; in **Finland**, if an employer hires a third-country national who is staying in the country illegally, an employment relationship of at least **three months** is presumed unless the employer or employee can prove otherwise;¹ in **Lithuania** if an employment contract is not extended or terminated upon the expiry of its term, it is recognised as a contract for an indefinite period of time, etc.

► **Employee status/salaried employment/non-salaried status applicable to certain groups of employees**

This presumption is very similar to the presumption of an existing employment relationship. However, as it is closely related to the employee's sectoral occupational status, it is considered separately. For the employee status of performing artists, the legal presumption set out in the **French** Labour Code provides that anyone who uses the services of an artist-performer to create a live performance for remuneration is deemed to be that artist's employer. For **professional journalists**, the French Labour Code² provides that any agreement by which a press company secures the services of a professional journalist in return for remuneration is presumed to be an employment contract.

► **Minimum monthly salary**

Presumptions related to the minimum monthly salary, as observed in **Lithuania**³, consider an employee to have worked for three months with normal working hours and a minimum monthly salary if no written employment contract exists, and neither party can prove otherwise. However, these presumptions are rarely used in practice due to discrepancies in reported working times.

► **Inspection verifications**

These presumptions, as seen in Spanish legislation,⁴ regard facts established by inspection officials as certain, subject to evidence provided by the concerned parties in defence of their rights.

► **Social security and tax law**

Presumptions arising from social security and tax law, such as those in **France**⁵, empower inspection officers to perform checks and investigations for different branches and schemes of the social security system. The findings resulting from these investigations and transmitted to another social security organisation are deemed authentic until proven otherwise.

¹ [Finish Employment Contracts Act](#) (55/2001; amendments up to 597/2018 included).

² [French Labour Code](#) (last update 9 July 2023).

³ [Lithuanian Employment Act](#) (1991, amended 1997, abolished by the Labour Code 2002, in force since 1 January 2003).

⁴ [Spanish Labour and Social Security Inspection System Regulator Act](#) (*Ley 23/2015, de 21 de julio, Ordenadora del Sistema de Inspección de Trabajo y Seguridad Social*).

⁵ [French Social Security Code](#) (*Code de la sécurité sociale*), [French Rural and Maritime Fishing Code](#) (*Code rurale et de la pêche maritime*).



► Dependent work⁶

It is generally agreed that the concept of 'economically dependent worker' falls between the two established concepts of employment and self-employment. It refers to those workers who do not correspond to the traditional definition of employee because they do not have employment contracts as dependent employees. However, although formally 'self-employed', they are **economically dependent** on a single employer for their source of income.⁷ Some countries have changed their binary (two-component) system, based on independent worker and employee status, creating a third status or improving differentiation criteria.⁸ For example, in Czechia, the Labour Code defines 'dependent work' as work carried out within the relationship of (employer) superiority and (employee) subordination, in the employer's name, according to the employer's instructions, and performed in person.⁹

► Employment relationships in digital platforms

Several Member States have enacted laws to tackle undeclared work in the platform economy. For instance, **Belgian** legislation introduced the possibility for platforms to obtain an authorisation or recognition, provided that certain conditions are met. Recognised platforms need to report on transactions and income paid to individuals. **France** also mandates reporting by platforms and has introduced a presumption of self-employment for platform workers. In **Spain**, the Status of Workers Act¹⁰ has established a legal presumption of employment for digital delivery platform workers. Additionally, the *Uber court ruling on undeclared work in the field of the collaborative economy*, has also recognised the existence of a real economic and functional dependence between the drivers and the company.¹¹

1.0 Introduction

1.1 Aims and objectives of the study

This study delves into the multifaceted issue of undeclared work in EU Member States, aiming to fill the existing knowledge gap on the methods and instruments to gather evidence of undeclared work. To date, a comprehensive understanding of the evidence types, associated challenges, and successful strategies to address this problem has been lacking. This study seeks to expand knowledge in this area, identify best practices, and foster mutual learning among Member States.

The objectives of the study are to:

- Identify the **types of evidence** gathered to prove the different types (i.e. unregistered employment, undeclared employment, or bogus self-employment) of undeclared work in the Member States;

⁶ In the study, the term 'dependent work' is used as a generic term, bringing together various related/intermediate categories, such as:

'parasubordinate' or 'quasi-salaried' work in Italy, 'economically dependent self-employment' (Spain, Germany), etc. This approach was chosen because different categories are used in national legislation, as well as in different studies and research. See Perulli, A. (2020). ['The legal and jurisprudential evolution of the notion of employee'](#). *European Labour Law Journal*, 11(2), pp.117-130.

At relevant places in the study, appropriate distinctions were made where possible.

⁷ Eurofound (11 June 2007). [Economically dependent worker. European Observatory of Working Life.](#)

⁸ Eurofound (2017), [Exploring self-employment in the European Union. Luxembourg: Publications Office of the European Union.](#)

⁹ [Czechia Labour Code No 262/2006 Coll. \(Zákoník práce\).](#)

¹⁰ [Royal Legislative Decree 2/2015 of October 23, 2015, approving the revised text of the Status of Workers Act \(Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores\).](#)

¹¹ See also the Uber judgment of the Court of Justice of the European Union (CJEU): [Judgement of 20 December 2017, Asociación Profesional Elite Taxi v Uber Systems Spain, SL., C-434/15.](#)



- ▶ Identify the common **challenges** when gathering evidence to prove undeclared work;
- ▶ Explore the common **reasons for appeals** and/or **lack of success** in proving the existence of undeclared work in court; and
- ▶ Identify **legal presumptions** established by law in the different Member States and applicable to undeclared work.

1.2 Methodology

The study is based on desk research and a survey filled-out by the members of the European Platform tackling undeclared work (the Platform). The survey was completed in mid-June 2023 and consisted of two parts – one section with closed questions (short version of the survey) and another section with open questions (long version of the survey). A total of 14 countries contributed to the survey.

The short survey was completed by representatives of:

- ▶ Cyprus: Labour Inspectorate;
- ▶ Denmark: Working Environment Authority;
- ▶ Estonia: Tax and Customs Board;
- ▶ Germany: Central Customs Authority, Directorate VII, Financial Control of Undeclared Work Unit;
- ▶ Greece: Hellenic Labour Inspectorate;
- ▶ Slovakia: National Labour Inspectorate;
- ▶ Slovenia: Financial Administration;
- ▶ Sweden: Work Environment Authority.

The full survey was completed by representatives of:

- ▶ Belgium: Social Information and Investigation Service (SIIS);
- ▶ Czechia: State Labour Inspection Office;
- ▶ Finland: Occupational Safety and Health Division, Regional State Administrative Agency of Southern Finland;
- ▶ Iceland: Directorate of Labour;
- ▶ Lithuania: State Labour Inspectorate;
- ▶ Spain: Labour and Social Security Inspectorate.

In this study, the key terms are defined as follows:

- ▶ **Unregistered employment:** An employment relationship that is not registered with the authorities when it should be. Such employees often do not have written contracts or terms of employment and their remuneration is likely undeclared.¹²
- ▶ **Under-declared employment:** When formal employers pursue the illegal practice of reducing their tax and social security payments, and therefore labour costs, by under-declaring the remuneration of employees. This occurs when employers pay their formal employees two salaries: an official declared salary and an additional undeclared ('envelope') wage that is hidden from the authorities for tax and social security purposes. Alternatively, an employer can under-declare the number of hours an employee works,

¹² European Labour Authority and European Platform tackling undeclared work. [Glossary](#).



e.g., to evade paying the minimum wage.¹³ Under-declared employment may include violations on working time, position, work duties, remuneration, minimum wage, social security contributions, etc.

- ▶ **Bogus self-employment:** Often referred to as false self-employment or dependent self-employment¹⁴, bogus self-employment is commonly understood as involving persons/workers registered as self-employed whose conditions of employment are *de facto* dependent employment. National legislation and/or court decisions determine this status. This employment status is used to circumvent tax and/or social insurance liabilities, or employers' responsibilities.¹⁵ In some Member States such as Italy, the term '**false parasubordinate**' or '**false quasi-subordinate**' is used as a synonym for economically dependent self-employed workers.^{16,17,18} Spain protects economically dependent self-employed workers by providing them with certain rights and obligations (e.g. annual leave, mandatory unemployment insurance, indemnity in the case of interruption to work without a legitimate reason).^{19,20}
- ▶ **Atypical types of work:** Describes non-standard employment forms, such as teleworking or domestic work.
- ▶ **Proof and evidence** have related meanings but are not the same. Evidence consists of information, facts, signs, or objects that give the impression that something is true or valid. Proof establishes a fact or the truth of a statement. It compels acceptance beyond a reasonable doubt, ensuring certainty.

The study is organised as follows: **Chapter 1:** Introduction; **Chapter 2:** explores the types of evidence collected to prove undeclared work in both online and on-site inspections; **Chapter 3:** addresses the common challenges when gathering evidence of undeclared work, including the common reasons for appeals and/or lack of success in proving the existence of undeclared work in court; **Chapter 4:** discusses legal presumptions applicable to undeclared work and their potential for cross-border transfer; **Chapter 5:** summarises findings and offers practical suggestions to improve cooperation among Member States.

2.0 Types of evidence gathered to prove undeclared work

This chapter describes the types of documents and information collected, as well as their acceptability as proof for administrative and/or criminal sanctions in case of **unregistered employment** (e.g. an employment relationship that is not registered with the authorities when it should be), **under-declared employment** (e.g. violations of regulations on working time, position, work duties, remuneration, minimum wage, social security contributions), or **bogus self-employment** (i.e. misclassification of a dependent employment relationship as self-employment). It also presents the types of information, facts and documents gathered to prove undeclared work in **atypical types of work** (e.g. teleworking, remote work or domestic work).

¹³ Ibid.

¹⁴ European Labour Authority (February 2023). Extent of dependent self-employment in the European Union. Available at: <https://www.ela.europa.eu/sites/default/files/2023-04/Study-on-the-extent-of-dependent-self-employment-in-the-EU.pdf>.

¹⁵ European Labour Authority and European Platform tackling undeclared work. [Glossary](#).

¹⁶ [Parasubordinate workers in Italy are defined as persons who are legally self-employed but who are often 'economically dependent' on a single employer](#) (Raitano, M. (2018). Italy: Para-subordinate workers and their social protection. OECD. The Future of Social Protection. Paris: OECD.

¹⁷ Eurofound (23 September 2015). Italy: [Economically dependent self-employed work in the Jobs Act](#).

¹⁸ Expatica (n.d.). [Labour Law in Italy](#).

¹⁹ Eurofound (2017). [Exploring self-employment in the European Union. Luxembourg: Publications Office of the European Union](#).

²⁰ Cherry, M.A. and Aloisi, A. (2016). [Dependent contractors in the gig economy: A comparative approach](#). 66 American Univ. L. Rev. 635 (2017). Saint Louis U. Legal Studies Research Paper No 2016-15

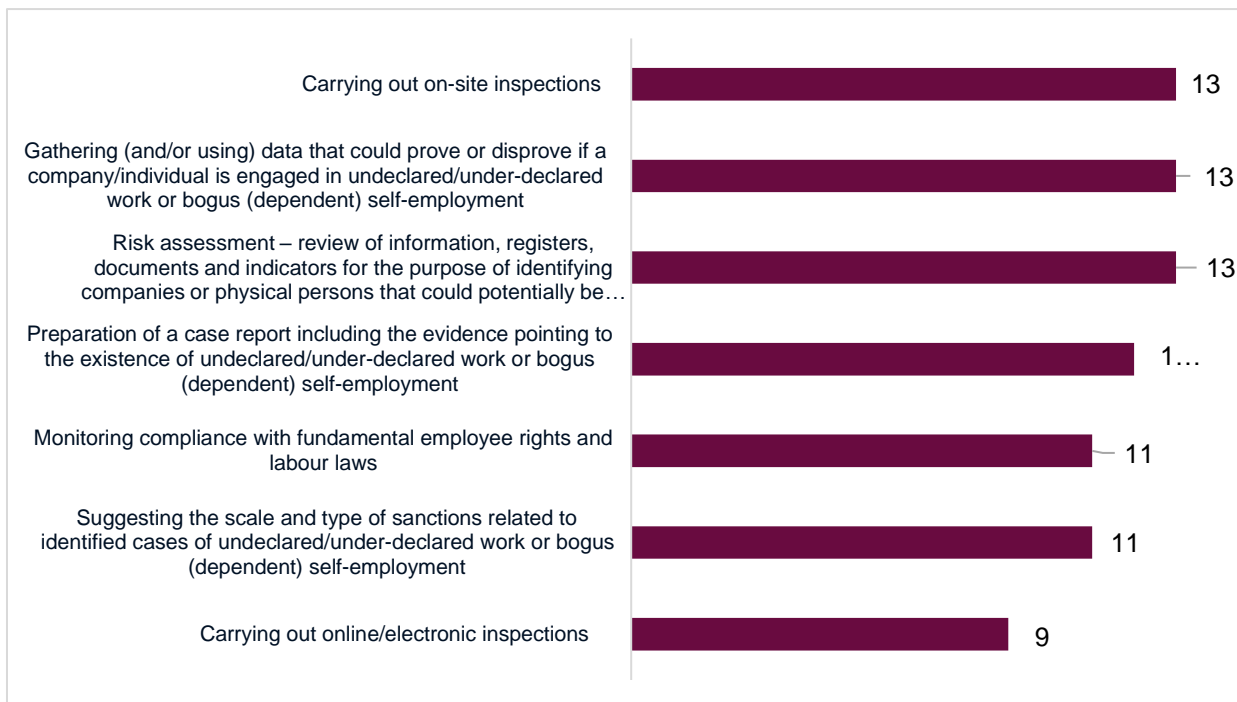


2.1 Inspections as sources of information and evidence

Almost all (13 out of 14) respondents indicated that they conduct on-site inspections, gather data that could prove undeclared work, and perform risk assessments to identify companies that should be inspected (see Figure 1 below). All respondents, except for the Labour Inspectorates of **Cyprus** and **Slovakia**, noted that they prepare a case report, which includes any evidence pointing to the existence of undeclared/under-declared work or bogus (dependent) self-employment. The process of suggesting the scale and type of sanction that should be applied in each identified case of labour law infringement also falls within their remit.

The respondents from **Belgium, Cyprus, Czechia, Denmark, and Slovakia** reported no experience in conducting online electronic inspections. The reasons for the lack of online inspections²¹ could be legal in nature, e.g. evidence from on-site inspection might be legally required to prove the existence of undeclared work. Other reasons may include the need for more efficient exchange of information among relevant public authorities and the interlinking of their databases and registers (respondents noted the lack of access to databases and/or missing data in other institutions' databases).

Figure 1. Does the scope of your organisation’s responsibilities include any of the following?



Source: 2023 survey on methods and instruments used as proof of undeclared work.

Note: N=14 countries.

The information used in the respondents’ day-to-day work most often comes from their internal databases (data from past inspections), other public authorities, obtained through requests for information, and publicly available data/registers (see Figure 2). Only nine respondents use data from public authorities in other countries, obtained through requests for information. The Labour Inspectorate of **Cyprus** also uses information from a complaints’

²¹ During online inspections, the labour inspectors could gather data through electronic communication or interviews from a) employers b) other relevant public bodies (e.g. OSH, social security, and revenue authorities), and c) social partners. The online inspection does not include an on-site visit.



hotline, while the Financial Administration of **Slovenia** gathers data from postal services, couriers, and different services' platforms.

Figure 2. Do you use the following sources of information?



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=14 countries.

Table 1 below shows that the two **most collected and checked types of evidence** in **online inspections** are **employee details** (e.g., name or employee starting date) and **staff list/registry** (list of posted employees) kept by the employer. By contrast, in **on-site inspections**, labour or service contracts/agreements and registries of working hours and overtime are the most collected and checked types of evidence.

The third most collected and checked type of documents in online inspections are **bank statements and payslips, bank pay-in slips and/or pay stubs with the logo or name of the employer**. In on-site inspections, they are **documents proving the owner and subcontractors**.

The fourth group of most regularly collected and checked documents in online inspections includes **internal company regulations, commercial information on companies (e.g., registered office), documents identifying the owner and subcontractors, unemployment verification letter/formal employment verification letter**. In on-site inspections, **employee details and timesheets were third most indicated**.

In both online and on-site inspections, ATM cards, video surveillance and CCTV, audio recordings, videos made by video cameras, webcams, cell phones, physical objects seized, declarations of electricity consumption, bill of exchange, deposit slips, bank or credit advice are *not* commonly collected and checked.

Table 1. What kind of documents do you collect/check during online and on-site inspections?

Type of documents collected/checked	Number of responses (online inspections)	Number of responses (on-site inspections)
Documents identifying the owner and subcontractors	8	12



Employee details (name, specialty, starting date of employment, etc.)	9	11
Labour or service contract/agreement	7	13
Registries of working hours and overtime	7	13
Staff list/registry kept by the employer (or list of posted employees where relevant)	9	10
Internal company regulations	8	10
Payslips, bank pay-in slip and/or pay stub with the logo or name of the employer (which in some cases, can provide adequate proof of employee earnings)	8	10
Timesheets	7	11
Details of company vehicles (extracts from the vehicle register, registration numbers, etc.) vehicles with logos of the employer	7	9
Employee timecards	7	9
Portable documents A1 or work permits	7	9
Unemployment verification letter/formal employment verification letter	8	8
Bank statement	8	7
Social ID card data (or employment card data)	7	8
Document for non-salary payments (cash awards, gift certificates, tickets to sport or cultural events, payments for moving expenses, provision of a vehicle or vehicle allowance, club memberships, or other special benefits)	7	7
Time schedule/chronogram of operations on site and the estimated number of the workforce required, including daily record of workers on site	5	9
Commercial contracts, subcontracts, receipts and other financial documents for deliveries to customers	5	8
Commercial information on companies, such as registered office, share capital, partners and/or administrators, as well as commercial, administrative and/or judicial incidents (bankruptcy proceedings, seizures, etc.)	8	5
Payments of social security contributions	7	6
Permits and licences (e.g. of employment agencies, temporary work and recruitment agencies)	7	6
Photographs (if lawful and admissible)	4	9
Precontractual documents, i.e. job description (including name of worker)	5	8
Witness statements	4	9
Tax documents and contracts for the declared workforce	7	5
Uniform with the logo or name of the employer that the worker wears	2	10
Revenue receipt	6	5
Site access and exit logs	3	8
Document on ownership of the equipment used by the worker	4	6
Proof of payments in PayPal or similar platforms	6	4
Computer-generated receipts/other receipts	5	4
Paper documents with logo/name of the employer or digital information (e.g. emails, texts, personal notes)	5	4
Payment voucher	4	4
Pay cheque (which could be cashed at a bank)	4	3



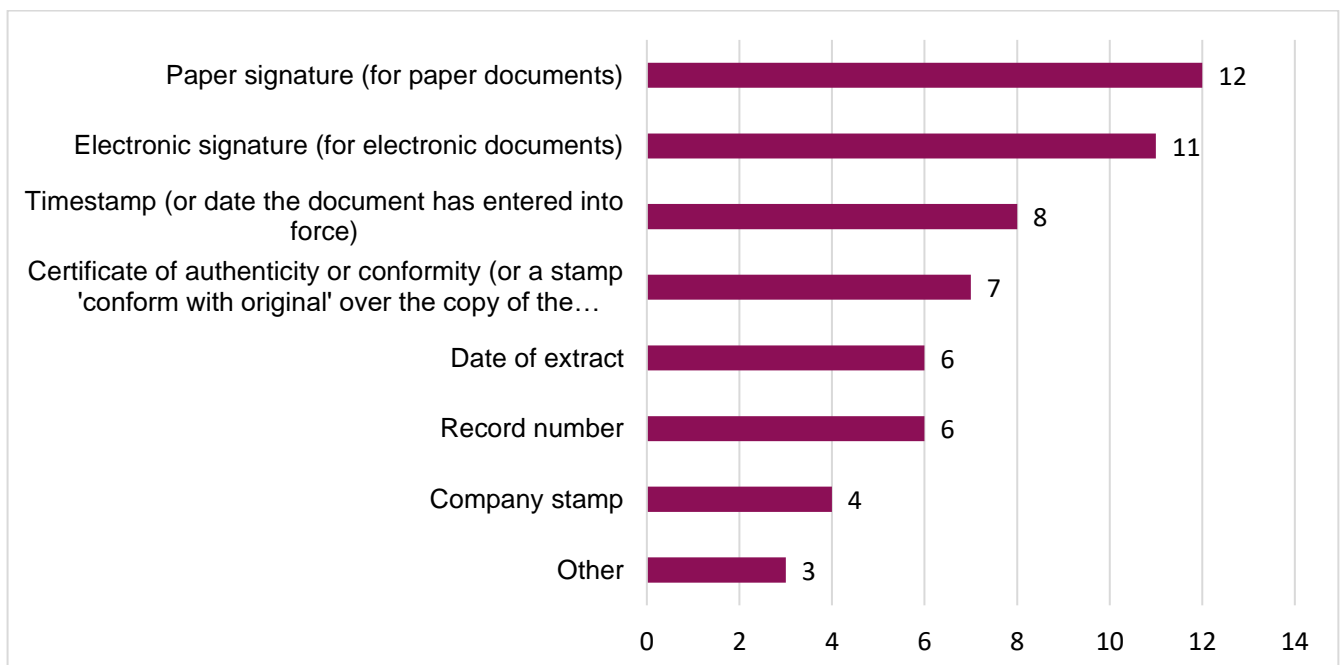
Videos made by video cameras, when in public, webcams, cell phone (if lawful and admissible)	2	5
Audio recordings (if lawful and admissible)	2	3
Bank or credit advice	3	2
Deposit slips	3	2
Bill of exchange	3	1
Physical objects seized	1	3
Declarations of electricity consumption	2	1
Video surveillance recordings and CCTV (if admissible)	1	2
ATM cards	1	0

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=14 countries.

Labour inspection sanctions usually can refer to **administrative** and **criminal sanctions**. Legal actions could be taken in case of labour law violations, ranging from injunctions and the requirement to pay sums due (e.g. back wages, unpaid social security contributions), to the revocation of permits or other administrative privileges, and even prison sentences.²² According to the respondents, the **most important evidence** for administrative and criminal sanctions is the **paper signature for paper documents**,²³ followed by the **electronic signature for electronic documents** (see Figure 3 below). The following attributes and format of documents - company stamp, record number and date of extract - are less important as evidence for administrative and criminal sanctions. Figure 3 presents the overall ranking.

Figure 3. Which attributes should be present and in what formats should the documents be presented to be accepted as evidence for administrative and criminal sanctions?



²² International Labour Organisation, (2013), [Labour Inspection Sanctions: Law and practice of national labour inspection systems](#).

²³ These may be signed by employers, employees, etc -for any document to serve as evidence, there is a need for it to be legibly signed.



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N= 14 countries.

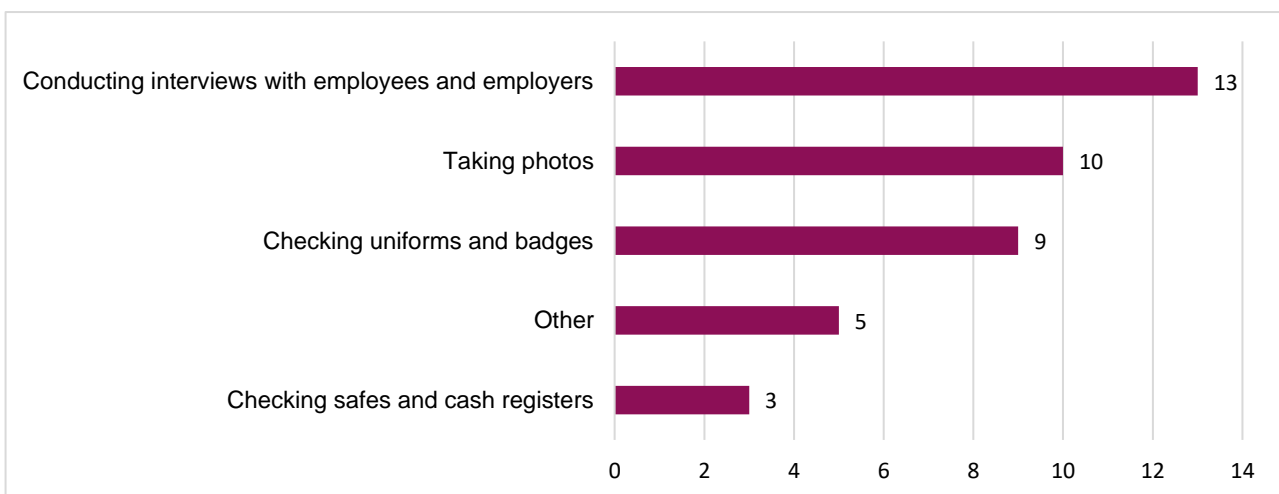
In **Denmark**, any document can potentially be accepted as evidence for administrative and criminal sanctions, depending on the specific case. In **Finland**, documents requested during inspections and provided by the employer can be used as evidence for both administrative and criminal sanctions. However, the Occupational Health and Safety (OSH) Authority in Finland only has competence to issue written advice on inspection reports in relation to undeclared work but not to impose negligence fees²⁴. Respondents from **Czechia** indicated that validating whether the documents provided relate to the inspected person is most important. Depending on the format of the document, it should contain more than one of the attributes mentioned. The issuing authority may need to be contacted to verify permits/licences.

Figure 4 presents the **existing procedures for on-site inspections** across the 14 responding countries. All these procedures are used by the respondents in on-site inspections. For example, all respondents indicated **conducting interviews with employees and employers**. Another commonly used procedure is **taking photos**, which is not used in Cyprus, Estonia, Greece, and Slovakia. The procedure of **checking uniforms and badges** is widespread, except in Cyprus, Estonia, Lithuania, Slovenia, and Slovakia. **Checking safes and cash registers** is applied in **Estonia, Slovenia, and Spain**.

Finland, Germany, Lithuania, Slovenia, and Spain are among the countries using additional procedures in on-site inspections, including taking videos, examining personal IDs and tax card numbers at construction sites/on docks, taking photos of premises and facilities, and obtaining witness testimonies.

Spanish inspectors can examine all kind of documentation that might be useful to verify compliance with social security legislation, including check (log) books, records, accounting and registration documents, software and magnetic files, official statements, proof of payment of social security contributions or benefits supporting documents for remuneration, documents required in the regulations on prevention of occupational risks, and any other related materials subject to inspection. The inspector has the power to request this documentation at the relevant public offices. All documents relevant to the inspection functions must be provided in a machine-readable format.

Figure 4. What are the procedures for on-site inspections?



²⁴ Administrative sanctions and fees could be imposed by other relevant authorities, to whom the OSH authority could forward information on the uncovered law violations.



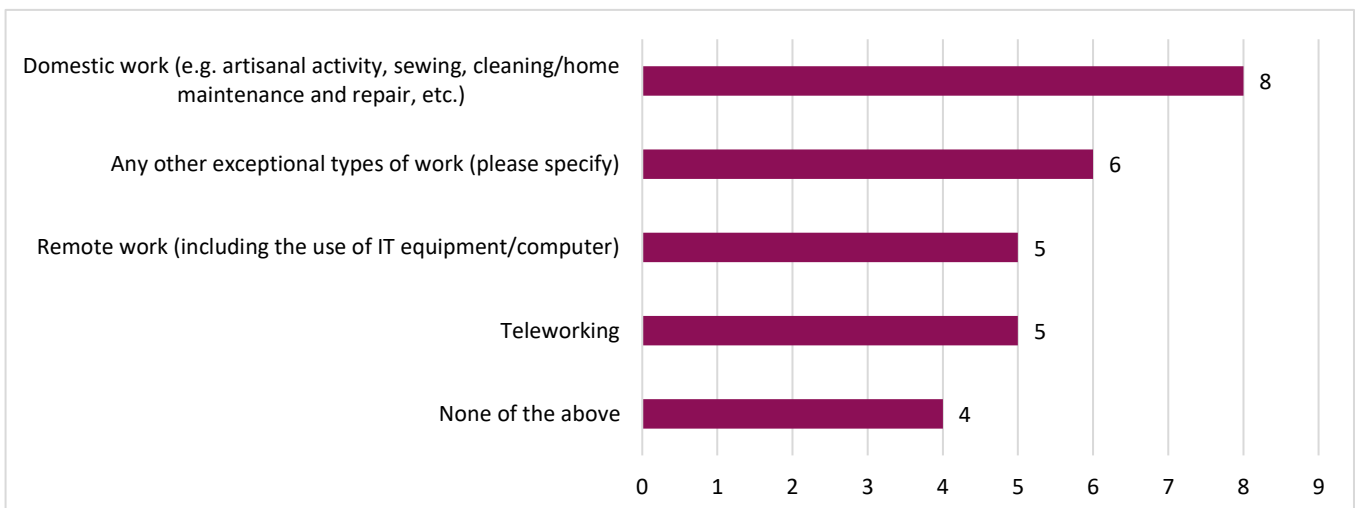
Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=14 countries.

Figure 5 presents the **atypical types of work** most often inspected by the respondents. The survey found that **domestic work** is the most checked and investigated type of atypical work, followed by **any other types**, **remote work**, and **teleworking**. **Belgium, Denmark, Estonia, and Iceland** representatives indicated that none of the above atypical types of work is checked and investigated in their country.

If there is a complaint, the Labour Inspection Services in **Lithuania** can investigate all of these categories of work. **Czechia, Finland** and **Greece** inspect all four – domestic work (e.g. artisanal activity, sewing, cleaning/home maintenance), remote work, teleworking, and any other atypical types of work. Labour inspection bodies in **Czechia** may inspect all cases of dependent work (as per the Labour Code) when the focus of inspection is related to employment legality. However, there are certain limitations, for example entering the residence of the inspected person may be required but not possible without prior consent from the inspected person. In **Germany**, checking domestic workers faces some restrictions due to inviolability of the home. In **Greece**, inspections in private households are conducted only in the presence of the police. In **Germany, Slovenia and Sweden, remote work is not inspected**.

Figure 5. Do you check and investigate teleworking, remote work or domestic (home) work?



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=14 countries. The figure shows the number of positive answers.

2.2 Case forwarding and gathering feedback on information and evidence collected

The three **bodies to which enforcement authorities forward cases** most frequently are **tax authorities, social security authorities and OSH authorities** (see Figure 6 below).

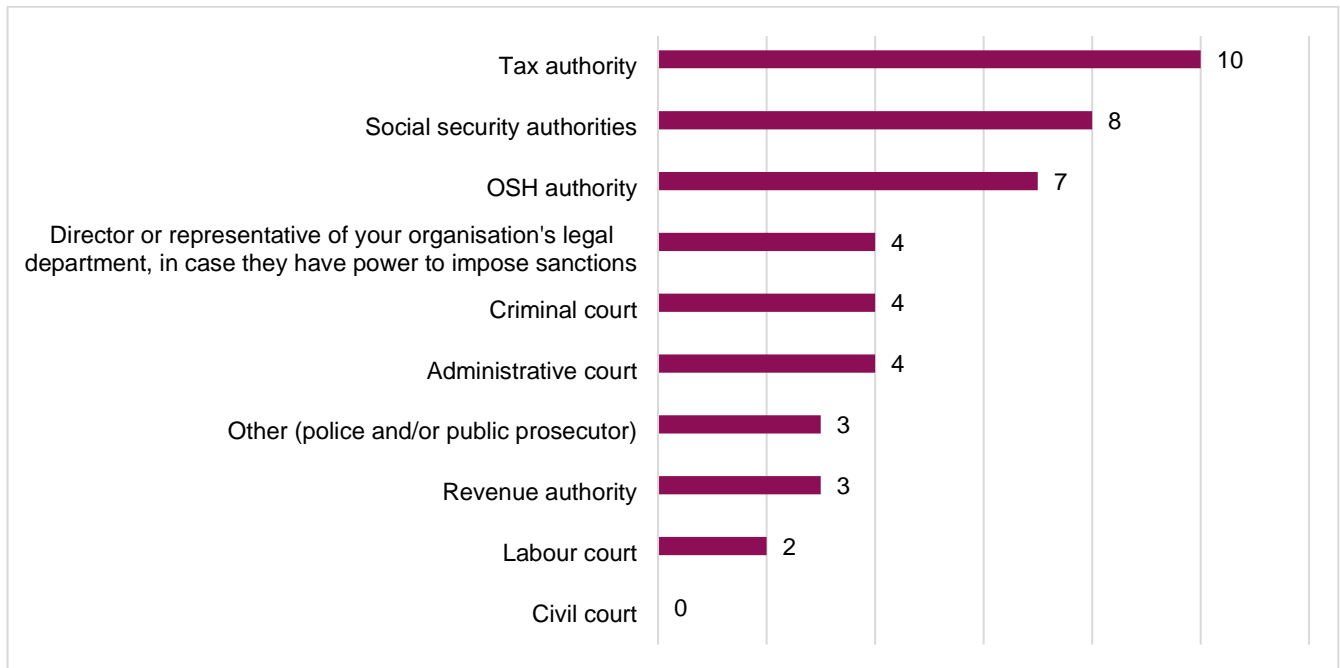
Other authorities to which cases are regularly forwarded are the **administrative courts, criminal courts and revenue authorities**. Although possible, cases are rarely forwarded to labour courts (**Belgium²⁵ and Cyprus**).

²⁵ Social inspectorate services rarely forward cases directly to labour courts. However, forwarding does occur indirectly, after the case has been treated at the administrative level.



As labour courts play a crucial role in the process of reclassifying contracts and establishing criteria for proving workers' subordination or economic dependence on an employer, the reasons for low take-up of this type of forwarding (only two of 14 countries) should be investigated. The intervention of labour courts after an inspection procedure is determined by law and is not usually a discretionary decision of the Labour Inspectorate. None of the participants in the survey indicated forwarding cases to civil courts.

Figure 6. Is there a practice for your organisation to forward the case to?



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=14 countries.

In **Germany**, in the course of inspections, the Financial Control of Undeclared Work Unit can forward cases to the cooperation authorities designated in section 2 (4) and section 6 of the Act to Combat Undeclared Work and Unlawful Employment (*Schwarzarbeitsbekämpfungsgesetz, 'SchwarzArbG'*) (e.g. the tax authorities, the agencies responsible for collecting the contributions for the different branches of social security, the Federal Employment Agency). The OSH Division, Regional State Administrative Agency of **Finland** clarified that it can provide the police with information and documents gathered during inspections. Police can then carry out an investigation with the prosecutor and initiate procedures with the court. Finnish enforcement bodies can also send information to the pension authority. **Slovenian** enforcement authorities can forward cases to the police and public prosecutor. **Slovakia's** Labour Inspectorate also indicated the police as an organisation to which cases are forwarded after inspection.

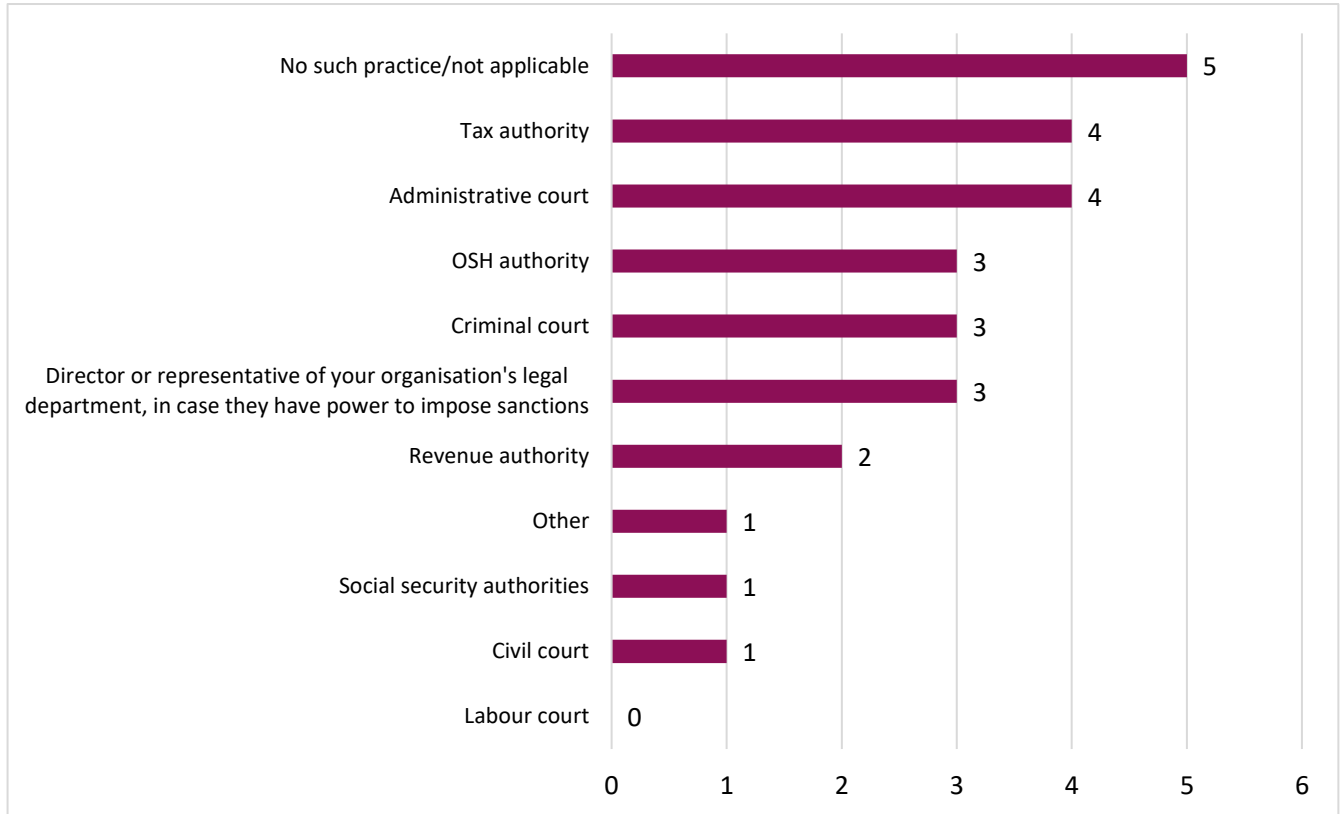
Figure 7 below shows **the authorities that most regularly provide feedback** in cases of sanctions against individuals or companies. This feedback constitutes a systematic sending of information and/or documents related to the outcome of the court proceeding to the labour (or tax/OSH) inspectorate, and the reasons for the outcome (i.e., type of evidence accepted/rejected by the court). A small majority indicated that authorities do not routinely provide feedback when a company or individual is sanctioned (**Cyprus, Czechia, Estonia, Germany, Slovakia**). This may be because this information is typically available in published court rulings.

Tax authorities and administrative courts remain the most common authorities providing feedback when there is a sanction for a company or individual, followed by OSH authorities, director/representative of enforcement body's



legal department,²⁶ criminal court, revenue authority, social security authority, and civil court. None of the respondents receive feedback from labour courts. Slovenia indicated that the police and public prosecutor provides feedback when a company/individual is sanctioned.

Figure 7. Which authorities provide feedback if a company/individual is sanctioned?



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=14 countries.

Respondents from **Cyprus, Czechia, Denmark, Estonia, Germany and Slovakia** indicated that there is **no practice of providing feedback** in their country, or it is not applicable. Some, however, noted that some authorities in their country provide feedback on the specific circumstances, facts and documents accepted/not accepted as evidence leading to the final sanction decision: administrative courts, director/other representative of the enforcement body’s legal department, tax authorities, criminal courts, OSH authorities and civil courts. None received feedback from the labour courts. In **Finland**, the police provide feedback if the evidence was not accepted, and the case is not moving forward to the courts. In **Slovenia**, the police and public prosecutors also provide feedback, while in Greece, the financial police provide feedback. In **Belgium**, feedback occurs between departments within the authority and between authorities (e.g., between the Service for administrative fines and the inspectorate services).

Labour inspectors frequently have no formal or organised contact with those responsible for particular aspects of undeclared work, such as the police, the judiciary (except industrial courts or labour tribunals), immigration

²⁶ Applies solely to enforcement authorities with power to impose sanctions.



authorities, or prison authorities. However, some good cooperation practices between labour inspectorates and the judiciary are documented and could be relevant:²⁷

- ▶ **Belgium:** there is a representation of the labour inspectorate within the structure of the Public Prosecutor's Office at all levels and magistrates of the Public Prosecutor's Office are present in the composition of the District Decentralised Cells;
- ▶ **France:** an agency has been established to monitor the proceedings resulting from the work of the labour inspectorate and to collaborate with the Ministry of Justice; an interinstitutional working group of experts has been set up to study and analyse judgments, more complex legal issues, and cases that have failed in court; and prosecutors, together with labour inspectors, are part of the Departmental Anti-Fraud Operational Committees;
- ▶ **Spain:** the Labour and Social Security Inspectorate (ITSS) has created special support units for the courts and the Public Prosecutor's Office;
- ▶ **Spain, France and Portugal:** meetings are regularly held between Labour Inspectorates and the Public Prosecutor's Office to improve their coordination.

In **Portugal**, the Authority for Working Conditions (*Autoridade para as Condições do Trabalho* - ACT) systematically notifies other bodies of infringements identified during inspections. In 2021, the ACT made 592 notifications to other entities, primarily the Institute of Social Security - ISS (60.5 %), followed by the Construction and Real Estate Institute (9.6 %), and the Tax Inspection (8.8 %). This was an increase of 22.1% compared to 2020.²⁸ Such notifications are regulated by law – the ACT is obliged to notify ISS of unpaid social security contributions,²⁹ while the ISS notifies the ACT of issues relevant to its activity (e.g. posting of workers to other Member States³⁰). The ACT's 2021 report on fighting fraud and tax evasion states that its inspection activity will continue to be based on a strategy of cooperation with preventive and prospective action in common with other agencies, namely the police and other bodies, including the ACT, ISS and the Foreigners and Borders Service (*Serviço de Estrangeiros e Fronteiras* - SEF).³¹

2.3 What information, facts and documents constitute evidence?

2.3.1. Commonly collected evidence as proof of undeclared work

The most common types of information, facts and documents collected to prove **unregistered employment** include 1) employee details, 2) staff list/registry kept by the employer (or list of posted employees if relevant), 3) registries of working hours and overtime, 4) timesheets, 5) documents identifying the owner and subcontractors, followed by labour and service contract/agreement, payslips, bank pay-in slip, pay stub, and precontractual documents (e.g. job description). Still, these responses were drawn from the short version of the survey and should be interpreted with caution, given the small sample size (6 respondents from 6 countries).

For **under-declared work**, the most widely collected types of data are 1) registries of working hours and overtime and 2) timesheets, followed by details for the employees, employment records (staff lists and registries), labour or service contracts and agreements, salary-related information such as payslips, bank pay-in slip and/or pay stub

²⁷ EU-International Labour Organization (ILO) (5 November 2019). [Enhancing the labour administration capacity to improve working conditions and tackle undeclared work](#). Undeclared work and labour inspection seminar: The relevance of judiciary on labour inspection effectiveness, especially on tackling undeclared work, some EU best practices. Kyiv.

²⁸ ACT (2022). [Activity Reports of the Work Inspection](#). Report 2021, p.147-148.

²⁹ Ibid.

³⁰ Ibid.

³¹ Office of the Secretary of State for Fiscal Affairs (June 2022). [Report on the fight against fraud and tax and customs evasion 2021](#).



with the employer's logo or name, as well as timecards, time schedule and chronogram of on-site operations, and estimated required workforce.

For the **misclassification of dependent employment relationship as self-employment**, the most frequently collected data are from or relate to 1) employee details, 2) staff list/registries, and 3) labour or service contracts/agreements, followed by documents identifying the owner and subcontractors. These are **the documents most commonly obtained across the EU in confirming all three employment deviations** – unregistered employment, under-declared work and misclassification of a dependent employment relationship as self-employment.

Documents rarely collected and used as evidence include bills of exchange, declarations of electricity consumption, deposit slips, pay cheques, payment vouchers and revenue receipts. This is common for all three types of undeclared work – unregistered employment, under-declared work and misclassification of dependent employment relationship as self-employment. For under-declared work, documents related to the ownership of the equipment used by workers and video surveillance recordings and CCTV footage are rarely used. None of the respondents indicated the collection of ATM cards or bank and credit advice as evidence of unregistered work, under-declared work and (in)dependent contractor misclassification.

The documents most often collected by respondents' organisations as evidence of violations in **atypical types of work (e.g., telework)** include: 1) copy of the home working/remote work contract and 2) copy of the company order, which allows distance (home) working. Other **frequently collected** documents as evidence for violations of atypical types of work include:

- ▶ Payslips, bank pay-in slips, and/or pay stubs;
- ▶ Tax documents;
- ▶ Contracts for declared workforce;
- ▶ Timesheets;
- ▶ Labour or service contracts/agreements;
- ▶ Portable documents A1 or work permits;
- ▶ Registries of working hours and overtime;
- ▶ Unemployment verification letter/formal employment letter;
- ▶ Social ID card data;
- ▶ Employee timecards;
- ▶ Staff list/registry kept by the employer;
- ▶ Employee details;
- ▶ Documents identifying the owner and subcontractors;
- ▶ Time schedule/chronogram of on-site operations and required workforce;
- ▶ Witness statements;
- ▶ Photographs;
- ▶ Ownership of equipment used.

Certain types of documents are very rarely used, such as computer-generated receipts/other receipts, pay cheques, revenue receipts, payment vouchers, proofs of payments in PayPal or similar platforms, declarations of electricity consumption, details of company vehicles, videos made by video cameras or cell phones, physical objects seized, correspondence and other information extracted from a computer. None of the respondents indicated the use of ATM cards, bank and credit advice, deposit slips, or bills of exchange.

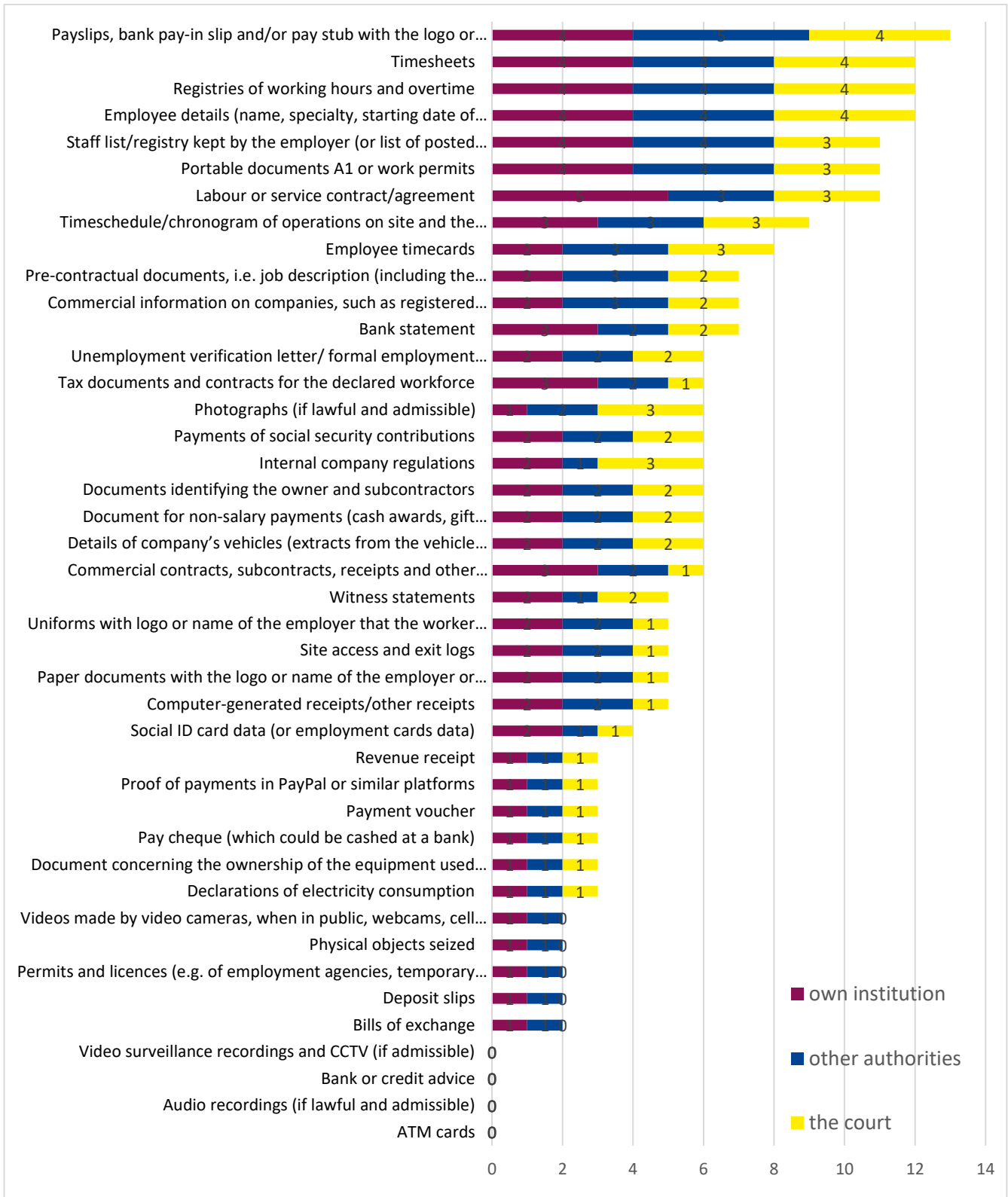


2.3.2. Commonly accepted evidence as proof of undeclared work

2.3.2.1 Commonly accepted evidence as proof of undeclared work by administrative courts

Only five respondents answered the survey question on the types of information, facts and documents **often accepted as evidence of unregistered employment** by their organisation, other national authorities, or the courts in their country. They indicated that these are: 1) payslips, bank pay-in slip and/or pay stub, 2) timesheets, 3) registries of working hours and overtime and 4) employee details, 5) labour and service contracts/agreements, 6) portable documents A1 or work permits. In the respondents' organisations, labour and service contracts/agreements are the most accepted type of evidence of unregistered employment. For other institutions, these are payslips, bank pay-in slips and/or pay stubs (see Figure 8 below).

Figure 8. Types of information, facts and documents accepted by your organisation, other authorities or the court as evidence of unregistered employment



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N= 5 countries.

Only five respondents answered the survey question on the information, facts and documents **rarely accepted or not accepted at all as evidence of unregistered employment** by national authorities, including their own



organisation, other authorities and the courts. Although the small sample size precludes general conclusions, the responses indicate that ATM cards, bank or credit advice, audio and video surveillance recordings and CCTV are not accepted as evidence. According to respondents, courts across the EU may not accept as proof videos made by video cameras, webcams or cell phone, permits and licenses, physical objects seized, bills of exchange, and deposit slips. This could be due to the fact that video recordings are easy to manipulate and costly to analyse for authenticity.

The 10 most widely accepted ('very often' and 'often') types of **documents recognised as evidence for under-declared employment** by respondents' organisations, other authorities or the courts, are: 1) timesheets, 2) registries of working hours and overtime (**Belgium, Czechia, Iceland, Lithuania, Spain**), 3) time schedules/chronograms of on-site operations and estimated workforce (e.g. daily record of workers on-site), 4) payslips, bank pay-in slips, and/or pay stubs, 5) employee timecards (**Belgium, Iceland, Lithuania, Spain**), 6) staff list/registry, 7) labour or service contracts/agreements (**Belgium, Czechia, Iceland, Spain**), 8) tax documents and contracts for declared workforce (**Iceland, Lithuania, Spain**), 9) social security contribution payments (**Belgium, Lithuania, Spain**), 10) internal company regulations (**Czechia, Lithuania, Spain**). **Documents seldom used as evidence of under-declared employment** include video surveillance recordings and CCTV, bank or credit advice, audio recordings, and ATM cards.

For **administrative sanctions for bogus self-employment** (misclassification of a dependent employment relationship as self-employment), the most frequently ('very often' and 'often') accepted items by respondents' institutions, other authorities and national courts are: 1) staff list/registries, 2) employee details, 3) labour or service contracts/agreements, 4) commercial information on companies (e.g. registered office or commercial/administrative/judicial incidents), 5) registries of working hours and overtime, 6) commercial contracts, subcontracts, receipts and other financial documents for deliveries to customers.

Other **items frequently accepted** as proof of the **misclassification of an employment relationship as self-employment** for the purposes of administrative sanctions are pre-contractual documents (i.e. job description), uniforms with the logo or name of the employer that workers wear, payslips, bank pay-in slips, and/or pay stubs, time schedule/chronogram of on-site operations, including the estimated workforce required, details on company vehicles, paper documents with the logo or name of the employer or digital information, employee timecards, the site access and exit logs, internal company regulations, and portable documents A1 or work permits.

Rarely accepted items in proving dependent self-employment include revenue receipts, videos, documents showing ownership of the equipment, deposit slips, pay cheques, video surveillance recordings and CCTV, audio recordings, proof of payments in PayPal or similar platforms, bills of exchange, physical objects sized, declarations on electricity consumption, and payment vouchers. According to the respondents, their organisation or another institution, including the court, accept ATM cards or bank and credit advice as evidence for administrative sanctions in relation to dependent self-employment.

For imposing **administrative sanctions for violations in atypical types of work**, the leading items accepted as evidence by respondents' institutions, other national authorities and the courts are: 1) payslips, bank pay-in slip and/or pay stub, 2) labour or service contracts/agreements, and 3) witness statements. National authorities and respondents' organisations **rarely accept** as evidence for enforcing sanctions: time schedule/chronograms of on-site operations and estimated workforce required, staff lists/registry, social ID card data, employee timecards, and documents identifying the owner and subcontractors. However, in some countries, these documents are recognised by courts as evidence of violations in relation to atypical types of work.



2.3.2.2 Commonly accepted evidence as proof of undeclared work by criminal courts

Based on respondents' experience, **criminal courts 'very often' and 'often' accept the following as evidence of unregistered employment for criminal sanctions:** 1) employee details, 2) working and overtime time registry, 4) timesheets, and 3) payslips, bank pay-in slip and/or pay stub (**Belgium, Finland, Lithuania, Spain**), 5) portable documents A1 or work permits (**Belgium, Lithuania, Spain**), 6) bank statements (**Finland, Spain**) and payments of social security contributions (**Belgium, Lithuania**). Labour or service contracts/agreements are also 'very often' accepted as evidence.

Types of documents not commonly accepted as evidence for criminal sanctions include social ID card data, videos by cameras, webcams or cell phones, permits and licenses, video surveillance recording and CCTV, audio recordings, and physical objects seized. None of the respondents indicated that deposit slips, ATM cards, bills of exchange and bank or credit advice are accepted as evidence for criminal sanctions in their countries.

For imposing **criminal sanctions for under-declared employment**, the most widely accepted types of evidence ('very often' and 'often') are as follows: 1) timesheets, 2) payslips, bank pay-in slips, and/or pay stubs, 3) time schedule/chronogram of on-site operations and estimated workforce required, including the daily record of workers on site, registries of working hours and overtime, and 4) employee timecards.

Criminal courts rarely accept as evidence site access and exit logs, audio recordings, video surveillance and CCTV, videos (from regular camera, web cameras, mobile phones), photographs, permits and licences, social ID card data. None of the four respondents indicated that any of the following documents – bills of exchange, ATM cards, deposit slips, or bank or credit advice – is accepted by the courts as evidence for imposing criminal sanctions for under-declared employment. Nevertheless, the use of these documents could be investigated further, as the results may be affected by the small sample size.

For **criminal sanctions for dependent self-employment**, the leading items accepted as evidence ('very often' and 'often'), according to the respondents from **Belgium, Lithuania and Spain**, are 1) employee details, 2) labour or service contracts/agreements, and 3) staff/list registry kept by the employer.

Other **items relatively frequently accepted** as evidence of dependent self-employment leading to criminal sanctions are witness statements, time schedule/chronogram of on-site operations, and estimated workforce required, details on company vehicles, internal company regulations, commercial contracts, subcontracts, receipts and other financial documents for deliveries to customers, registries of working hours and overtime, portable documents or work permits, payment of social security contributions, payslips, bank pay-in slip and/or pay stub with the employer's name or logo. The criminal courts do not accept the following items as evidence leading to criminal sanctions in relation to dependent self-employment: bills of exchange, ATM cards, deposit slips and bank or credit advice.

Only three respondents (**Czechia, Finland, Lithuania**) specified the items most often accepted by criminal courts as evidence for imposing **criminal sanctions for violations in connection with atypical types of work:** 1) information from site access and exit logs, 2) physical objects seized, 3) video surveillance and CCTV, 4) photographs, 5) witness statements, 6) labour or service contracts/agreements, 7) payslips, bank pay-in slips, and/or pay stubs. In their experience, **none of the following 15 items are accepted as evidence** in criminal courts in such cases:

- ▶ Documents signed by the employee allowing the employer and inspection authorities to visit the premises in their home, where they work;
- ▶ Correspondence and other information extracted from a computer;
- ▶ Videos made by video cameras, when in public, webcams, cell phone (if lawful and admissible);



- ▶ Details of company vehicles (extracts from vehicle register, registration numbers, etc.), vehicles with logos of the employer;
- ▶ Declarations of electricity consumption;
- ▶ Proof of payments in PayPal or similar platforms;
- ▶ Document for non-salary payments (cash awards, gift certificates, tickets to sport or cultural events, payments for moving expenses, provision of a vehicle or vehicle allowance, club memberships, or other special benefits);
- ▶ Bills of exchange;
- ▶ Bank statements;
- ▶ Computer-generated receipts/other receipts;
- ▶ Pay cheque (which could be cashed at a bank);
- ▶ Revenue receipt;
- ▶ Bank or credit advice;
- ▶ Deposit slips;
- ▶ ATM cards.

Again, this information should be interpreted with caution, given the small survey sample size (3 respondents from 3 countries have answered the question on the atypical types of work). Further details are presented as figures in the Annex.

2.4 Attributes and formats of the evidence

The **most required attributes and formats of evidence in the types of documents that may be accepted as evidence for imposing administrative sanctions** in cases of unregistered employment, under-declared employment, dependent self-employment or violations in atypical types of work are:

- ▶ Permits and licences (e.g., of employment agencies, temporary work and recruitment agencies): electronic signature, paper signature, timestamp;
- ▶ Pre-contractual documents (e.g. job description): electronic signature, paper signature, timestamp;
- ▶ Commercial contracts, subcontracts, receipts and other financial documents proving deliveries to customers: timestamp, electronic/paper signature;
- ▶ Labour or service contracts/agreements: electronic signature, paper signature, timestamp;
- ▶ Portable documents A1 or work permits: timestamp, electronic signature, paper signature.

A certificate of authenticity or conformity is an important attribute for permits and licences, documents used to identify the owner and subcontractor, internal company regulations, employee details, commercial information, paper documents with the logo or name of the employer or digital information. It is less important for bank statements, pay cheques, proofs of payments in PayPal or similar platforms, revenue receipts, documents for non-salary payments, electricity consumption declarations, etc.

The **company stamp** is important in commercial contracts, subcontracts, receipts, other financial documents for deliveries to customers, timesheets, registries of working hours and overtime. It is less important in social security contributions payments, tax documents, contracts for declared workforce, employee timecards, time schedule/chronogram of on-site operations and estimated workforce required, for example.

The **date of extract** is important for permits and licences, portable documents A1 or work permits, timesheets, registries of working hours and overtime, staff lists/registries, payslips, bank pay-in slip and/or pay stub. It is less important in social ID card data, timecards, bank statements, pay cheques, payment vouchers, proof of payments in PayPal or similar platforms, revenue receipts, and documents for non-salary payments (cash awards, gift



certificates, tickets to sport or cultural events, payments for moving expenses, provision of a vehicle or vehicle allowance, club memberships, or other special benefits), etc.

Less relevant attributes/formats of evidence for administrative sanctions are physical objects seized, ATM cards, bank or credit advice, bills of exchange, deposit slips, photographs, audio recordings, video surveillance recordings and CCTV footage.

Table 2. Required attributes/formats of evidence for administrative sanctions

Type of document	Timestamp (or date document entered into force)	Electronic signature	Paper signature	Certificate of authenticity or conformity	Company stamp	Date of extract	Record number	Sum
Permits and licences (e.g. of employment agencies, temporary work and recruitment agencies)	4	5	4	3	2	2	1	21
Pre-contractual documents, i.e. job description (including name of worker)	4	5	4	2	2	1	1	19
Commercial contracts, subcontracts, receipts and other financial documents for deliveries to customers	4	4	3	2	3	1	1	18
Labour or service contracts/agreements	3	5	4	2	2	1	1	18
Portable documents A1 or work permits	4	4	3	2	2	2	1	18
Timesheets	4	3	2	2	3	2	1	17
Documents identifying owner and subcontractors	3	3	3	3	2	1	1	16
Registries of working hours and overtime	3	3	2	2	3	2	1	16
Staff lists/registries kept by the employer (or list of posted employees where relevant)	4	3	2	2	2	2	1	16
Internal company regulations	3	2	2	3	2	1	1	14
Employee details (name, specialty, starting date of employment, etc.)	3	2	2	3	1	1	1	13
Commercial information on companies, such as registered office, share capital, partners and/or administrators, as well as commercial, administrative and/or judicial incidents (bankruptcy proceedings, seizures, etc.).	2	2	2	3	1	1	1	12
Paper documents with logo or name of employer or digital information (e.g. emails, texts, personal notes)	2	2	2	3	1	1	1	12
Payslips, bank pay-in slip and/or pay stub with the logo or name of employer (which, in some cases, can provide adequate proof of employee earnings)	1	2	2	1	1	2	1	10
Unemployment verification letter/formal employment verification letter	2	3	3	1	1	0	0	10



Details of company vehicles (extracts from vehicle register, registration numbers, etc.), vehicles with logos of the employer	2	2	2	2	1	0	0	9
Payments of social security contributions	3	3	1	1	0	1	0	9
Tax documents and contracts for declared workforce	3	2	1	1	0	1	1	9
Site access and exit logs	1	1	1	2	1	1	1	8
Uniforms with logo or name of the employer that the worker wears	1	1	1	2	1	1	1	8
Documents on ownership of equipment used by the worker	2	2	1	1	1	0	0	7
Social ID card data (or employment cards data)	1	1	2	2	1	0	0	7
Employee timecards	2	1	1	2	0	0	0	6
Time schedule/chronogram of operations on site and estimated workforce required, including daily record of workers on site	3	1	1	1	0	0	0	6
Bank statement	1	1	0	0	1	1	0	4
Pay cheque (which could be cashed at a bank)	1	1	0	0	1	1	0	4
Payment voucher	1	1	1	1	0	0	0	4
Proof of payments in PayPal or similar platforms	1	1	0	0	1	1	0	4
Revenue receipts	1	1	0	0	1	1	0	4
Witness statements	1	1	1	1	0	0	0	4
Computer-generated receipts/other receipts	0	1	0	0	1	1	0	3
Document for non-salary payments (e.g., cash awards, gift certificates, tickets to sport or cultural events, payments for moving expenses, provision of a vehicle or vehicle allowance, club memberships, or other special benefits)	1	0	0	0	1	1	0	3
Declarations of electricity consumption	0	0	0	0	1	1	0	2
Physical objects seized	0	0	1	0	0	0	0	1
ATM cards	0	0	0	0	0	0	0	0
Audio recordings (if lawful and admissible)	0	0	0	0	0	0	0	0
Bank or credit advice	0	0	0	0	0	0	0	0
Bills of exchange	0	0	0	0	0	0	0	0



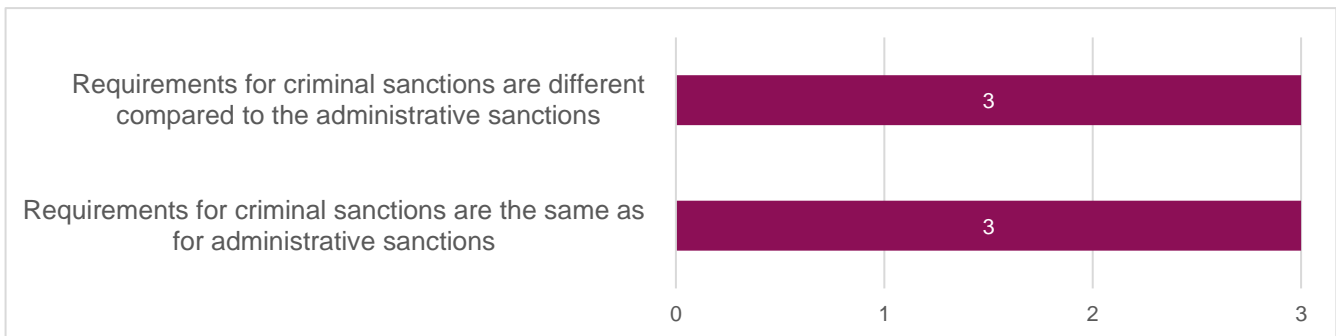
Deposit slips	0	0	0	0	0	0	0	0
Photographs (if lawful and admissible)	0	0	0	0	0	0	0	0
Video surveillance recordings and CCTV (if admissible)	0	0	0	0	0	0	0	0
Videos made by video cameras, when in public, webcams, cell phone (if lawful and admissible)	0	0	0	0	0	0	0	0
Sum	71	69	54	50	40	31	17	

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N= 4 countries.

Respondents were less forthcoming in **the attributes and formats of evidence required to impose criminal sanctions**, which likely reflects the need for specific legal competence to provide accurate answers. In **Belgium, Denmark and Lithuania**, the requirements are the same as for administrative sanctions. By contrast, **Finland, Iceland and Spain** have different obligations for administrative and criminal sanctions (see Figure 6 below).

Figure 9. Are the required attributes/format different for imposing criminal sanctions?



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=6 countries.

None of the respondents specified the attributes or formats required for documents to be accepted as evidence for criminal sanctions.



3.0 Challenges in gathering evidence to prove undeclared work

This chapter aims to identify (i) the main challenges faced by enforcement authorities when gathering evidence as proof of different types of undeclared work and how these challenges have been overcome, (ii) the common reasons for appeals and/or a lack of success in proving the existence of different types of undeclared work, and (iii) key shortcomings of the existing legal frameworks, together with the additional types of evidence that could be accepted as proof in order to improve the sanctioning of undeclared work. The chapter focuses on authorities' cooperation and data sharing before and after on-site inspections, the level of digitalisation of various documents, and gathering evidence during on-site inspections.

3.1 Challenges and solutions when gathering evidence on different types of undeclared work

Survey respondents indicated several challenges when gathering evidence as proof of different types of undeclared work:

Challenges related to **capacity, technical knowledge and powers of relevant public authorities**:

- ▶ Labour authorities struggle to control all exits or to access private property, for example in construction (**Lithuania**). They may not have the authority to enter private properties, such as private houses or compounds that are being renovated (**Iceland**). One challenge not mentioned by the respondents might be the inspection of workplaces that frequently change location, such as street vendors, small mobile construction sites, or seasonal agricultural activities;
- ▶ Legal and technical challenges in accessing information stored in computer equipment (**Spain**).
- ▶ A growing challenge³² may arise from the **increasing expectation that labour inspectors will carry out immigration enforcement activities during their workplace inspections**. For example, in **Spain and Portugal**, labour inspectors can play a role in the procedures allowing undocumented migrant workers to regularise their immigration status.
- ▶ Another challenge³³ that was not addressed by the survey respondents is the **unclear legal basis for the establishment of labour relations**. Examples include very short-term contracts for seasonal activities or on-call contracts, such as those in the hospitality and entertainment industries, where workers are not officially registered or have multiple employers, only one of which makes partial declarations.

Challenges in **cooperation and communication with employees**:

- ▶ Employees and employers may each refuse to testify (**Lithuania**) or cooperate (**Belgium, Czechia**). However, the most likely reasons for employees' reluctance to speak to inspectors or the police are that

³² Although not mentioned by survey respondents, this challenge is reported based on desktop research. This could be further explored and discussed at future thematic review workshops.

³³ Although not mentioned by survey respondents, this challenge is reported based on desktop research. This could be further explored and discussed at future thematic review workshops.



they: (a) may look guilty of agreeing to work under-declared; (b) they are receiving undue unemployment benefits; or (c) they are afraid that they might be fired or lose their work permit (**Finland**);

- ▶ Authorities face language barriers when interviewing employees, and employees may not know their (real) employer (**Denmark**).

Challenges in **cooperation and communication with employers**:

- ▶ Inspected persons often use **stalling tactics**. For example, they may delay inspectors' access to the site and employees (**Czechia**), or request unwarranted extensions of the deadlines set for provision of documents/information (**Czechia**);
- ▶ **Employers may refuse to provide documents** for the inspection, or the documents may not be kept on-site. In some countries, documents do not have to be kept on-site if the inspection is conducted without prior notice (Finland). Iceland reports a lack of evidence to gather, such as no time records;
- ▶ Various schemes are used to **obscure the actual nature of business and labour relationships**, such as letter-box companies/temporary agency employment, non-transparent supply chains of contractors, etc. (**Czechia**). Records and documents may also be falsified.

Several respondents noted **limited/lack of experience with online inspections** (SIIS in **Belgium**, State Labour Inspection Office of **Czechia**, Danish Working Environment Authority). The lack of online inspections may stem from legal reasons, e.g., evidence from on-site inspections might be required by law to prove the existence of undeclared work (**Czechia**). Other explanations may be found in the lack of access to databases, lack of collaboration with social security authorities (**Belgium**), and/or missing data in other institutions' databases (**Lithuania**). **Data confidentiality** remains a subject of debate in many countries, even between government agencies. Legislative amendments may be necessary to overcome legal data protection obstacles and grant access to registries maintained by different administrative bodies.

Box 1 presents some of the challenges in gathering evidence in **Czechia**.

Box 1. Challenges in gathering evidence in Czechia

According to the Czech State Labour Inspection Office, intentional non-cooperation and non-communication is observed at inspection sites, despite the existence of sanctions for such behaviour. Employees are often instructed by the employer what (not) to say in an event of an inspection, while inspectors are stalled for long periods of time at the entrance/reception of the company/site before being admitted to the premises. During that time, the employer 'prepares' the workplace for the inspection. During the inspection, the workers may not be aware of the name of the legal entity of their true employer (workers only know their supervisor's first name) which makes it difficult to identify the entity responsible for the violation. Inspected persons may request to extend the deadlines for provision of documents/information. Employers may also utilise the services of letter-box companies and/or non-transparent supply chains of contractors so as to obscure the actual nature of their business and labour relationships.

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

A number of challenges and possible solutions relate to the mandates and powers of labour or OSH authorities to conduct interviews and gather witness statements, as well as the legal set-up and practice of accepting interview transcripts as evidence in court. Survey respondents provided a short description of their practices and national specifics and these are summarised in Box 2.



Box 2. Mandates and powers of labour and OSH authorities when conducting interviews/gathering witness statements

Survey results show that labour and OSH authorities have the mandate to conduct interviews with employees and employers at any stage of the process of investigation of undeclared work, from the time at which undeclared work is suspected or during on-site inspections, through to the transfer of the case to the police and/or during trials. However, these interviews are usually conducted by different competent bodies and differ in terms of their acceptance as evidence in courts:

- ▶ **Interviews performed on-site during inspections.** During checks and inspections for potential undeclared work, labour inspectors from **Czechia, Denmark, Finland, and Lithuania** have the right to interview persons representing employers, persons authorised by the employer, employees, self-employed persons, and other persons. The State Labour Inspection Office of Czechia can interview representatives of relevant trade union bodies;
- ▶ **Interviews carried out at the office of the labour inspectorate.** The Labour and Social Security Inspectorate of **Spain** can request the employer, its representatives and managers, to come to the Inspectorate's office (or any other public office designated by the acting inspector) to provide explanations or clarifications;
- ▶ **Interviews and full investigations carried out by the police.** The interviews undertaken by labour or OSH authorities only aim to establish certain facts (regarding undeclared work, underpayment, etc.) as an initial step in the process. In case of reasonable doubt as to the existence of undeclared work, the labour authorities can forward the case to the police. Survey respondents from **Finland** and Iceland emphasised that only the police have the authority to carry out full investigations, interview witnesses, and gather statements that will be accepted in the courts. Labour inspectors and OSH authorities can also be interviewed as witnesses. Prosecutors decide whether the case can proceed to court;
- ▶ **Witness statements collected during the trial.** The interview transcripts obtained by the labour inspectorates (or OSH authorities) are not always accepted as evidence in court. Further witness statements can be gathered during the trial phase. **Iceland's** Directorate of Labour noted that 'only in criminal cases can witnesses be asked to provide statements, testimonials and interviews; other authorities are only able to collect information from interviews if the interviewee does so voluntarily.'

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Survey respondents recommended **several solutions** to these challenges:

- ▶ **Digitalisation of witness statements and transcripts of interviews** so that original statements are read as primary evidence (and any changes of statements at a later date can be challenged) (Lithuania);
- ▶ **Better collaboration and easier data sharing** among relevant authorities, including increased numbers of joint inspections (Belgium, Czechia, Denmark, Finland, Spain);
- ▶ **Digitalisation** of documents and other aspects of the inspection process (Belgium, Czechia, Finland, Spain);
- ▶ Using **interpreters and online support/solutions** to translate data received by other authorities or witnesses (Denmark);



- ▶ Engaging **specialised IT personnel** and/or organising training for inspectors on the use of IT; access to information in electronic devices, and methods to determine the validity and authenticity of that information (Spain);
- ▶ Better and more effective **sanctions** (Finland), including improved legislation and permission to impose sanctions **on those who do not maintain appropriate records** and information (Iceland).

A distinction can be made between on-site and online inspections in terms of challenges and solutions. Table 3 presents more information.

Table 3. Challenges encountered and solutions proposed, by type of inspection

Challenges	Solutions	On-site and/or online inspections
Labour inspectors struggle to control all exits	Call more inspectors or officials from other authorities (e.g. the police)	On-site inspections
Labour inspectors do not have the authority to enter private properties	Improve legislation/increase inspectors' powers	On-site inspections
Intentional non-cooperation/non-communication by employer and employees; stalling tactics used by employers; lack of evidence to gather (e.g. no time records kept)	Increased numbers of joint inspections with different authorities; increased sanctions for non-cooperation or lack of record-keeping	On-site and online inspections
Language barriers when interviewing employees	Use telephone or on-site interpreters	On-site inspections
Legal and technical challenges in accessing information stored in computer equipment	Legal changes; training; hiring additional IT experts	On-site inspections
Witnesses change their testimony later in court	Digitalise original statements and provide them to the court	On-site inspections
Various schemes obscure the real nature of business and labour relationships, e.g. letter-box companies/temporary agency employment, non-transparent supply chains of contractors	Improve legislation/increase inspectors' powers/increase numbers of joint inspections with different authorities	On-site and online inspections
Lack of cooperation among relevant authorities/exchange of data	Establish rules, obligations and efficient procedures for cooperation among relevant authorities/exchange of data	On-site and online inspections



Lack of access to databases and/or missing data in other institutions' databases	Seek technical solutions on providing access to and completeness of the data	Online inspections
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Source: 2023 survey on the methods and instruments used as proof of undeclared work.

3.2 Common reasons for appeals and/or lack of success in proving the existence of different types of undeclared work

Survey respondents noted several common reasons for **appeals and/or lack of success in proving unregistered and under-declared employment**:

- ▶ Lack of evidence found during the inspection (**Belgium**);
- ▶ Employee(s) unwilling to talk or cooperate (**Finland**);
- ▶ Difficulties in proving any work relations or labour law violations when the employee is not working during the on-site inspection and/or if there is no register of the work (**Finland**);
- ▶ No national legislation requiring employers to record employees' working hours, which hinders evidence-gathering (**Iceland**);
- ▶ Difficulties in checking work carried out at home or offered online, as entering private property is prohibited by law and requires authorisation from the individual concerned; difficulties in locating the place, day and time of work for work performed at home or offered online (in such cases, the proof of provision of services is very complex) (**Spain**);
- ▶ Witnesses change their testimony before the courts and courts accept the new testimony, despite the inspectors' statements, or employers present the courts with new evidence not provided during the investigation (**Lithuania**);
- ▶ It is sometimes impossible to prove all attributes of dependent work (**Czechia**) (see Box 3).

Box 3. Attributes of dependent work that need to be proven in Czechia

According to Section 2 of the Labour Code of Czechia:

(1) Dependent work (*závislá práce*) means work that is carried out within the relationship of the employer (superior) and employee (subordinate), in the employer's name, according to the employer's instructions (orders), in person, by the employee for their employer;

(2) Dependent work is performed for wage, salary or other remuneration, at the employer's cost and liability, at the employer's workplace, or at some other agreed place within the working hours.

Source: 2023 survey on the methods and instruments used as proof of undeclared work; Labour Code of Czechia.³⁴

³⁴ [Labour Code of Czechia, No. 262/2006 Col, amended in 2012.](#)



The lack of success in proving **under-declared employment** stems from two reasons:

- ▶ Employees believe themselves to benefit from working under-declared (they pay less tax and social security, and may even receive some partial unemployment benefits or social welfare support), thus they avoid speaking to inspectors (**Finland, Spain**);
- ▶ Deficiencies in employers' registries, or a suspicion that registries have been falsified (**Spain**).

The main challenges for **misclassification of a dependent employment relationship as self-employment** include:

- ▶ Evidence collected during on-site inspections may turn out to be insufficient or may not be the right evidence to lead to a court sentence (**Belgium, Denmark**);
- ▶ Difficulties in proving all attributes of dependent work (**Czechia**);
- ▶ Complexity of checks, such as the need to prove working time, numbers of affected workers, etc. Employers may obstruct inspectors by using algorithms/applications/computer programmes that obscure the business organisation of work. There may also be a lack of cooperation by some workers, who perceive advantages in registering as self-employed (**Spain**);
- ▶ If a case is cross-border in nature, it is even more difficult to check and prove (**Spain**);
- ▶ Misclassification of a dependent employment relationship as self-employment is hardest to prove during inspections. B bogus self-employment has increased considerably in manual labour in recent years. Many employers using bogus self-employed people work together with lawyers to mask the employment relationship. There are many third-party invoicing companies that market 'light entrepreneurship' and target non-native-speaking foreign workers. These companies are partly the reason that bogus self-employment is increasing in popularity and are also part of the problem of masking the employment relationship as 'light entrepreneurship' (**Finland**).

Box 4. Light entrepreneurship in Finland

Persons who are self-employed but who do not have their own company are considered 'light entrepreneurs'. As a light entrepreneur, a person can invoice customers through an invoicing service company. These companies have different ways of operating, but generally can:

- Undertake a formal employment contract with the person (wage earner) to whom the company then pays a wage;
- Undertake an invoicing contract – if the person is an individual (without a business ID) or entrepreneur (with a business ID) engaged in earning income, the company pays a trade income to them or their company.

According to the Self-Employed Persons' Pensions Act, self-employed workers must take out pension insurance within six months of the date on which they start their self-employment. Where the person does not enter a formal employment relationship with an invoicing service company but instead operates under a business name or other form of self-employment, they may have to file and pay VAT.

However, parties cannot freely agree on whether they are in an employment relationship or not, and the matter is laid down in law. If the characteristics of an employment relationship are met, it is an employment relationship.



The scope of application of the Employment Contracts Act is compelling legislation, i.e., it is not something the parties themselves have a choice on. <https://tyosuojelu.fi/en/employment-relationship/characteristics-of-an-employment-relationship>.³⁵

Source: Finnish Tax Administration, Light entrepreneur.³⁶

4.0 Legal presumptions applicable to tackling undeclared work

This part of the study presents the legal presumptions recognised by national legislations and applicable to undeclared work. **A legal presumption is a rule of law which permits a court to assume a fact is true without any evidence until there is a certain weight of evidence which disproves or outweighs the presumption.**³⁷

A legal presumption can be **absolute** (non-rebuttable) or **relative/simple** (rebuttable). Absolute presumptions are very rare, although some examples exist in labour law. Relative/simple presumptions are more common.

The use of presumptions³⁸ in labour law cases **shifts the burden to prove** that the worker is *not* a worker from the employee onto the employer. In most systems, this shift happens automatically as a consequence of the legal presumption (i.e. without the worker having to establish any particular facts)³⁹. As an exception, in some legal systems (e.g. Belgium), presumptions do not automatically apply, but require the plaintiff to establish certain facts before the court in order for the court to presume the existence of an employment relationship and then shift the burden to the defendant.

Presumptions (most rebuttable) are generally accepted in order to prevent excessive burden on complaints and cannot prejudice the rights and interests of the parties involved.

Presumptions can be distinguished in two broad groups:

- ▶ **General** presumptions (e.g., presumptions applying to all or specific economic sectors and employment segments/occupations), and
- ▶ **Specific/special** presumptions (e.g., presumptions applying to non-standard employment).

A lack of systematic information on the existence of legal presumptions applicable to undeclared work in the EU exist. Member States do not use a uniform terminology to refer to the different types of legal presumptions. This study developed a typology closest to the meaning of the presumptions existing in the Member States, while remaining sufficiently general to cover the variants and their different emphases.

Within the two broad groups of legal presumptions (general and specific presumptions), the following types of legal presumptions can be distinguished:

- ▶ **General legal presumptions**
 - ▷ Legal presumptions of the existence of employment and/or its duration/terms

³⁵ See for more information, the [website](#) of the Occupational Safety and Health Administration in Finland.

³⁶ Finnish Tax Administration, [Light entrepreneur](#).

³⁷ [People's Law Dictionary \(n.d.\)](#). 'Presumption'; [UpCounsel \(n.d.\)](#). [Legal definition of 'presumption'](#).

³⁸ In Member States that have as origin Roman law the legal presumptions are considered "iuris tantum" (rebuttable) and "iuris et de iure" (irrebuttable).

³⁹ ETUC (2021). [Options for legal presumptions and burden of proof reversals](#).



- ▷ Legal presumptions of the employment status applicable to certain groups of employees
- ▷ Legal presumptions regarding the minimum monthly salary
- ▷ Legal presumptions of the certainty of inspections verifications
- ▷ Legal presumptions arising from social security and tax law
- ▶ **Specific/special legal presumptions**
 - ▷ Legal presumptions of dependent work
 - ▷ Legal presumptions of the existence of an employment relationship in digital platforms

The legal presumptions identified through the survey responses most often apply to **unregistered employment**. For **misclassification of employment relationships as self-employment**, the situation is more complex and different solutions at national level exist, as well as attempts to address the problem at EU level.

4.1 General legal presumptions

4.1.1 Legal presumptions of the existence of employment and/or its duration/terms

Presumptions of the existence of an employment relationship, the duration and/or terms of employment are found in similar forms or with different variations in all Member States.

In the absence of written contracts, various legal presumptions apply to determine the **existence of an employment relationship**. In some cases, national legislation establishes negative presumptions, stating that certain forms of employment are not employment relationships or excluding certain categories of workers from the scope of the legislation.

Member States are bound by Directive (EU) 2019/1152.⁴⁰ According to Article 11, Member States that allow the use of on-demand or similar employment contracts must take measures to prevent abuse. One of the three options is to introduce and apply **a rebuttable presumption of the existence of an employment contract** with a minimum number of paid hours based on the average number of hours worked in a given period. As the deadline for transposition was as recent as 1 August 2022, this study does not review the level of transposition or measures taken to date. In the near future, however, a review of national transposition measures may provide useful examples.

Legal presumptions also apply to determine the **duration and terms of employment contracts**. In some cases, it is assumed that the employment provisions are as alleged by the worker.

Presumptions on the existence of an employment relationship, its duration and/or its conditions are closely linked, almost always derive from the same national legal act, and are sometimes difficult to strictly separate.

A review of the presumptions of the existence of an employment relationship, the duration and/or conditions of employment contracts in the Member States is presented below.

⁴⁰ [Directive \(EU\) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.](#)



In **Greece**, if an oral or written part-time contract is not declared to the national information system for registering employers and employees for social security and labour purposes (ERGANI) within eight days, it is legally considered as a **full-time contract**.⁴¹

In **Bulgaria**, Article 67, paragraph 2 of the Labour Code⁴² establishes an **irrebuttable presumption** that the employment contract shall be deemed to be concluded for an indefinite period unless otherwise expressly agreed. Article 68, paragraph 5 of the Labour Code provides that an employment contract concluded in violation of the requirements of the Code for a fixed-term employment contract shall be deemed to have been concluded for an indefinite period (**presumption of an open-ended employment contract**). Both presumptions relate to the duration or terms of the contract.

In **Finland**, if an employer hires a third-country national who is staying in the country illegally, an employment relationship of at least **three months** is presumed unless the employer or employee can prove otherwise (Chapter 11a /451/2012/, Section 8, para 2).

According to the Labour Law of **Latvia**,⁴³ a temporary contract may be concluded for a maximum of two years, after which time it is considered a contract for an **indefinite period of time**. The Labour Law (Section 41, para 2) also provides for a presumption that if the employee and the employer, or at least one of the parties, has started to perform the contracted duties, an employment contract that does not conform to the written form shall have the same legal consequences as an employment contract expressed in writing. The interpretation of this presumption should lead to the conclusion that the consequences for both parties include their rights and binding obligations arising from a written contract (including the employer's obligation to register the employment relationship). Section 44, para 5, referring to employment contracts for a specified period in order to perform specified short-term work, provides for the presumption that if an employment contract does not indicate the duration, or if, according to the circumstances, the entering into an employment contract for a specified period is not permissible, the employment contract shall be deemed for an unspecified period (**presumption of an open-ended employment contract**). These presumptions apply to the existence, duration and terms of the employment relationship.

In **Lithuania**,⁴⁴ where a fixed-term employment contract is concluded for a certain period of time or for the period of the performance of certain work, but not exceeding five years (Article 109(1)), **three legal presumptions** about the effects of the expiry of a fixed-term employment contract apply (Article 111 (para 1-3)):

- ▶ If the term of an employment contract has expired, but the employment relationship actually continued and neither of the parties had requested to terminate the contract, it shall be considered extended for an **indefinite period of time**;
- ▶ A fixed-term employment contract shall become **an indefinite term contract** when the circumstances in respect of the terms of the contract cease to exist during the period of the employment relationship;
- ▶ If an employment contract, upon the expiry of its term, is not extended or is terminated, but within one month from the day of its termination another fixed-term employment contract is concluded with the dismissed employee for the same work, then, at the request of the employee, such contract shall be recognised as concluded for **an indefinite period of time**.

Additionally, if an employee has started work pursuant to a verbal agreement with the employer, **the employment contract is considered to be concluded and must be executed in written form**, i.e. presumption of the existence of an employment relationship. The employer shall register each employment contract or any

⁴¹ [Greek Law 4611/2019](#) (Government Gazette A' 73/17.05.2019).

⁴² [Bulgarian Labour Code \(Кодекс на труда\)](#). Available (in Bulgarian).

⁴³ [Latvian Labour Law](#).

⁴⁴ [Lithuanian Labour Code](#) (available in English).



amendments thereto in the book of registration of employment contracts within the company. Normally, a contract of employment shall be concluded for an indefinite period of time (open-ended employment contract).⁴⁵

In **Spain**, the Status of Workers Act⁴⁶ establishes presumptions on the existence of an employment relationship, as well as its duration and terms. A contract is presumed to be concluded for an indefinite period of time unless the text of the contract proves otherwise.⁴⁷ An employment contract (which can be concluded in written or oral form) will be presumed to exist between everyone who provides a service on behalf of the organisation and its management and who receives remuneration in return (Status of Workers Act, Article 8, para 1). Contracts shall be in writing for any given period of **more than four weeks**. In the absence of such a requirement, **the contract shall be presumed to be concluded for an indefinite period of time**, unless proven that it is of a temporary nature or the part-time nature of the services is accredited (Article 8, para 2).

A part-time contract must be formalised in writing. The contract shall include the number of working hours per day, week, month or year, and the mode of distribution as provided for in a collective agreement. If these requirements are not met, the contract shall be presumed to have been concluded on a **full-time basis**, unless proof can be provided to the contrary, e.g., that the services are partial (Article 12, para 4). Temporary contracts concluded fraudulently **are presumed to be open-ended** (Article 15, para 3).

A legal **negative presumption** is established, which excludes from the scope of the employment relationship certain categories of employees, such as management consultants, work done on an amicable, voluntary or goodwill basis, commercial activities, and work by family members, unless there is evidence that they are employees.

In **the Netherlands**, if work is performed for remuneration for at least 20 hours per month or per week for at least three consecutive months, it is presumed that this work is performed under an **employment agreement (or other type of contract)**.⁴⁸ This legal presumption of the existence of an employment relationship is important in circumstances where it is unclear whether there is an employment agreement, either because no clear contract has been reached or because the course of actual events differs from the arrangements in the contract. This legal presumption can be rebutted by evidence to the contrary.⁴⁹ According to another legal presumption on the duration or terms of the contract, if no specific period is mentioned, or the agreements exceed the legally permitted period or number of consecutive contracts, an employment contract will be deemed to be a **contract for an indefinite period of time** (employment for an indefinite period). This employment agreement will not terminate automatically.

In **France**, the Labour Code (*Code du Travail*)⁵⁰ establishes a **presumption of the existence of an employment contract**. Article L7121-4 stipulates that 'the presumption of the existence of an employment contract subsists regardless of the method and amount of remuneration, as well as the qualification given to the contract by the parties' and this presumption applies even if it is proven that the employer has failed to declare the employee or has paid undeclared remuneration. Case-law defines the employment contract on the basis of three criteria: provision of work, relationship of subordination, and remuneration.

In **Estonia**, the Employment Contracts Act establishes presumptions for the existence of an employment relationship, as well as its duration and terms. If a person does work for another person, which, according to the circumstances, can be expected to be done only for remuneration, it is presumed to be an **employment contract**

⁴⁵ [National Labour Law Profile: Lithuania](#)

⁴⁶ [Royal Legislative Decree 2/2015 of October 23, 2015, approving the revised text of the Status of Workers Act \(Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores\)](#).

⁴⁷ *Ibid.*

⁴⁸ The Dutch Civil Code lays down three forms of contracts relating to the performance of work: employment agreement, contract for services, contract of work.

⁴⁹ [Palthe Oberman Advocaten, \(26 July 2017\). Employees vs Independent Contractors Netherlands.](#)

⁵⁰ [French Labour Code \(Code du travail\)](#).



(§1, para 2).⁵¹ However, if the employer has not communicated to the employee the information on the working conditions as specified in the Employment Contracts Act, it is presumed that no agreement has been made or obligations established (§6, para 9). The Act also contains a presumption for the unspecified period of the employment contract - a fixed-term employment contract may be for up to five years if it is justified by good reasons arising from the temporary fixed-term characteristics of the work (§9).

4.1.2. Legal presumptions of employment status applicable to certain economic sectors

The presumption of employee status is very similar to the presumption of an existing employment relationship. It is considered separately, however, as it is most closely related to the employee's sectoral occupational status and is applicable to certain groups of workers.

In **France**, if working conditions are the same as for a worker, the person is considered to be employed, even if the employer claims that the person is self-employed. More specifically for artists, the presumption of an existing employment relationship applies even if the artist retains the freedom to express their art, if they own all or part of the equipment used, or if they employ one or more persons to assist them, as long as they personally participate in the performance.

In the case of undeclared work, there is also a presumption that the employer did not declare employment intentionally (**presumption of intent**) unless they prove otherwise.

Two sectoral legal presumptions of employee status exist in France:

- ▶ Employee status of **performing artists**: the presumption set out in Article L7121-3 of the French Labour Code provides that anyone who uses the services of an artist-performer to create a live performance for remuneration is deemed to be the artist's employer (unless the artist is registered as self-employed with the Registry of Commerce and Companies);
- ▶ Employee status of **professional journalists**: Article 7112-1 of the French Labour Code⁵² provides that any agreement by which a press company secures the services of a professional journalist in return for remuneration is presumed to be an employment contract. This presumption applies irrespective of the mode and amount of the remuneration, or the description given to the agreement by the parties.

Examples of such presumptions were given by survey respondents (see Box 5 below).

⁵¹ [Estonian Employment Contracts Act](#) (available in English).

⁵² [French Labour Code](#) (last update 9 July 2023).



Box 5. Belgium example

In Belgium, in general terms, the person who refers to the existence of an employment contract must prove its existence. However, the following cases establish a legal presumption that there is an employment contract between the parties: pharmacists, sales representatives, sports people, and similar ancillary services and artists.

Similar conditions

The social security system for employees also applies to those working under similar conditions to those of an employment contract, i.e., as soon as they perform work within the definition given by the legislator. The performance does not necessarily need to be carried out under terms of subordination. Similar conditions exist for agents, domestic workers, personal carriers, goods carriers, physicians training to be specialists, reception parents, and personal assistants.

Apprentices

For social security purposes, apprentices are equivalent to employees.

Public sector

The Employees' Social Security Scheme applies to both contractual and non-contractual employees in the public sector.

The presumption applies to all three types of employment: unregistered, under-declared, and misclassification of employment relationships as self-employment.

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

The survey found that **Denmark** does not apply legal presumptions in labour law, and the authority must prove all facts. However, desk research found that some circumstances are specially considered by courts in establishing the status of employee, including the extent of the employer's control and direction of the tasks performed by the worker. The type of labour tax paid is an important criterion in determining whether an individual is to be considered an employee.⁵³

4.1.3. Legal presumptions regarding the minimum monthly salary

The survey also provided examples of legal presumptions regarding the minimum monthly salary. If the employment contract is not concluded in writing and the employer or the employee cannot prove the existence of an employment relationship, it is presumed that the employee has worked for a certain period of time, according to the normal working hours, and has earned the minimum monthly salary.

Lithuania's approach to the presumption for minimum monthly salary is presented in Box 6.

⁵³ OECD (2014). [Non-regular employment, job security and the labour market divide](#). Employment Outlook. Chapter 4.



Box 6. Lithuania example

In Lithuania it shall be deemed that illegal labour relations have lasted for three months until the date when the fact of undeclared work is established, with the employee paid the minimum monthly wage set by the government of Lithuania as of that date. This provision shall not apply in cases when the State Labour Inspectorate or the worker prove that higher remuneration was paid, or the employer recognises that the worker was employed illegally and proves a shorter period of undeclared work. In other words, if the employer does not ensure the conclusion of an employment contract in writing and the employer or employee cannot prove the existence of another employment relationship duration, working hours and pay, the employee is considered to have been employed for three months, with normal working time and a **minimum monthly salary**.

This legal presumption is relevant solely to fully unregistered employment. It is rarely used, as employees report that they have worked less time and the evidence collected does not allow for a three-month period to be assumed. In practice, therefore, courts do not take the presumption into account.

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

4.1.4. Legal presumptions of the certainty of inspection verification

The **Spanish** Labour and Social Security Inspection System Regulator Act (Law 23/2015)⁵⁴ establishes a presumption of **certainty of inspection verifications**. Article 23, para 1 provides that the facts established by the officials of the Labour and Social Security Inspection and formalised in the infraction and liquidation reports, observing the pertinent legal requirements, are presumed to be certain, without prejudice to the evidence that interested parties may provide in defence of their respective rights or interests. The same evidentiary value is attributed to the facts outlined in reports issued by the Labour and Social Security Inspection as a consequence of verifications carried out by the same, without prejudice to their contradiction by the interested parties in the manner determined by the applicable procedural rules (Article 23, para 2).

In addition, the established presumption of certainty shall not be affected by the replacement of the official or officials during the period of the inspection, although interested parties must be notified in due time and form of such substitution before the end of the inspection, in accordance with the stipulated conditions (Article 23, para 3).

4.1.5. Legal presumptions arising from social security and tax law

In the **Netherlands**, from a social security and tax law perspective, some working relationships are considered employment relationships even though they do not meet all requirements of the Civil Code. However, as soon as the supposed employee can prove that they are, in fact, a self-employed worker, this presumption will be rebutted. It is the employer who must determine whether a relationship qualifies as an employment relationship for tax and social security contributions for employees. If this is the case, the employer is obliged to withhold income tax, as well as the employee's social security contributions. As the Income Tax Act 2000 and the Payroll Tax Act 1964 do not define an employment contract, the tax and social security authorities have developed guidelines and criteria for determining whether a worker is acting as an employee (Netherlands Civil Code), as an employee for tax and social security reasons, or as an independent contractor.⁵⁵

⁵⁴ [Spanish Labour and Social Security Inspection System Regulator Act](#) (Ley 23/2015, de 21 de julio, Ordenadora del Sistema de Inspección de Trabajo y Seguridad Social).

⁵⁵ [Dutch Legal Framework Differentiating Employees from Independent Contractors](#).



In **France**, Article L.114-10-1 of the Social Security Code⁵⁶ provides that inspection officers referenced in Article 114-10 (as well as in the French Rural and Maritime Fishing Code⁵⁷) may conduct their checks and investigations on behalf of other organisations belonging to different branches and schemes of the social security system, and those findings **are deemed authentic** until proven otherwise. This presumption is relevant because it is part of a procedure allowing the social security services to discover undeclared work. In addition, Article L.244-11 of the Social Security Code provides that if the offence of unlawful employment is established by a criminal decree, the statute of limitations is extended to five years for social security contributions, civil action for recovery of social security contributions or late payment surcharges, and action to enforce uncontested garnishment.

4.2 Specific/special legal presumptions

This section of the study focuses on the presumptions related to non-standard employment such as dependant employment⁵⁸ and platform work.

Various studies have noted the worrying number of employers classifying workers as self-employed in order to circumvent collective agreements, employment legislation (e.g. minimum wages, working time legislation), taxation and other employer obligations arising from the standard employment contract, with the emerging 'gig' or 'platform' economy accelerating the trend.⁵⁹

One area of discussion is the emergence of the so-called 'economically dependent self-employed', a category of workers **legally independent** (i.e., self-employed) but **economically dependent**, who are between genuinely subordinate workers and genuinely independent entrepreneurs.⁶⁰

Over the last decade, working through an online platform has become a topic of growing interest.

There are, however, clear challenges.⁶¹ Many platform workers are considered as self-employed, and it is often difficult to distinguish between genuine and bogus self-employment. Further challenges include the information available to workers about their working conditions, dispute resolution, collective rights and non-discrimination.⁶²

4.2.1. Legal presumptions of dependent work

The status of 'economically dependent', 'parasubordinate' or 'quasi-salaried' workers is subject to different approaches and regulation, with an increasing need for social security and legal protection.

It is generally agreed that the concept of 'economically dependent worker' falls between the two established categories of employment and self-employment (having some characteristics of each form). It refers to those workers who do not correspond to the traditional definition of employee because they do not have an employment

⁵⁶ [French Social Security Code \(Code de la sécurité sociale\)](#).

⁵⁷ [French Rural and Maritime Fishing Code \(Code rural et de la pêche maritime\)](#).

⁵⁸ The concept of dependent work is used broadly, bringing together various categories and intermediate forms provided for in national legislation, applied in practice and explored in relevant research. Among the variety of explanations is the understanding that the concept of 'dependent work' defines a standard employment relationship, characterised by the existence of 'legal dependence' or 'subordination'. Some experts argue that, in contrast, the term of 'parasubordinate' or 'quasi-salaried' work, as an intermediate category of worker, is established in specific labour rules. These relationships do not meet the basic elements of the traditional test determining a labour relationship, other than the attribute of economic dependence (remuneration perceived from a sole client being the sole or principal source of income).

⁵⁹ Williams, C.C. and Horodnic, I.A. (30 Aug 2019). [Dependent self-employment: theory, practice and policy](#).

⁶⁰ Bozzon, R. and Murgia, A. (2022). [Independent or dependent? European labour statistics and their \(in\)ability to identify forms of dependency in self-employment](#). Social Indicators Research, 160, pp. 119-226.

⁶¹ Garben, S. (20 April 2021). ['Old' rules and protections for the 'new' world of work](#). *Social Europe*.

⁶² European Commission (2020). [Study to gather evidence on the working conditions of platform workers](#). Luxembourg: Publications Office of the European Union.



contract as dependent employees. However, although formally ‘self-employed’, they are **economically dependent** on a single employer as their source of income.⁶³

Some countries have changed their binary system based on the distinction between employee and the self-employed and created a third status of worker or improved the differentiation criteria. **Austria** and **Italy** created a hybrid third status (workers continue to be classified as self-employed but are given special status for social protection). **Portugal, Slovakia, Slovenia and Spain** introduced economically dependent worker status. **Germany, Malta, and Latvia** use criteria of economic dependence to combat and identify bogus self-employment. **Ireland, Norway and Poland** are establishing criteria to clearly distinguish employment and self-employment⁶⁴. **Belgium** has established criteria to distinguish employment and self-employment⁶⁵. **France and Sweden** do not have an intermediate category of quasi-subordinate employment either.

Whether a work relationship is an employment relationship is mainly determined by the courts, taking into consideration the whole content of the contract, as well as the actual conditions and circumstances under which the relationship is performed.

Box 7. Italy and Spain examples

Italy: A new intermediate category called ‘quasi-subordinate’ (*lavoratore parasubordinato*), between worker and independent contractor, appeared in Italy as early as 1973. However, this category was abandoned as it was used to hide bona fide employment relationships. In 2003, a new definition of quasi-subordinate workers emerged, called ‘project work’. In 2015, the ‘work on a project’ legislation was completely repealed and a legal presumption of worker status was introduced in the Jobs Act, which sets out two main categories of employment relations: 1) employment of a dependent employee, regulated by an employment contract, and 2) engagement of an independent contractor for particular services or tasks, which is regulated by a special contract, such as self-employment, consultancy or freelance. This reform was aimed at detecting ‘false’ parasubordinates,⁶⁶ abolishing certain types of contractual agreements, and reducing the disadvantages associated with the status of parasubordinate workers.^{67,68,69}

Spain: In 2007, Spain introduced the ‘dependent autonomous worker’ status and regulated all forms of independent work. This created a third category of workers, ‘economic dependent self-employed workers’ (*trabajadores autonomos economicamente dependientes*, TRADE). To determine whether a worker falls within the definition of a TRADE worker, the law created a threshold of economic dependence, set at 75 % of their income. Since 2011, a TRADE contract must be formalised in order to be valid. In the absence of a written contract, the relationship is deemed to have the status of employment. Studies suggest that, in practice, this third category is only available to a small percentage of self-employed workers, due to the onerous nature of its regulations and the high dependency threshold required for inclusion. TRADE status includes a series of workers’ rights and obligations. Workers are entitled to 15 days’ holiday each year and indemnity in the case of interruption to their work without a legitimate reason. Workers are obliged to resolve conflicts in employment tribunals. Unemployment insurance cover is mandatory, in contrast to its voluntary nature for other self-employed workers.^{70,71}

⁶³ Eurofound (11 June 2007). [Economically dependent worker. European Observatory of Working Life.](#)

⁶⁴ Eurofound (2017). [Exploring self-employment in the European Union.](#) Luxembourg: Publications Office of the European Union.

⁶⁵ Title XIII of the Program Law (I) of 27 December 2006, published on 28 December 2006 in the Belgian Monitor.

⁶⁶ [Parasubordinate workers in Italy are defined as persons who are legally self-employed but who are often ‘economically dependent’ on a single employer](#) (Raitano, M. (2018). Italy: Parasubordinate workers and their social protection. The Future of Social Protection. OECD Publishing.

⁶⁷ Eurofound (23 September 2015). [Italy: Economically dependent self-employed work in the Jobs Act.](#)

⁶⁸ Expatica (n.d.). [Labour Laws in Italy.](#)

⁶⁹ Cherry, Miriam A. and Aloisi, Antonio, [‘Dependent Contractors’ in the Gig Economy: A Comparative Approach](#), 22 October, 2016.

⁷⁰ Eurofound (2017). [Exploring self-employment in the European Union. Luxembourg: Publications Office of the European Union.](#)

⁷¹ Cherry, Miriam A. and Aloisi, Antonio, [‘Dependent Contractors’ in the Gig Economy: A Comparative Approach](#), 22 October, 2016.



In **Czechia** the Labour Code defines ‘dependent work’ as work carried out in the context of the relationship between an employer (superior) and an employee (subordinate), in the employer’s name, and according to the employer’s instructions (orders), in person, by the employee for the employer. It sets out the conditions under which the dependent work has to be performed: for a wage, salary or other remuneration, at the employer’s cost and liability, at the employer’s workplace, or at some other agreed place within specified working hours (Section 2). It provides that dependent work may be carried out exclusively within the basic labour relationship unless otherwise regulated by other statutory provisions. Basic labour relationships are an employment relationship and legal relations (relationships) based on agreements on work performed outside an employment relationship (Section 3).⁷² These provisions are relevant for all three types of undeclared work and are key to establishing undeclared employment in cases of dependent work.

The case law in Czechia contains various examples of decisions issued by the State Labour Inspectorate concerning ‘undeclared’ work and bogus self-employment (the so-called švarcsystém⁷³).⁷⁴

The study found that the Labour Inspection body in **Greece** issued all Regional Directorates with guidelines for the uniform treatment of cases requiring special treatment in the context of the fight against undeclared work. Regarding **volunteering**, the following instruction is given:

- ▶ ‘If based on circumstances of a particular case, it is ultimately impossible to ascertain the type of work, the inspection may apply **the legally accepted presumption in favour of dependent work**. In order to rebut this presumption, it must be proved in each case, in a clear and certain manner, that the work is offered under the free action of the person providing it in the relevant fully reasoned judgment of the administration and ultimately of the administrative court.’⁷⁵

Portugal recently made wide-ranging changes to the Portuguese Labour Code and related legislation. Law No 13/2023 was published on 3 April 2023, amending the Portuguese Labour Code and related legislation, and implementing the so-called, Decent Work Agenda. The new provisions define an **economically dependent self-employed worker**, taking into consideration the criterion foreseen in the Contributory Code, which focuses on the **percentage of income obtained by the beneficiary entity**. Where the work provider performs activities for several beneficiary companies among which there is a corporate relation of reciprocal participations, dominium, or group, or have common organisational structures, this is considered one beneficiary. However, this depends on a declaration by the service provider addressed to the beneficiary of the activity, accompanied by proof that the service provider obtains more than 50 % of its total activity from the beneficiary.⁷⁶

4.2.2. Legal presumptions of the existence of an employment relationship in digital platforms

A number of studies and surveys have attempted to provide data on the extent of undeclared work in the platform economy and to estimate its characteristics.⁷⁷ Some researchers argue that ‘the crucial element is undoubtedly whether people working via online platforms are to be regarded as “workers/employed”, with attendant rights under

⁷² [Czechia Labour Code No 262/2006 Coll. \(Zákoník práce\)](#).

⁷³ The Schwartz system is a system of economic activity in which the persons performing customary activities for the entrepreneur in a dependent relationship are not employees, but formally act as independent entrepreneurs (self-employed, usually sole proprietors). The system is named after entrepreneur Miroslav Schwarz, who started this type of business in 1990.

⁷⁴ See 2023 survey on the means and instruments used as proof of undeclared work.

⁷⁵ Labour Inspection Body, Special Secretary (2018). Guidelines for the uniform treatment of cases requiring special treatment in the context of the fight against undeclared work, p. 6.

⁷⁶ [Decent Work Agenda: Main changes to labor legislation come into force on 1 May 2023](#).

⁷⁷ Hauben, H. (2021). [Tools and approaches to tackle undeclared work in the collaborative economy. Learning resource paper from the thematic review workshop on undeclared work in the collaborative economy](#). 19-20 May 2021. Eftheia bvba and ICF. European Commission (2019). [Undeclared work in the European Union. Special Eurobarometer 498](#).



EU and national law, or instead as “independent contractors/self-employed”. Most other issues are directly dependent on labour status and support the need to introduce a rebuttable presumption of employment’ in response to platforms that deny their workers employee status.⁷⁸

Criteria for some platform workers are set out in the CJEU *Yodel* case (C-692/19), issued on 22 April 2020.⁷⁹ The criteria relate to the working status of a parcel delivery courier under the Working Time Directive (2003/ 88/ EC).⁸⁰ The Court found that in accordance with the Directive, persons will be considered self-employed if they have discretion to: (a) use subcontractors or substitutes in the provision of their services; (b) accept or not accept the various tasks offered by their putative employer, or unilaterally set the maximum number of those tasks; (c) provide their services to any third party, including direct competitors of the putative employer, and (d) fix their own hours of work within certain parameters and tailor their time to suit their personal convenience rather than solely the interests of the putative employer (para 45). The Court considers cumulatively the existence of all those discretionary rights and further holds that, in classifying a person's occupational status under Directive 2003/88/EC, account must be taken of all the relevant factors relating to that person and their economic activity.

Several Member States have undertaken various initiatives to address the challenge of undeclared work in the platform **economy**.

4.2.2.1 Member States' legislative decisions and important court rulings on working on digital platforms

Some countries have enacted specific legislation governing the employment status of people working through platforms, introducing a **general legal presumption** of employment when certain criteria are met (e.g. **Belgium, Croatia, Malta, the Netherlands, Portugal, Slovenia, Spain**) or when referring to specific economic sectors (e.g. **Spain** introduced a rebuttable presumption for riders in the food and parcel delivery sector).⁸¹

- ▶ Through recent changes to the Labour Code (Article 12-A), **Portugal** has introduced a legal presumption of an employment relationship for digital labour platforms: A presumption of the existence of an employment contract exists in cases where certain characteristics are verified in the way the activity is carried out, namely when the remuneration is fixed and when the digital platform or intermediary operator:
 - ▷ Exercises management power and determines specific rules;
 - ▷ Controls and supervises the provision of the activity;
 - ▷ Verifies the quality of the activity provided;
 - ▷ Restricts the activity provider's autonomy as regards work organisation, in particular the choice of working time or periods of absence, the possibility to accept or refuse tasks, the use of subcontracts or substitutes, through the application of sanctions, the choice of clients or to provide activity to third parties via the platform;
 - ▷ Exercises disciplinary power;
 - ▷ Makes the equipment and working tools available.

⁷⁸ Garben, S. (20 April 2021). [‘Old’ rules and protections for the ‘new’ world of work. Social Europe.](#)

⁷⁹ InfoCuria (22 April 2020). [Order of the Court \(Eighth Chamber\).](#)

⁸⁰ [Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.](#)

⁸¹ Hauben, H. (2021). [Tools and approaches to tackle undeclared work in the collaborative economy. Learning resource paper from the thematic review workshop on undeclared work in the collaborative economy.](#) 19-20 May 2021. 19-20 May 2021. Eftheia bvba and ICF.



- ▶ In **Belgium**, alongside the two existing statuses – that of employee or independent worker⁸² – there is a **legal presumption of an employment contract** for certain economic sectors and for activities carried out **via an employment platform**. In the absence of proof to the contrary, the employment relationship is presumed to be performed under the terms of an employment contract if a certain number of criteria are met. The legal presumption is not applicable to family employment relationships and can be rebutted by all legal means, in particular on the basis of the general criteria. The sectors to which this presumption applies are as follows: construction, supervision, transport, cleaning, agriculture, horticulture, and **activities carried out via a work platform**. In December 2021, the Brussels' Labour Court rendered a decision on the status of Deliveroo workers. The judge declared that the relationship between delivery drivers and Deliveroo was not one of employee status, sharply contradicting current European case-law granting employee status to such workers.⁸³ From January 2023, **specific criteria** are laid down by law for activities carried out via a platform. Indeed, work carried out from a commissioning digital platform is presumed to be performed under the terms of an employment contract where it appears that at least three of eight criteria or two of the last five criteria are met.⁸⁴ There is an obligation for platforms to obtain authorisation and report on transactions and income paid to individuals.

Box 8. Spain and France: legislation and important court rulings examples

In **Spain**, the addition of provision 23 to the Status of Workers Act introduces the **presumption of employment status for digital delivery platforms**:

- ▶ 'By application of the provisions of Article 8, para 1, the activity of persons who provide paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise business powers of organisation, management and control directly, indirectly or implicitly, by means of algorithmic management of the service or working conditions, through a digital platform, is presumed to be included within the scope of this Act.'⁸⁵

The presumptions in Article 8, paragraph 1 and additional provision 23 of the Status of Workers Act are particularly relevant. This does not preclude the need to provide all necessary evidence to reinforce these assumptions and give certainty to the action taken. The Riders' Act (in force since 12 August 2021) recognises food delivery riders working for digital platforms as employees rather than independent contractors under specific circumstances. The new legislation adds two main provisions to the Workers' Statute: the first relates to the **presumption of employment status** and is applied for the activities of distribution of any type of product or merchandise when the employer exercises its faculty of organisation, direction and control, directly, indirectly, or implicitly, through the algorithm management of the service or working conditions, via a digital platform; and the second requires platforms to disclose relevant **information to their riders**, including how algorithms and artificial intelligence (AI) impact working conditions, hiring decisions and layoffs, as well as the development of workers' profiles. However, according to some authors, this specific rebuttable legal presumption of an

⁸² General criteria to fulfil in order to identify whether or not there is an employee status:

- will of the parties
- worker's freedom to organise their working time
- worker's freedom to organise their work
- possibility for the company to exercise hierarchical control over the employee.

See: [Belgian Federal Public Service: Employment, Labour and Social Dialogue. Nature de la relation de travail: travail salarié ou travail indépendant?](#)

⁸³ Raucant, E. (November 2020). [Quel statut social pour les travailleurs de plateforme? Les \(potentielles\) avancées en Droit social Européen et Belge.](#)

⁸⁴ Ibid.

⁸⁵ [Royal Legislative Decree 2/2015 of October 23, 2015, approving the revised text of the Status of Workers Act](#) (Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores).



employment relationship for food delivery riders may be more difficult to apply than the general legal presumption of an employment relationship, due to the need to fulfil a number of conditions.

Additionally, the Plenary of the Fourth Chamber of the **Spanish Supreme Court** in Decision No 805/20 of 25/09/2020 overturned Social Court No 39 judgment from 3 September 2018, which denied a working relationship between Glovo and an actor and stated that the claimant had TRADE status (economically dependent self-employed worker). The decision declared that the relationship between a delivery driver ('rider') and the company Glovo is of an **employment nature**. The Court refused to refer a question to the CJEU for a preliminary ruling. It upheld the first ground of the appeal for unification of doctrine filed by the plaintiff, arguing that the defining characteristics of an employment contract are met, particularly those of dependence and employment by another person. The Supreme Court ruled that Glovo is more than a mere intermediary for contracting services between businesses/shops and delivery drivers (distributors – it is a company that provides delivery and courier services, setting the essential conditions for the provision of such service, and it owns the essential assets for performance of the activity. For this purpose, it uses riders (distributors) who do not have their own autonomous business organisation and who provide their services within the employer's work organisation. The distributor's autonomy is limited to secondary matters such as transportation and route choice, as Glovo assigns services and monitors execution in real-time. The form of provision of the service, such as price and method of payment, are established by Glovo.⁸⁶

In **France**, an amendment to the Labour Code introduced a **rebuttable legal presumption of self-employed status** for people working through platforms⁸⁷. Article L.8221-6 of the Labour Code (added by Act No 2016-1088 of 8 August 2016) is applicable to self-employed workers who use one or more electronic platforms (defined in the French General Tax Code) to carry out their professional activity.

The court practice provides examples of undeclared work among digital platform workers. One of the relevant cases is the **Uber ruling on undeclared work in the field of the collaborative economy**, handed down on 4 March 2020 by the plenary session of the Social Chamber of the Supreme Court of Cassation.⁸⁸ It opened new perspectives for the prosecution of undeclared work in the collaborative economy in terms of employment contract criteria. The solution adopted makes it possible to characterise the offence of undeclared work by concealing a worker employed under a false status.

As self-employed workers are registered within the relevant registers and with tax authorities and social security bodies, they benefit from the simple legal presumption of non-salaried status set out in Article L. 8221-6, I of the French Labour Code. In order to characterise undeclared work, therefore the Criminal Court must establish the existence of a legal relationship of subordination using the classic criteria of labour law, by applying a set of precise and concordant clues. The Social Chamber of the Court of Cassation affirmed that this link 'is characterised by the performance of work under the authority of an employer who has the power to give orders and instructions, to control their execution and to punish breaches'. The Court provided this definition in 1931 and is still used today, as it remains aligned with the CJEU.

The reclassification by the Criminal Court of a false (or bogus) self-employed status as an employment contract is often based on various labour law criteria, such as:

⁸⁶ Plenary of the Fourth Chamber of the Spanish Supreme Court in Decision No 805/20 of 25/09/2020 overturns Social Court No 39 judgment from 3 September 2018, which denied a working relationship between Glovo and an actor and stated that the claimant had TRADE status (economically dependent self-employed worker).

See: Tribunal Supremo, [Sala de lo Social PLENO Sentencia núm. 805/2020, 25/09/2020](#).

See also the Uber judgment of the Court of Justice of the European Union (CJEU): [EUR-Lex - 62015CJ0434 - EN - EUR-Lex \(europa.eu\)](#).

⁸⁷ See [Article L. 8221-6 French Labour Code](#).

⁸⁸ See the full judgement (available only in French) [Cour de cassation, civile, Chambre sociale, 4 mars 2020, 19-13.316, Publié au bulletin](#). See also the [Explanatory note to the uber ruling \(Ruling n°374 – 4 march 2020\)](#).



- ▶ exclusivity of the false self-employed person's work for the company and their lack of autonomy;
- ▶ absence of customers, materials or tools of their own, with the exception of their means of transport;
- ▶ use of the company's uniform and logo;
- ▶ general lack of independence.

However, the situation remains complex. The presumption is of non-salaried status and there is no legal presumption of salaried status for these types of workers. The only possibility is to initiate a criminal or labour law procedure to reclassify independent status as a salaried status. For this type of worker, the Social Chamber and the Criminal Chamber of the French Court of Cassation have taken different positions on proof of intent.

In the **Netherlands**, as of 2022 there are no general rules or dedicated legislation on work on platforms. Nevertheless, the issue has been recognised at policy level. However, there are recent examples of recognition of worker status from case-law:

- ▶ February 2021: the Amsterdam Court of Appeal ruled that Deliveroo riders are employees and are entitled to all labour rights under the haulage-sector collective bargaining agreement;
- ▶ September 2021: the Amsterdam Court of Appeal found that house cleaners hired via the app Helping have the status of temporary agency workers;
- ▶ September 2021: the Amsterdam District Court ruled that Uber drivers are employees, not contractors, and should be covered by the collective labour agreement for taxi transport (CAO Taxivervoer).⁸⁹

Latvia has **no specific legislation for platform workers**, but the issue is on the trade union agenda since the outbreak of COVID-19 in 2020.⁹⁰

In **Estonia**, the general presumption of employee status cannot be applied where the person obligated to perform the work is to a significant extent independent in choosing the manner, time, and place of performance of the work (Employment Contracts Act, §1, para 4). This implies that the presumption does not apply to platform workers, suggesting that Estonia considers **platform workers to be self-employed**.⁹¹

4.2.2.3 Actions at EU level

The growing importance of issues of employment relationships in digital platforms,⁹² their transnational dimensions, and fragmented national regulations have given rise to the need for coordinated efforts at **EU level**.

On 9 December 2021, the European Commission presented a proposal for a Directive to improve working conditions on platforms. The draft legislation includes establishing a **rebuttable legal presumption of an employment relationship for workers on digital platform companies**, complemented by a **reversal of the burden of proof**. This has given rise to many calls for the introduction of criteria to end the vicious practice of bogus self-employment. The proposed Directive provides a list of criteria to determine whether the platform is an employer. If the platform meets the necessary criteria, it is legally presumed to be an employer

The European Trade Union Confederation (ETUC) has expressed the need for new legislation at EU level by means of a directive establishing a **rebuttable legal presumption of an employment relationship where the**

⁸⁹ Hoppe, R., Jeliazkova, M.I., Krouwel, A. and Bandelow, N.C. (2020). [The Netherlands: Country report](#). SGI and Bertelsmann Stiftung.

⁹⁰ Sabanova, I. and Baboi, D. (May 2022). [Online platform & platform work. The complex European landscape](#), Friedrich-Ebert Stiftung.

⁹¹ Estonian Ministry of Social Affairs (2022). [Draft directive on platform work](#).

⁹² According to the Council of the EU, there are around 500 digital labour platforms operating in the EU, active in every EU country. Over 28 million people in the EU work through one (or more) of these digital labour platforms; in 2025, that number is expected to reach 43 million people (Council of the EU and the European Council (2023). [EU rules on platform work](#)). As a result of the proposed directive, it is estimated that between 1.7 million and 4.1 million people could be reclassified as workers. Others may become genuinely self-employed, as some platforms may adjust their business models (EURES (17 March 2022). [EU proposes directive to protect the rights of platform workers](#).



burden of proof should be borne by the digital platform.⁹³ In October 2022, a joint letter from trade unions, cooperative enterprises, and non-governmental organisations (NGOs) to the European institutions was published, calling for an effective directive on improving working conditions in platform work. That letter states:

'The Commission has made the activation of the presumption of employment dependent on two out of five criteria of subordination being met. This requirement will give digital labour platforms the possibility to draft contracts and working conditions in such a way as to escape four criteria on paper and therefore continue with the malpractice of bogus self-employment as well as deliberately limit the freedom of genuine self-employed workers on another criterion. Furthermore, the use of criteria to trigger the presumption ignores the difficulty of enforcing proper classification by platforms. Besides the violations of labour rights, these proposals will again open the possibility for digital labour platforms to provide for unfair competition against those companies respecting the rules. To prevent this, a true presumption with a reversal of the burden of proof must place the burden on the platform to activate rebuttal of the presumption and not leave this activation on the shoulders of workers or administrative or judicial authorities.'⁹⁴

A **Framework Agreement on the application of Article 16(1) of Regulation (EC) No 883/2004** on the circumstances of habitual cross-border telework⁹⁵ has been signed by a number of EU Member States and countries of the European Economic Area (EEA) to address the sharp increase in cross-border telework following the COVID-19 pandemic. It takes into account the interests of workers, employers, and social security institutions. It also aims to help them to meet the reality of telework until the coordinating regulations on social security are adapted.⁹⁶ The Agreement offers employers and employees the option **to maintain social security coverage within the employer's country when the employee engages in telework from another country for less than 50 % of their working hours (with the remainder in the country of the employer).**⁹⁷

The Framework Agreement facilitates the conclusion of individual derogations between the signatory Member States in the interest of a category of employed teleworkers and their employer(s), provided that certain conditions are met. It ensures that the amount of time a worker can work in their country of residence could be increased without creating social security obligations in that country for the employer. A request may be submitted for the employee to be subject to the social security legislation of the State of registered office or place of business of their employer in cases where: 1) their country of residence is different to the country of registered office or place of business of their employer, and 2) their cross-border telework in the State of residence is less than 50 % of their total working time and the request is agreed by both employer and employee.

The Agreement entered into force on 1 July 2023, when it was signed by the following EU Member States and countries of the EEA: **Austria, Belgium, Croatia, Czechia, Finland, France, Germany, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.**⁹⁸

⁹³ Hauben, H. (2021). [Tools and approaches to tackle undeclared work in the collaborative economy. Learning resource paper from the thematic review workshop on undeclared work in the collaborative economy.](#) 19-20 May 2021. 19-20 May 2021. Eftheia bvba and ICF.

⁹⁴ ETUC (25 October 2022). Joint letter for an effective Directive on improving conditions in platform work.

⁹⁵ [Regulation \(EC\) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.](#)

⁹⁶ [Explanatory Memorandum to the Framework Agreement on the application of Article 16 \(1\) of Regulation \(EC\) No. 883/2004 in cases of habitual cross-border telework.](#)

⁹⁷ [Framework Agreement on the application of Article 16\(1\) of Regulation \(EC\) No 883/2004 in cases of habitual cross-border telework.](#)

⁹⁸ Belgian Federal Public Service Social Security (n.d.). [Cross-border telework in the EU, the EEA and Switzerland.](#)



4.3 Legal presumptions and (reverse) burden of proof

Statutory presumptions in employment law are usually rebuttable, i.e. evidence may be adduced to rebut them. Generally, presumptions reverse the burden of proof,⁹⁹ which is on the person who must prove the existence of the alleged fact. Reversing the burden of proof allows the employee to provide basic facts without necessarily having to prove them, instead requiring the employer to prove that the allegation is false.

This is best illustrated with examples from legislation implemented in some Member States (see Box 9 below).

Box 9. Reverse burden of proof examples

France:

- ▶ The **reverse burden of proof** applies in the case of undeclared work. If an employer is accused of undeclared work, it is up to the institution or the person accusing the employer to prove that the formalities relating to hiring or the declaration of wages have not been carried out. Article L.8221-5 of the French Labour Code stipulates that undeclared work is characterised by the employer's intentional failure to comply with formalities relating to hiring or declaring wages. In other words, there is no reversal of the burden of proof with regard to the regularity of the declaration of employment. The employer does not have to prove the regularity of the declaration of employment but must be able to present supporting documents during an inspection. In the event of a dispute, it is up to the undeclared/unregistered employee to present evidence suggesting the existence of an infringement of the prohibition on undeclared employment. In the light of this evidence, the onus is on the employer to prove that their decision is justified by objective factors unrelated to any infringement. The law stipulates that breaches of the prohibition on undeclared work are recorded in official reports, which are valid until proven otherwise, according to Article L8271-8 of the French Labour Code. This means that the burden of proof lies with the employer, which must prove that it has not resorted to undeclared work;
- ▶ More specifically for **artists**, it is up to the party intending to rely on Article L.7121-5 of the Labour Code to demonstrate that the presumption of salaried status does not apply to the contracts in question. The presumption of salaried employment provided for in Article L.7121-3 does not apply to artists recognised as service providers established in a Member State of the EU or EEA, where they usually provide similar services, and who come to France to exercise their activity through the provision of services on a temporary and independent basis.

Belgium:

- ▶ Unlike most Member States, where the shift of the burden of proof occurs automatically as a consequence of the legal presumption (i.e., without the worker having to prove any specific facts), presumptions do not automatically apply. The claimant is required to establish certain facts before the court in order for the court to presume the existence of a relationship and then shift the burden to the defendant to rebut;¹⁰⁰
- ▶ There is special protection for termination of employment or other forms of retaliation in the event of pregnancy or in the event of a complaint of discrimination or harassment. In such cases, the employer

⁹⁹ Generally, the burden of proof refers to the obligation or responsibility to prove to the court the assertions made by a complainant. The general rule is that the burden of proof lies with the party who makes the allegation. The reversed burden of proof is a legal concept that shifts the responsibility of proving a fact from the party who normally has to prove it to the other party. The term 'reverse burden of proof' is not itself typically used in legislation, but is used in research and literature to describe a rule pertaining to the issue of proving evidence; Eurofound (11 March 2007). [Burden of proof](#); ILO (25-26 September 2018). [Evidence in Labour Court proceedings: national reports – preparatory questionnaire for the European Labour Court judges meeting](#).

¹⁰⁰ ETUC (2021). [Options for legal presumptions and burden of proof reversals](#).



bears the burden of proving that the termination of employment (or other action criticised) had nothing to do with the reason for the protection;

- ▶ Parties do not have to prove anything in connection with collective agreements; rather, it is for the judge to control their validity.

Finland:

- ▶ In labour law cases, the employer usually bears the burden of proof, for instance in cases of termination of employment.

Germany:

- ▶ If the Dismissal Protection Act applies, the employer has to prove the facts causing the termination of employment;
- ▶ The Anti-Discrimination Act provides that in the event of a conflict, where one party is able to establish facts from which it can be presumed that discrimination has occurred (under the relevant legal grounds), the other party must prove that there has been no breach of the provisions prohibiting discrimination. This also applies to employment discrimination.

Spain:

- ▶ In cases of discrimination, the defendant should provide an objective and reasonable justification, sufficiently proven, of the measures adopted and their proportionality (Labour Law Procedure Code, Article 96, para 1);¹⁰¹
- ▶ In case of work accidents or occupational diseases, it is employer's responsibility to prove the adoption of the necessary measures to prevent or avoid the risk (Article 96, para 2, Labour Law Procedure Code);
- ▶ The employer has to prove the existence of a legal ground for the termination of the employment contract and the worker only has to prove termination.

Italy:

- ▶ The burden of proof of lawfulness of the dismissal is carried by the employer;
- ▶ In discrimination cases, the burden of proof is reversed.

Other legal presumptions on the burden of proof mentioned in the Guide to Recommendation No 198¹⁰² relate to the **Netherlands** (Groen/Schoevers, HR 14 November 1997, NJ 1998, 149, JAR 1997, 263); Portugal (Article 12 Labour Code), and **Hungary** (Section 1(5) of Act LXXV of 1996).¹⁰³

¹⁰¹ [Labour Law Procedure Code](#).

¹⁰² ILO (2013). [Regulating the employment relationship in Europe: a guide to Recommendation No 198](#), Employment Relationship Recommendation, 2006.

¹⁰³ Ibid; see also Williams, C.C., Llobera, M. and Horodnic, A.V. (March 2020,). [Tackling undeclared work in the collaborative economy and bogus self-employment. Working Paper](#). European Platform tackling undeclared work. The paper mentions the Beigeladene German case-law on bogus self-employment, which applies the 'primacy of facts' rule and a presumption on the existence of an employment relationship, meaning that the burden of proof is placed on the employer in a dispute concerning employment status (German Sozialgericht Heilbronn Judgment of 1 February 2017).



5.0 Conclusions and suggestions

The study identified the **types of evidence** gathered to prove of the different types (i.e. unregistered employment, under-declared employment, or bogus self-employment) of undeclared work in the Member States; the common **challenges** when gathering evidence to prove the different types of undeclared work; the common **reasons for appeals** and/or **lack of success** in proving the existence of undeclared work in court; and the **legal presumptions** established by law in the different Member States and applicable to undeclared work.

Based on the conducted survey and desk research, several suggestions on the **collection of evidence** to prove the existence of undeclared work can be made.

Enhanced cooperation:

- ▶ There is a need to establish practices for engaging more inspectors or officials from different authorities (e.g. the police) in undeclared work cases in order to control all exits, access private territory, and expand the pool of collected evidence admissible in court;
- ▶ All relevant authorities need to establish better cooperation mechanisms, including exchange of information, maintaining and interconnecting their databases and registers. This could improve risk assessment systems, leading to the easier identification of possible violations where inspections should be focused. Enhanced cooperation could also facilitate locating the place, day and time of work performed at home or online;
- ▶ The practice of forwarding cases and exchanging information with OSH authorities could be intensified;
- ▶ There is a need to establish procedures for tax and social security authorities, administrative courts and civil courts to send feedback to labour (and OSH) inspectorates when a company or individual is sanctioned. These procedures should include information on the circumstances/facts/documents accepted/not accepted (and why) as evidence leading to the final sanction;
- ▶ Social partners, language courses, and/or hand-held devices could all help to overcome language barriers when interviewing witnesses.

Technical solutions and training:

- ▶ Witness statements and transcripts of interviews should be digitalised so that the original statements are read as primary evidence (and any changes of the statements at a later date could be challenged in court);
- ▶ It is recommended to use interpreters and online support/solutions to translate data received by other authorities or witnesses;
- ▶ With the development of IT and the advent of distance work, new procedures likely need to be established for inspecting teleworking as a specific type of employment;
- ▶ Engaging specialised IT personnel and/or training inspectors on the use of IT is another identified need. For example, it is crucial to ensure access to information held in electronic devices, as well as methods to determine the validity and authenticity of the information obtained.



Legal improvements and legal capacity:

- ▶ The powers and/or procedures of labour, tax and OSH inspectors to enter (private) places of work and collect data (including personal data) could be enhanced;
- ▶ Legal procedures allowing the gathering, verification of authenticity, and use by the courts of video surveillance and CCTV recordings, audio recordings, bank or credit advice, and ATM cards could be reviewed and improved;
- ▶ The legal base could review and consider whether all attributes of dependent work should be proven (or whether a subset will suffice). In addition, legislators could explore whether work violations on several successive days could be assumed under certain circumstances (i.e. do not need to be proven through inspections on several successive days);
- ▶ Strengthening the legal departments at all inspectorates (with the support of other public bodies and/or social partners) could lead to easier identification of the actual nature of business and labour relationships (including cases involving letter-box companies, temporary agency employment, non-transparent supply chains of contractors);
- ▶ All countries could have better and more effective sanctions, including improved legislation and permission to impose sanctions on those who do not maintain the appropriate records and information.

Awareness:

- ▶ Wider awareness and information campaigns could help to increase cooperation from witnesses (employees and employers).

Several **suggestions** can be made to enhance the **effectiveness of legal presumptions** (i.e. a rule of law which permits a court to assume a fact is true without any evidence until there is a certain weight of evidence which disproves or outweighs the presumption) to combat undeclared work, based on the findings of this study.

- ▶ **A greater degree of uniformity** in the approach to the regulation and application of the common law **on presumptions of employment**. Without prejudice to the autonomy of individual countries and without seeking a binding EU-wide solution, recommendations can be formulated for the adoption of common criteria when the existence of an employment relationship shall be presumed (e.g. type and form of employment contract, duration, provision of work, agreed remuneration, duties of the parties). These criteria would be useful to national labour inspectorates, tax and social security authorities, social partners (employers' unions, trade unions), business associations, NGOs, etc., and could prompt dialogue on legislative and administrative changes. The changes are also important to guarantee the free movement of people and the right of workers and freelancers to live and work in another Member State of the EU, as well as to prevent import/export of undeclared work;
- ▶ **Promote Member States' good experiences of applying general and specific presumptions of employment** with a view to adopting modern and more complete legislative solutions in those Member States with only partial and/or outdated legislation. Research, including extensive information on good practices in the implementation of laws, could be disseminated through the Platform, facilitating the transfer of workable legislative solutions and successful enforcement practices. Examples include the



presumption of certainty of inspection checks and similar presumptions arising from social security and tax law;

- ▶ **Continue the debate on the potential adoption of the proposed Directive on improving working conditions in platform work (2021),**^{104,105} considering amendments by the European Parliament's Employment Committee¹⁰⁶ in 2022, as well as suggestions for improving its shortcomings. The new Directive should unify efforts of individual Member States, introducing clear and stronger rules against employment misclassification by setting up a clear legal presumption of employment relationship for workers in digital labour platforms, complemented by a reversal of the burden of proof (e.g. a platform will be considered an employer unless it proves otherwise).
- ▶ **Continue the debate on the need for developing a commonly accepted dependent work definition,** ideally via a uniform regulation at EU level. The positive experience of a number of countries could be used. For example, formulation of a set of criteria on economic dependence, to be applied by Member States. This would allow them to identify and combat bogus self-employment.
- ▶ **Limiting uncertainty** in the application of existing legal tests for employment status in the EU could be valuable. This can be achieved by:
 - ▷ Identifying sources of uncertainty, which show that the uncertainty in classifying non-standard employment relationships stems largely from the challenges associated with applying the mutuality of obligations test;¹⁰⁷
 - ▷ Avoiding including contractual clauses that attempt to categorise the relationship as self-employment in the contractual and related documentation provided by some employers of non-standard workers, and/or the exclusion of implied terms that would help to establish worker status;
- ▶ **Study the case-law of the Member States and the CJEU more intensively.** Key decisions could be systematised and used as a starting point and source for further and more effective legislative and regulatory decisions at national and EU level, and for dynamic recommendations to improve their practical implementation;
- ▶ Relevant authorities and research organisations could **develop and disseminate models for self-regulation** and encourage national business associations in Member States to adopt a form of self-regulation or voluntary employer code of conduct. This would help to align the practices according to a set of agreed legal presumptions (a set of legal presumptions that can be modified and/or extended) to prevent and/or reduce undeclared work.

¹⁰⁴ [Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work. COM/2021/762 final.](#)

¹⁰⁵ The proposed directive was presented by the European Commission in December 2021, and the Council adopted its position on the proposal on 12 June 2023. The proposal introduces two key improvements for platform workers: it helps to determine the correct employment status of people working for digital platforms, and it establishes the first EU rules on the use of AI in the workplace. European Council (2023). [EU rules on platform work.](#)

¹⁰⁶ European Parliament (12 December 2022). [Digital workers: better working conditions and protection of rights. Press release.](#)

¹⁰⁷ Mutuality of obligation is the principle that exists when an employer has a legal duty to provide work for their employee and, in return, the employee has a legal duty to do that work. See also: DavidsonMorris (18 December 2022). [Mutuality of Obligation & Worker Status.](#)



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Annex

Table 4. Types of information, facts and documents collected as evidence of unregistered employment, under-declared work, and misclassification of a dependent employment relationship as self-employment

Type of information, facts and documents	Unregistered employment	Under-declared work	Misclassification of a dependent employment relationship as self-employment
Employee details (name, specialty, starting date of employment, etc.)	6	5	7
Staff list/registry kept by the employer (or list of posted employees where relevant)	6	5	7
Labour or service contract/agreement	5	5	7
Registries of working hours and overtime	6	6	5
Timesheets	6	6	5
Documents identifying owner and subcontractors	6	4	6
Payslips, bank pay-in slip and/or pay stub with the logo or name of the employer (which, in some cases, can provide adequate proof of employee earnings)	5	5	4
Precontractual documents, i.e. job description (including name of worker)	5	4	5
Employee timecards	4	5	4
Site access and exit logs	4	4	5
Uniforms with the logo or name of the employer that the worker wears	4	4	5
Time schedule/chronogram of operations on site and estimated workforce required, including daily record of workers on site	4	5	4
Unemployment verification letter/formal employment verification letter	4	4	5
Internal company regulations	4	4	4
Photographs (if lawful and admissible)	4	3	5
Portable documents A1 or work permits	4	4	4
Commercial contracts, subcontracts, receipts and other financial documents for deliveries to customers	4	3	4
Commercial information on companies, such as registered office, share capital, partners and/or administrators, as well as commercial, administrative and/or judicial incidents (bankruptcy proceedings, seizures, etc.)	4	3	4
Details of company vehicles (extracts from vehicle register, registration numbers, etc.), vehicles with logos of the employer	4	3	4
Paper documents with logo or name of employer or digital information (e.g. emails, texts, personal notes)	4	3	4



Permits and licences (e.g. of employment agencies, temporary work and recruitment agencies)	4	3	4
Social ID card data (or employment cards data)	4	3	4
Witness statements	3	3	4
Bank statement	3	3	3
Document for non-salary payments (cash awards, gift certificates, tickets to sport or cultural events, payments for moving expenses, provision of a vehicle or vehicle allowance, club memberships, or other special benefits)	3	3	3
Tax documents and contracts for the declared workforce	2	4	3
Payments of social security contributions	2	3	3
Audio recordings (if lawful and admissible)	2	2	2
Computer-generated receipts/other receipts	2	2	2
Document concerning the ownership of the equipment used by the worker	2	1	3
Physical objects seized	2	2	2
Proof of payments in PayPal or similar platforms	2	2	2
Videos made by video cameras, when in public, webcams, cell phone (if lawful and admissible)	2	2	2
Video surveillance recordings and CCTV (if admissible)	2	1	2
Bill of exchange	1	1	1
Declarations of electricity consumption	1	1	1
Deposit slips	1	1	1
Other	1	1	1
Pay cheque (which could be cashed at a bank)	1	1	1
Payment voucher	1	1	1
Revenue receipt	1	1	1
ATM cards	0	0	0
Bank or credit advice	0	0	0
No such practice/not applicable	0	0	0

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N= 14 countries.

Table 5. Types of information, facts and documents collected as evidence of violations in connection with atypical types of work

Type of information, facts and documents	Atypical types of work
Copy of home working/remote work contract	5



Copy of company order that allows home working	4
Payslips, bank pay-in slip and/or pay stub with the logo or name of the employer (which, in some cases, can provide adequate proof of employee earnings)	3
Tax documents and contracts for the declared workforce	3
Timesheets	3
Labour or service contracts/agreements	3
Portable documents A1 or work permits	3
Registries of working hours and overtime	3
Unemployment verification letter/formal employment verification letter	3
Social ID card data (or employment cards data)	3
Employee timecards	3
Staff list/registry kept by the employer (or list of posted employees where relevant)	3
Employee details (name, specialty, starting date of employment, etc.)	3
Documents identifying owner and subcontractors	3
Time schedule/chronogram of operations on site and the estimated number of the workforce required, including the daily record of workers on site	3
Witness statements	3
Photographs (if lawful and admissible)	3
Ownership of the equipment used	3
Bank statement	2
Payments of social security contributions	2
Document for non-salary payments (cash awards, gift certificates, tickets to sport or cultural events, payments for moving expenses, provision of a vehicle or vehicle allowance, club memberships, or other special benefits)	2
Pre-contractual documents, i.e. job description (including the name of the worker)	2
Document on ownership of equipment used by the worker	2
Permits and licences (e.g. of employment agencies, temporary work and recruitment agencies)	2
Commercial contracts, subcontracts, receipts and other financial documents for deliveries to customers	2
Commercial information on companies, such as registered office, share capital, partners and/or administrators, as well as commercial, administrative and/or judicial incidents (bankruptcy proceedings, seizures, etc.)	2
Paper documents with logo or name of the employer or digital information (e.g. emails, texts, personal notes)	2
Internal company regulations	2
Video surveillance recordings and CCTV (if admissible)	2
Audio recordings (if lawful and admissible)	2
Uniform with logo or name of the employer that the worker wears	2
Site access and exit logs	2
Documents signed by the employee, which allow the employer and the inspection authorities to visit the premises in their home, where they work	2
Computer-generated receipts/other receipts	1
Pay cheque (which could be cashed at a bank)	1
Revenue receipt	1

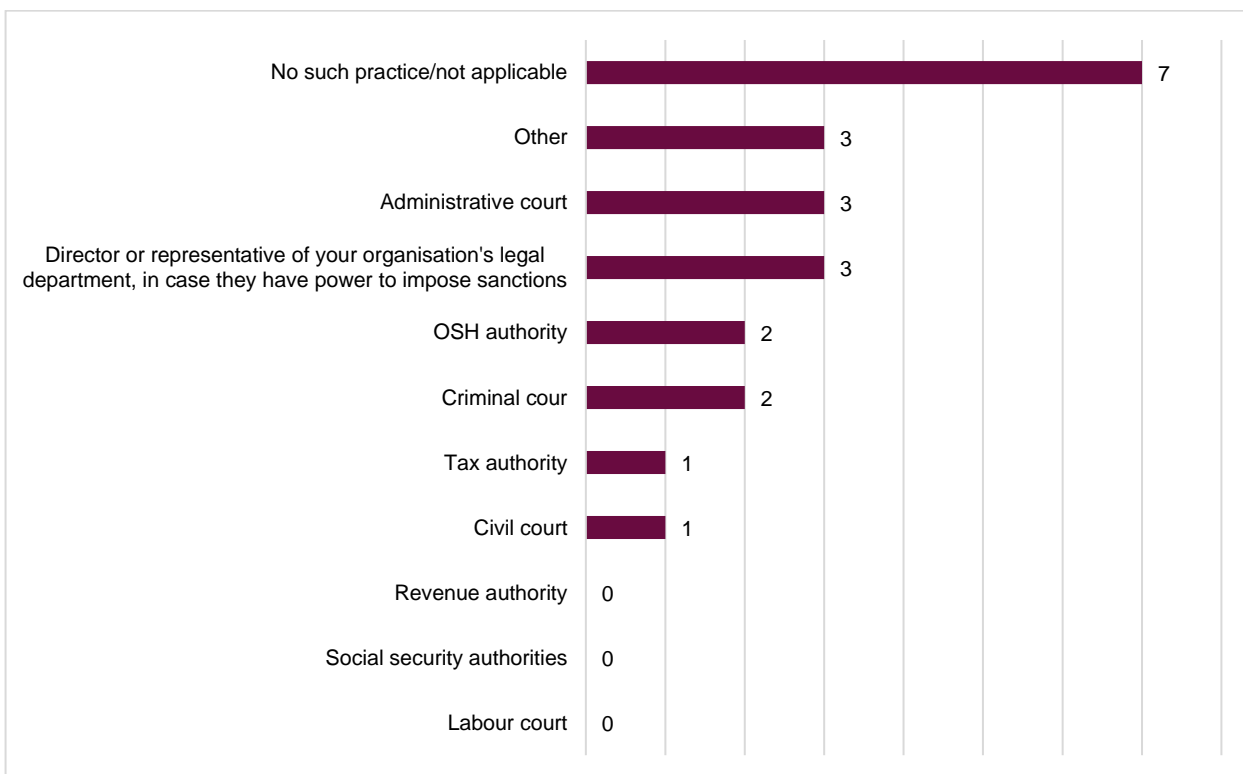


Payment voucher	1
Proof of payments in PayPal or similar platforms	1
Declarations of electricity consumption	1
Details of company vehicles (extracts from vehicle register, registration numbers, etc.), vehicles with logos of the employer	1
Videos made by video cameras, when in public, webcams, cell phone (if lawful and admissible)	1
Physical objects seized	1
Correspondence and other information extracted from a computer	1
Bank or credit advice	0
Deposit slips	0
ATM cards	0
Bill of exchange	0
No such practice/not applicable	0
I do not know	0
Oher	0

Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N= 5 countries.

Figure 10. Which authorities provide feedback on the circumstances/facts/documents that were accepted or not accepted as evidence that led to the final sanction decision?

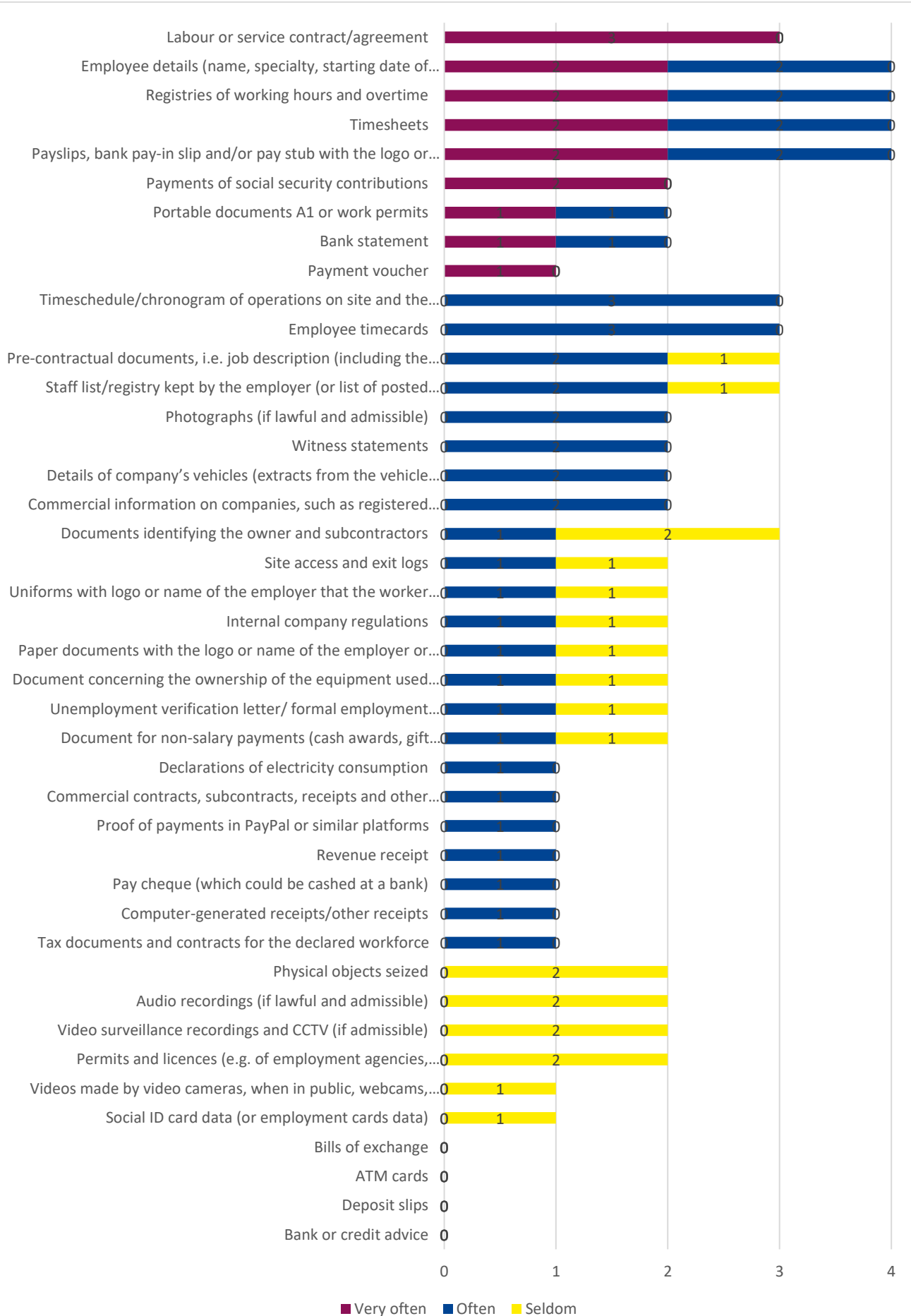




Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=14 countries.

Figure 11. According to your experience, how often are the following items accepted as evidence for criminal sanctions by the criminal court (unregistered employment)?





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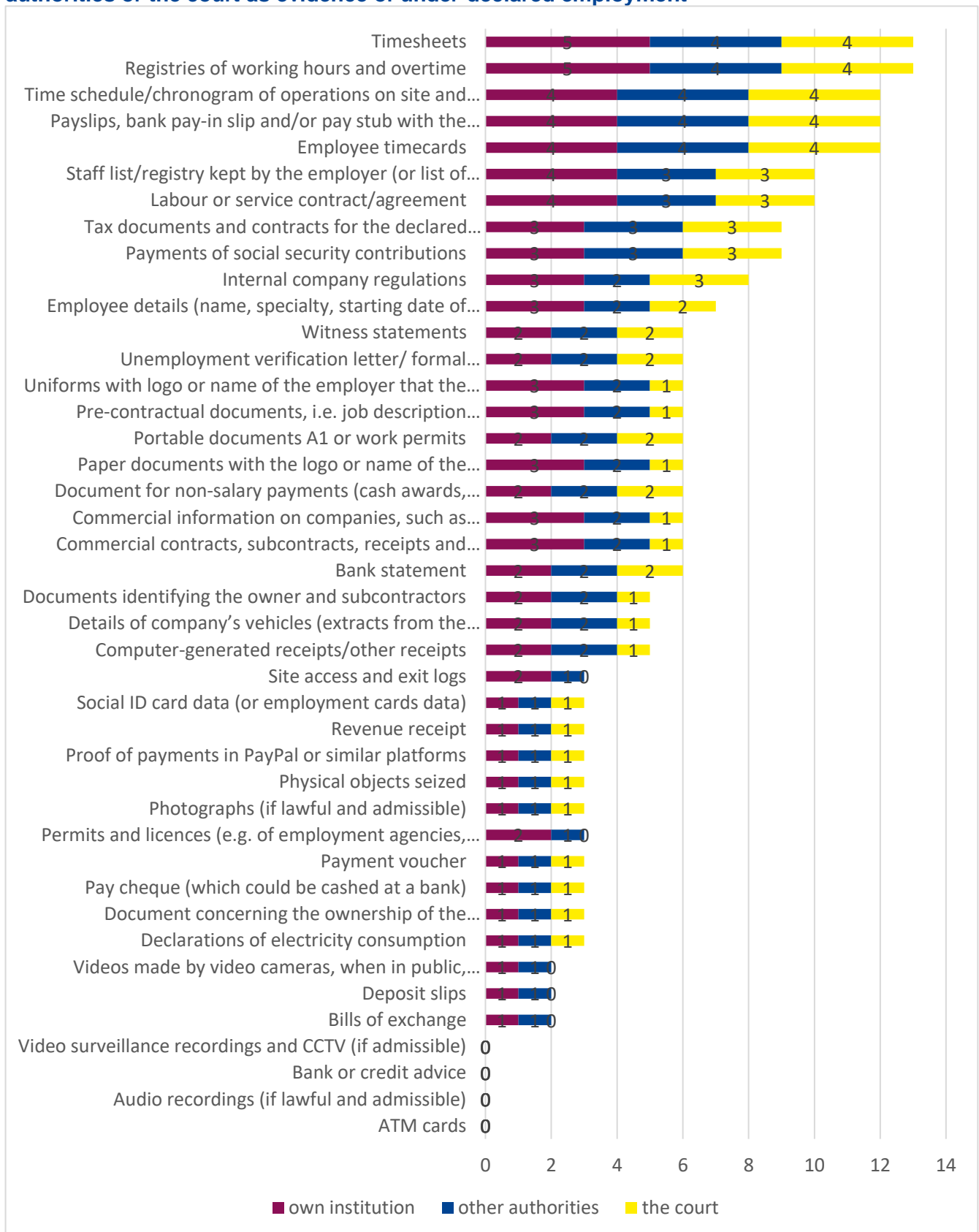


Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=4 countries.



Figure 12. Types of information, facts and documents accepted by your organisation, other authorities or the court as evidence of under-declared employment

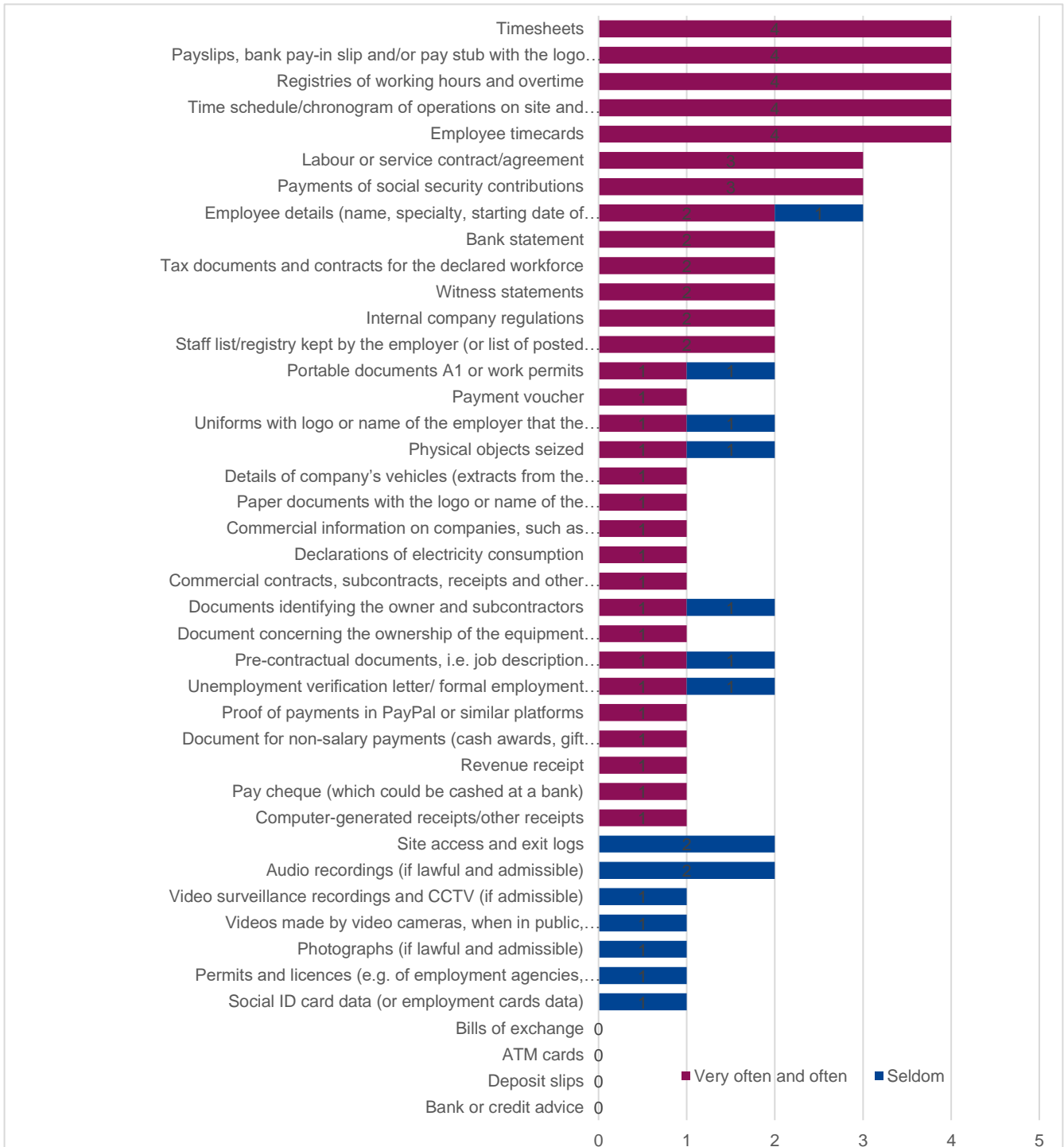




Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N= 5 countries; numbers show the sum of answers 'very often' and 'often'.

Figure 13. According to your experience, how often are the following items accepted as evidence for criminal sanctions by the criminal court (under-declared employment)?

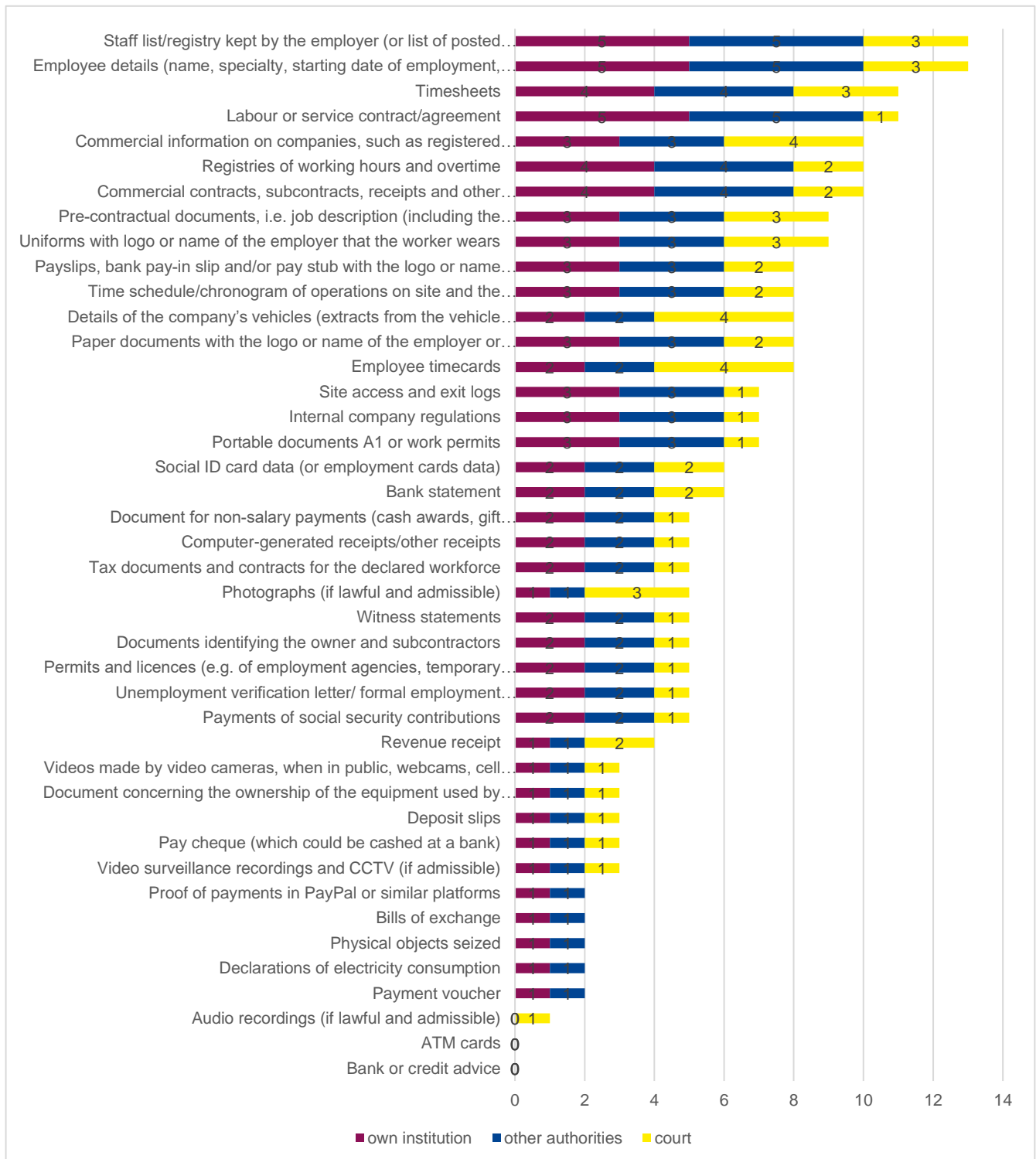


Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N= 4 countries.



Figure 14. According to your experience, how often are the following items accepted as evidence for administrative sanctions by your organisation, other authorities or the court (misclassification of a dependent employment relationship as self-employment)?

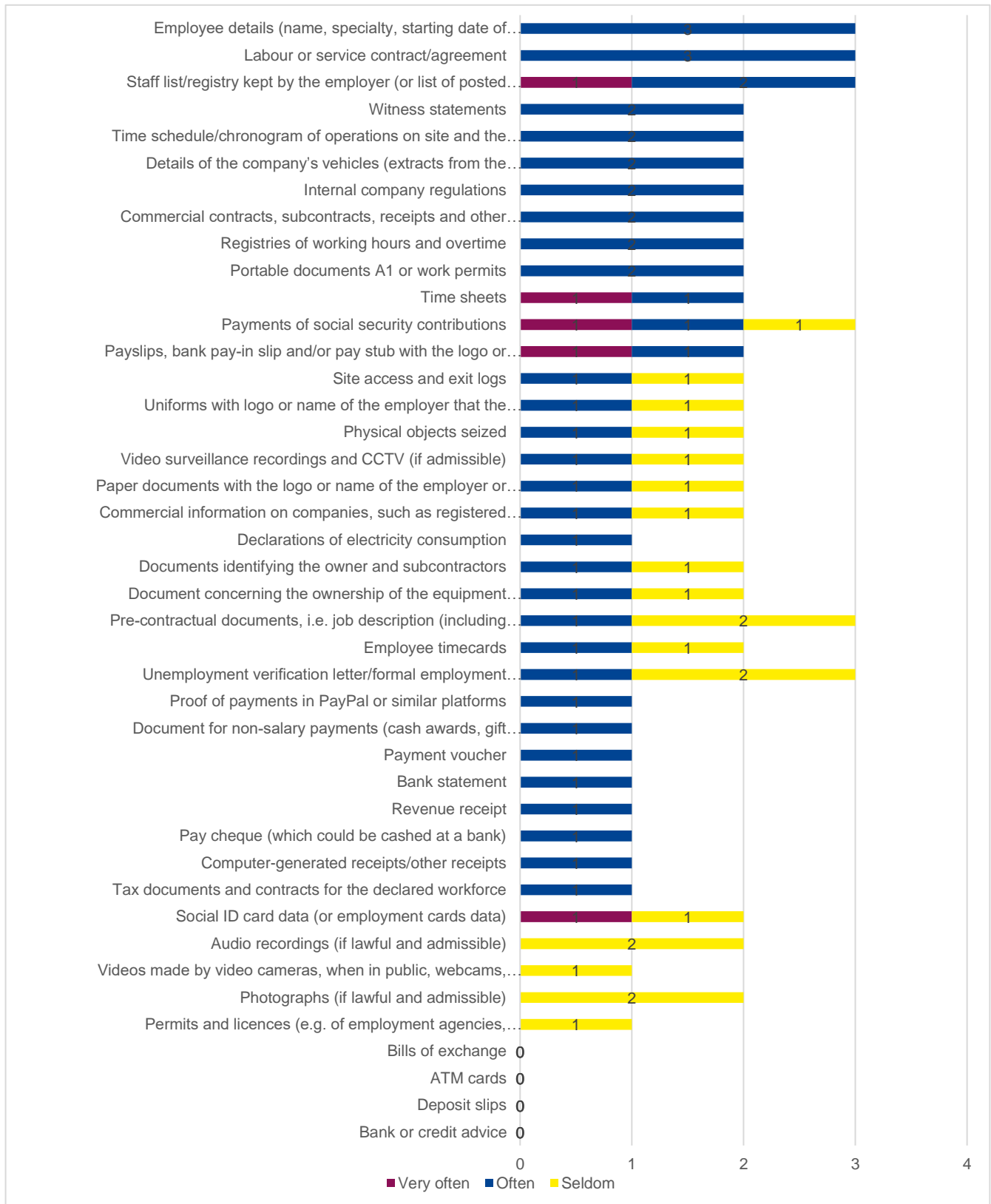


Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=6 countries; numbers show the sum of answers 'very often' and 'often'.



Figure 15. According to your experience, how often are the following items accepted as evidence for criminal sanctions by the criminal court (as evidence of misclassification of a dependent employment relationship as self-employment)

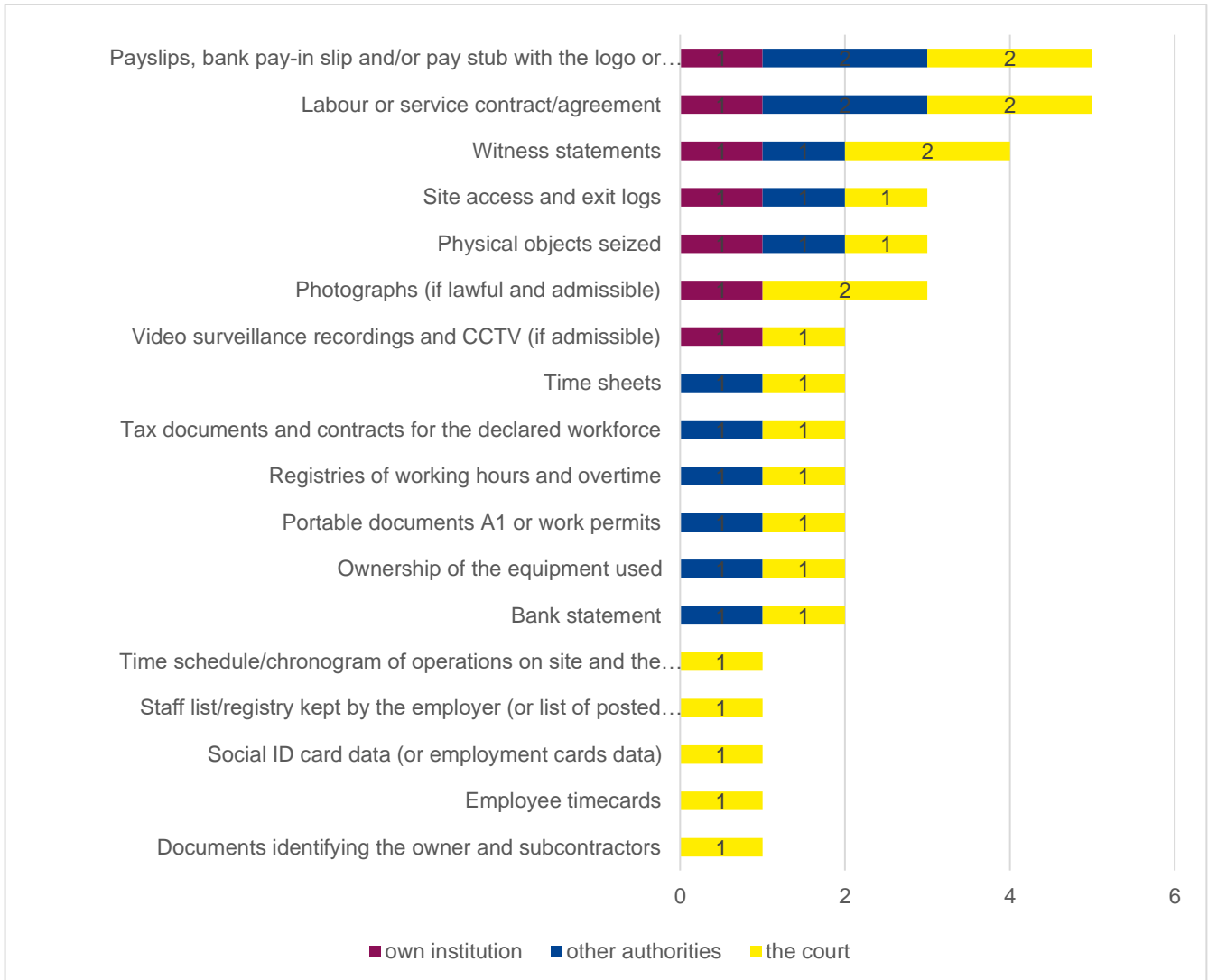




Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=3 countries.

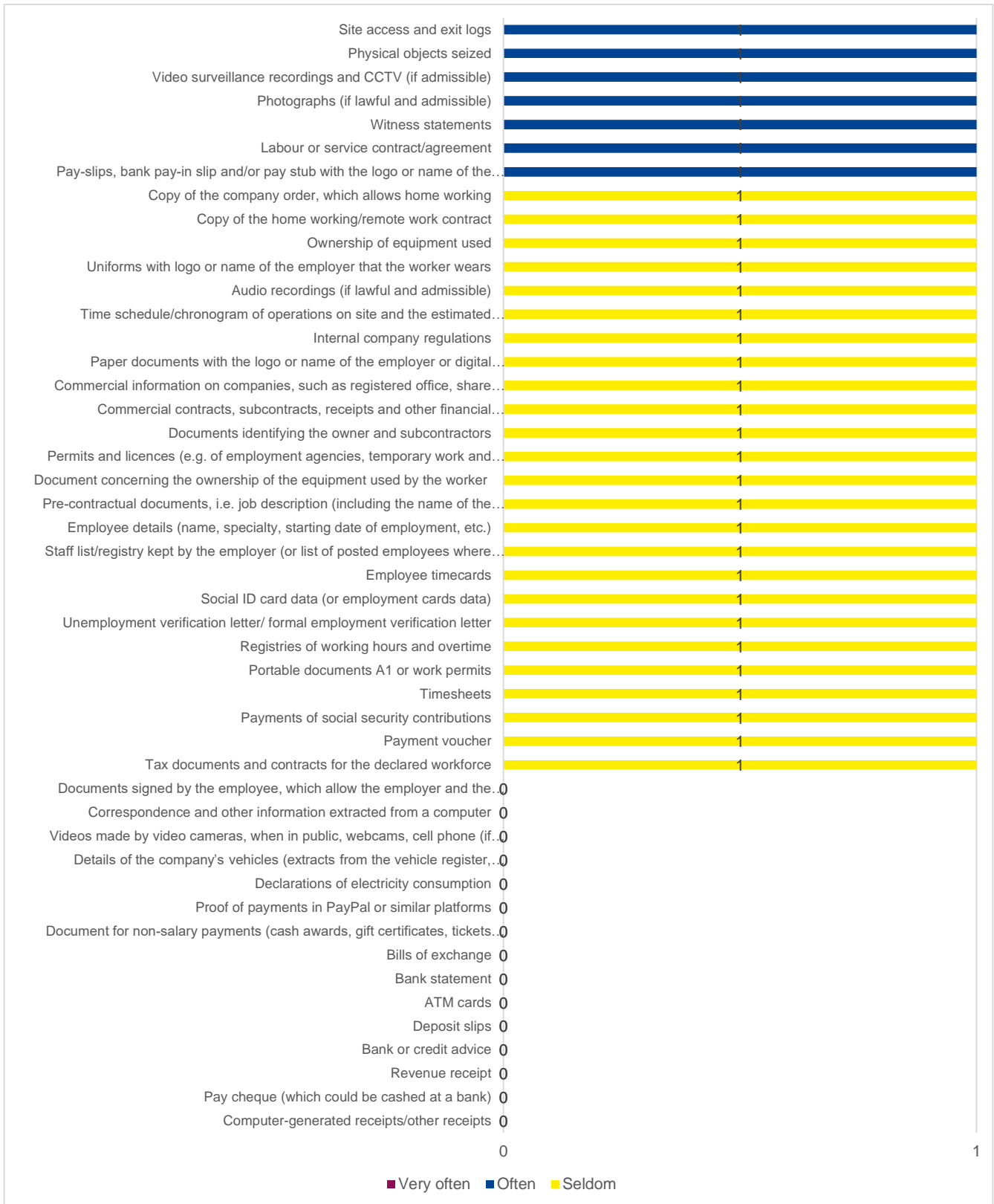
Figure 16. Types of information, facts and documents accepted by your organisation, other authorities or the courts as evidence of violations in connection with atypical types of work



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=3 countries; numbers show the sum of answers 'very often' and 'often'.

Figure 17. According to your experience, how often are the following items accepted as evidence for criminal sanctions by the criminal court (violations in connection with atypical types of work)?



Source: 2023 survey on the methods and instruments used as proof of undeclared work.

Note: N=2 countries.