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Labour Inspection and Undeclared Work in the EU

International Labor Organization

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Abstract

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Keywords

undeclared work, European Union, labor inspection, employment

Comments

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Labour Inspection and Undeclared Work in the EU

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Labour Inspection and Undeclared Work in the EU

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Preface

Within the ILO/EC framework of cooperation, this comparative study on Labour Inspection Strategies for Combatting Undeclared Work was carried out during the biennium 2012-13. The study was coordinated by the ILO, Labour Administration and Inspection Programme (LAB/ADMIN) in cooperation with EC Unit EMPL-B2/Labour Law. The purpose of this study was to consider the role that national labour inspection systems in the EU have as part of a strategic policy response to undeclared work.

Undeclared Work in the European Union

The European Commission has highlighted that undeclared work, if not properly confronted, threatens to undermine the EU's ability to meet its employment targets for more and better jobs and stronger growth. Undeclared work is a form of social dumping that introduces unfair competition between firms on the basis of low wages and the non-payment of social security benefits. Above all, it leads to working situations that violate the rights and dignity of workers. In this regard, the ILO, like the EC, emphasizes the need to encourage transitions from informal to formal work as a prerequisite for achieving decent work.

The ILO's approach to undeclared work is situated in the context of the broader notion of the informal economy, which it defines as "all economic activities by workers and economic units that are – in law or in practice – not covered, or insufficiently covered, by formal arrangements." This definition includes the notion of undeclared work as understood by the EC, while also covering workers who sometimes fall outside the coverage of labour legislation (e.g. domestic or agricultural workers).

While these formulations are widely known, the exact legal definition of undeclared work often varies from one country to the next. This has important implications for the enforcement of regulations on undeclared work by labour inspectors (especially in the cross-border context).

Undeclared work is a complex phenomenon with a myriad of attributes and causes. Any attempt to counter this pattern of employment requires an equally sophisticated and balanced approach between preventive measures and law enforcement. The European Foundation for the Improvement of Living and Working Conditions notes that while the approach to undeclared work in EU Member States is still mostly focused on deterrence, there has been a noticeable shift in efforts to transform undeclared work into formal employment and even prevent people from taking up undeclared work in the first place.

In general, undeclared work in Europe remains inherently difficult to measure. This poses difficulties for policy makers and in particular labour inspectorates as they try to better understand the phenomenon of undeclared work in all of its aspects and develop tailored policies and improved inspection practices for preventing, reducing or at the very least monitoring the incidence of undeclared labour. The common challenge governments face in reducing undeclared work and ensuring conditions of decent work for undeclared workers, speaks to the need for shared policy guidelines among labour inspectorates across the EU.

Tackling undeclared work requires a number of coordinated steps on the part of governments and public institutions. To begin, governments in Europe need to pursue policies that will at the same time reduce the incentives for employers to use undeclared work and for workers to engage in such activities. This is the broader policy picture that, if

successful, can help relieve the burden on detection and enforcement measures, which, on their own, will likely prove less successful at changing the patterns and prevalence of undeclared work.

Prior to the introduction of the EC's Employment Guideline No. 9, the most widespread approach to addressing undeclared work was through punishing infractions through greater detection efforts as opposed to penalties. With the adoption of Guideline No. 9, prevention measures in addition to efforts to punish non-compliance have become more commonplace, as have efforts to enable greater compliance. Measures to improve compliance, however, are largely confined to northern EU Member States. Even with more widespread efforts to boost compliance, such efforts are still mainly observed in the original EU 15 countries. New EU countries have instead shown a preference for measures to detect and punish non-compliance with regulations on undeclared work. What these developments reveal is that countries are no longer relying as heavily on deterrence but are expanding their policy responses to include both carrots and sticks.

Labour inspection and undeclared work

Labour inspectorates are important allies for dealing with the problem of undeclared work, even though they commonly lack the necessary resources, tools, procedures and coordination with other relevant authorities to prevent, identify and remedy such cases.

Improving the application and enforcement of workers' rights and protections through more robust and responsive labour inspection action remains a necessary and important part of addressing undeclared work. The approach that inspection services take depends largely on the national context. In some countries, particularly in new EU Member States where undeclared work is widespread within the formal economy, a broader strategy may be required. In other countries where undeclared work is more specifically a structural problem, more targeted measures would be suitable.

Whatever the circumstances, inspectors need to have a good knowledge of existing national regulations so as to better identify and deal with situations of undeclared work. For this, inspectors need to be properly trained. Moreover, the planning and practice of inspection visits should be reassessed to ensure that adequate attention is paid to the incidence of undeclared work, even in situations where a visit's primary objective is not to detect undeclared activities. In addition, countries can take advantage of the educational or promotional function of labour inspectorates to increase awareness among businesses and workers about the rules on undeclared work and how such situations can be avoided or regularized. In this regard, inspectorates have a valuable role in the prevention and transformation of undeclared work and should not simply be viewed as enforcers handing out fines and penalties.

The ILO notes that the credibility of any inspectorate depends to a large extent on its ability to advise employers and workers on the most effective means of complying with the legal provisions within its remit in all areas. However, it also depends on the existence and implementation of a sufficiently efficient labour inspection system.

Article 3 of ILO Convention No. 81 on Labour Inspection calls for the protection of all type of workers, including vulnerable workers. Moreover, Article 7 of ILO Convention No. 150 on Labour Administration recommends extending the functions of labour administration, which includes labour inspection, to groups of workers who are not employed persons according to national laws.

This comparative study aims at filling the gap of knowledge within labour inspectorates on how to deal effectively against fraud, informal economy problems and undeclared work. The results of the study have been summed up with a set of Conclusions

and Recommendations that should inspire future research work and action in this delicate area.

It is our hope that the current comparative study would assist policy makers to better understand the factors for improving their own labour inspection systems by offering a review of selected national good practices and strategies for combatting undeclared work. In this regard, the national studies can be consulted on the ILO/LAB/ADMIN webpage.

Many thanks to all those who have contributed to this study:

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1. Nature, size and scope of undeclared work in the EU

1.1. Conceptual approach

Fighting against undeclared work has been an important policy issue in OECD and in particular EU countries during the last decades. Given the variety of forms that fraudulent behaviors intending to evade tax and social obligations assume, and the difficulties on identifying and measuring the exact dimension of the hidden labour economy, all conceptual attempts looking for a uniform approach to the problem are especially challenging. In the last years, the EU institutions and Member States have been considering social fraud mainly under the perspective of undeclared work[1], even though the term implies understandings and notions at national and international level that are quite heterogeneous.

From a general point of view, the term undeclared work is considered *prima facie* one of the structural parts of the shadow economy. However, it should be noted that also the shadow economy may be defined in a variety of ways,[2] as highlighted in a recent study.[3]

The shadow economy is viewed as an aggregate of economic activity results not included into officially documented Gross National Product[4] or "those economic activities and the income derived forms that circumvent or otherwise avoid government regulation, taxation or observation."[5] This definition also covers the cases pertaining to unregulated economy (e.g. activity unrelated to breach of legislation; activity of economic operators, which is not-required to be registered) as well as aspects of criminal activities (e.g. legally prohibited actions, such as production and sale of narcotic substances, smuggling and theft).[6]

The notion of "undeclared work" is also defined in very different ways and is often used together with other labour market terminology, sometimes as a synonymous of illegal

[1]See among others: Eurofound (2008), Tackling undeclared work in the European Union, Eurofound, Dublin, available at http://www.eurofound.europa.eu/pubdocs/2008/13/en/1/ef0813-en.pdf.
Eurofound (2009), Measures to tackle undeclared work in the European Union, Eurofound, Dublin, available at http://www.eurofound.europa.eu/pubdocs/2009/25/en/1/EF0925EN.pdf.
European Commission (2007), Stepping up the fight against undeclared work COM(2007) 628 final, European Commission, Brussel.

[2]Startiene, G., & Trimonis, K. (2009). The Size of Non-Observed Economy. Ekonomika ir vadyba-Economics and Management 14, 976-983.

[3]Schneider. F. and Williams, C. The Shadow Economy, 2013, Institute of Economic Affairs (IEA). Wenmister. London.

[4]Schneider, F. & Enste, D. H. (2002). The Shadow Economy: An International Survey. Cambridge University Press, Cambridge.

[5]Schenider, F. and Willians. Op. cit., p. 3.

[6] Rosser, J. B. (2006). Book's (Schneider, F. Enste, D. Shadow Economy: An International Survey) Review [accessed 24 April 2008].
Available from Internet: http://cob.jmu.edu/rosserjb/book.rev.schneider&enste.doc.

work, irregular work, illegal employment, unregistered employment, hidden unemployment, "black" labour, etc, even though their content can be fundamentally different, and varied. For example, from —aiming to determine the portion of the employed not reflected in statistical reports due to a variety of reasons— the terms "informal employment" or "unregistered employment" are both used. Illegal work is used in many countries to refer either to a broader notion, such as in France, or to the undeclared work conducted by individuals with an irregular status, migrant workers without a work or residence permit, (for example, in Greece or Cyprus).

Other concepts such as "informal employment" are more frequently used in applied research, wherein it is defined as the number of people working in the informal labour market, as the illegal purchase and sale of labour force without an employment contract and ignoring laws that regulate labour relations.

Since the beginning of the 21st century, different studies (mainly addressing the phenomenon from the point of view of tax non-compliance) used different terms to address this complex phenomenon in Europe (the most frequently used terms are "undeclared work" and "illegal work").

The difficulties of achieving a common definition or understanding result from the fact that undeclared work is a complex, heterogeneous phenomenon that forms part of an even more complex reality, (the informal economy),[7] which can be also defined in a variety of ways.[8]

The discussion on undeclared work is very much connected to the debate on the informal economy as a part of the economy that is hidden from the relevant authorities. Originally the notion of the informal economy derives from the literature on socio economic issues of developing countries. Researchers determined that large groups of the population in those countries were not absorbed in the modern economy. In 1963, Clifford Geertz[9] introduced two terms for this phenomenon: the "firm-centered economy" and the bazaar economy. The "firm-centered economy" was characterized by an efficient conduct of business, high productivity and the use of substantial quantities of capital and technology. The "bazaar economy" was characterized by low productivity, intensive labour and low capital intensity, low incomes and a high capacity for absorption (involution). Furthermore, it was not officially registered by the authorities (e.g. tax authorities, Chamber of Commerce).

[7] Defined by the ILO as "all economic activities by workers and economic units that are –in law or in practice– not covered, or insufficiently covered, by formal arrangements" (ILC 2002, Decent Work and the informal economy, http://www.ilo.org/publabour inspection/english/standards/-relm/ilc/ilc90/). The term, as mentioned in ILO's Resolution concerning decent work and the informal economy adopted in the 90th ILC session, 2002, accommodates both wage and own-account workers lacking protection, rights and representation.

[8] Startiene, G., & Trimonis, K. (2009). Op. cited.

[9] See reference in Geertz, C. (1978). The bazaar economy: Information and Search in peasant marketing: Papers and proceedings of the ninetieth annual meeting of the American economic association. The American Economic Review, 68(2), 28-32. Retrieved from http://prelim2009.filmbulletin.org/readings/10-Economic_Sociology/Geertz.pdf.

Elaborating on this dualistic model, Hart[10] introduced the terms formal and informal in his study on the employment structure in Accra, Ghana. With the ILO report on the Kenyan economy and a series of World Bank studies in the seventies, the two terms took root in the debate on economic development.[11]

Although the informal economy became a common notion, clear-cut definitions were never agreed. The ILO perspectives evolved from the notion of informal sector as defined in the report of the Director-General to the ILC (1991)[12] to the broader concept of informal economy (see note 7).

In this context, undeclared work refers to underground or hidden labour, clandestine employment, "black" labour, moonlighting or illegal work. These terms are for the most part used in industrialized countries and refer to different types of work whose activities are covered by labour law, but are not in conformity with its requirements or avoid complying with administrative obligations. For example, workers are paid below the minimum wage, employers do not register workers with the social security authorities, taxes and social security contributions are not paid on employment earnings or wage workers unlawfully accumulating work earnings with unemployment, sickness or accident social benefits.

According to the EC's Communication 98/219,[13] undeclared work refers to "paid activities that are lawful as regards their nature but not declared to the public authorities, bearing in mind that difference in the regulatory system of Member States must be taken into account."[14] This definition excludes criminal activities from the scope of undeclared work. It also excludes work which does not have to be declared to public authorities, such as work in the household economy or voluntary work. Consequently, the "only difference between undeclared and declared work is that undeclared work is not declared to the authorities for tax, social security or labour law purposes."[15]

The Organization for Economic Cooperation and Development (OECD) proposes a similar definition, using the term 'hidden employment' to refer to work, "which although not illegal in itself, has not been declared to one or more administrative authorities."[16]

[10] Hart, K. (1973), Informal economy opportunities and the urban employment in Ghana. In Journal of Modern Africa Studies, Vol. 11, no.1.

[11] *Transitioning from the informal to the formal economy*, Report of the Director-general, International Labour Conference, 103 Session, 2014, Geneva.

[12] *The dilemma of the informal sector*, Report of the Director-general, International Labour Conference, 78th session, Geneva.

[13] Communication from the Commission (98) 219 final, 7 April 1998.

[14] Ibid.

[15] Eurofund (2013). Tackling undeclared work in 27 European Union Member States and Norway. Approaches and measures since 2008. Eurofund Dublin available at: http://www.eurofound.europa.eu/publications/htmlfiles/ef13243.htm.

[16] OECD Employment Outlook, 2004.

According to the European Foundation for the Improvement of Living and Working Conditions,[17] the definition of undeclared work definition covers diverse paid activities ranging from informal domestic services to clandestine activity conducted by illegal residents. For analytical purposes, three broad types of undeclared work are distinguished:

- undeclared work within a formal or informal enterprise, or what might be termed undeclared waged employment. This can be either wholly undeclared, where all one's wages are paid 'off the books', or partially undeclared, where a portion of the wage from one's formal employer is paid officially and a portion off the books ('envelope wages');

- own-account undeclared work for an enterprise or another client such as a household, conducted in a similar way to self-employment; and

- more socially embedded own-account undeclared work, delivering goods and services directly to consumers who are neighbours, kin, friends or acquaintances.

The ILO's approach to undeclared work has been usually in the context of the already mentioned broader notion of informal economy. It includes the notion of undeclared work as understood by the EC, while also covering workers who sometimes fall outside of the coverage of labour legislation. As mentioned above, some types of informal work are not subdued to declaration, such as activities with economic expression but not remunerated within the family or proximity networks (for example, the neighbours that get together to help each other during harvest or to paint a house, or the relative that helps to take care of the elderly) and thus, will not be considered as undeclared work. Nonetheless, avoidance of labour law requirements and social fraud is present in many apparent non remunerated activities like false occupational status (bogus self-employment, internships, volunteering) and demand from national authorities a constant surveillance on what is to be declared and taxed on the basis of the reality of the facts.[18]

From a labour law perspective, undeclared work is usually considered as a work without a labour contract between an employee and an employer or in breach of its terms and conditions, namely in what refers to registration obligations. Undeclared work is, as so, a legal payable activity, which is either unregistered or its results are concealed from the state institutions in order to avoid taxes or use tax advantages in breach of legislative acts regulating employment relations. It should be noted that only the cases on which the state institutions have no information (or such information is insufficient when compared to data on official work) regarding avoidance of taxes and social insurance contributions are attributed to undeclared work. When state institutions have no information on a specific employment case because it is considered to be a legislated against and concealed (e.g. producing and distributing legally prohibited goods), it is criminal activity and not undeclared work,[19] in line with the definition of the EC.

[17] Eurofund 2012 op cit. page 3.

[18] See Bignami R., Casale G., Fasani M., (2013) Labour inspection and the employment relationship, Working Document No. 28, LAB/ADMIN, ILO, Geneva.

[19] Williams, C. C. (2009a). Case of Envelope Wages in the European Union. International Journal of Sociology, 39(2), 39-59.

While these formulations are generally accepted, the exact legal definition of undeclared work often varies from one country to the next. This has important implications for the enforcement of regulations on undeclared work by labour inspectors. To take two examples, German law tolerates a large amount of informal paid work that takes place in the home or between acquaintances; such work is not considered to be undeclared nor is it sanctioned. By contrast in Denmark, undeclared work covers a broader field of labour transactions and includes any type of productive activity paid in cash or in kind that is not declared.[20]

Moreover, depending on the country,[21] the focus on undeclared work might be different, which is reflected in the use of distinct definitions and policies. For instance, in some countries where there is a legal requirement to have written employment contracts and to register them, undeclared work means in principle work performed without a written employment contract.[22] In other cases, the notion of legal work is defined but not the notion of illegal or undeclared work. Undeclared work might be described in law as a subcategory of the broader term of illegal work; or perhaps the term is paraphrased, enumerating different categories of workers or scenarios that are considered illegal under the law.[23] In some cases, there is no official definition at all.[24]

In fact, domestic legislation of most of the countries does not provide a definition of "undeclared work", and governments rather refer to the notion as stated by the EC COM (98) 219.[25] However, labour codes and social security laws generally cover the main issues related to undeclared work, such as the obligation of declaring new workers, the criteria to determine the employment relationship against commercial contracts, requirements for hiring workers based on minimum age, legal status in the country and certification for certain occupations, etc. Legal provisions on minimum wages, employment agencies, working time, holidays with pay, and others also provide useful references and tools for labour inspectors, helping to define minimum standards applicable to all workers and thus entitling labour inspectorates to reinstate workers on their rights, in application of the laws. Difficulties still arise, though, from the lack of clarity or ambiguity of some facts, where it is difficult to distinguish the border between what is to be considered waged work or what is to be declared.

In some countries, though, the law provides definitions of what is to be considered undeclared work, even if included under broader legal definitions. This is the case of Lithuania, where undeclared work is part of the current concept of illegal work as defined

[20] Pfau-Effinger, Brigit. Varieties of undeclared work in European societies, British Journal of Industrial Relations, 47, 1 March 2009, pp. 79-99.

[21] All the references on this paper without identification of source were gathered from national studies commissioned by the ILO and two round-tables organized with labour inspectorates from Belgium, France, Greece, Italy, Ireland, the Netherlands, Poland, Portugal, Romania, and Spain in Brussels on 29 April 2013 and Geneva on 10 and 11 July 2013.

[22] Latvia, Bulgaria, Former Yugoslav Republic of Macedonia. .

[23] France, Poland.

[24] E.g. Spain, Portugal, United Kingdom.

[25] For instance, Art. 32(7) of the Greek Bill No. 3996/2011 uses exactly the same definition.

in the Labour Code.[26] A similar broad definition is used in Germany.[27] In Belgium, illegal employment is all work done in contravention to social legislation under the competence of federal authorities.[28] In the Czech Republic, the Act on Employment No. 435/2004 considers illegal work where a natural person does not work for a legal or natural entity on the basis of a labour law relationship or another contract, except in the case of the natural person's spouse or child, or where the worker performs work in breach of an employment permit issued or without such a permit.

France uses the term "illegal employment" (L. L821 of Labour Code) to cover:

a) "Concealed labour", as an activity intentionally hidden to avoid payments of taxes or social contributions;

b) Bogus self-employment;

c) Illegal accumulation of employment relations;

d) Fraud in connection with social benefits;

e) Illicit supply of workers, and human trafficking;

f) Irregular employment of foreigners.

A precise legal definition of undeclared work is considered by many observers as a problematic one. This would explain the absence of such definition as based on the deliberate decision of policy makers to avoid potential gaps in the application of the law, thereby avoiding a policy approach that is too reductive. On the other hand, a too broad definition might obscure the purpose of a definition on undeclared work, namely the protection of undeclared workers, since non-declaration makes them vulnerable and deprives them of their legitimate rights. There is also the risk of confounding undeclared work with social or fiscal fraud, rather than putting an emphasis on the protection of workers' rights. Disparities on legislation exist even in areas regulated by the European Union, like posting of workers, where studies reveal differences in the transposition and its practical effects,[29] depending on factors such as the importance of collective agreements compared to the law or the level of details provided by these agreements. For instance, the Irish legislation does not have a precise reference to the mandatory existence of a labour

[26] Art. 98 of the Labour Code approved by Law No. IX-926 of 4 June 2002, amended by Law No. XI-394 of 22 July 2009 defines illegal work as the work: 1. 'performed without the conclusion of an employment contract although the characteristics of an employment contract are present' (an employment contract is defined by the LC as 'an agreement between an employee and an employer whereby the employee undertakes to perform work of a certain profession, speciality, qualification or to perform specific duties in accordance with the work regulations established at the workplace, whereas the employer undertakes to provide the employee with the work specified in the contract, to pay him the agreed wage and to ensure working conditions as set in labour laws, other regulatory acts, the collective agreement and by agreement between the parties'); or 2. 'performed by foreign citizens and stateless persons failing to comply with the procedure of their employment established by regulatory acts'.

[27] Illegal Employment is defined as working on a freelancing or employed basis for money and without the statutory registrations and announcements (Illegal Employment Combat Act 2004).

[28] Social Penal Code, Article 1, § 1.

[29] Cremens, 2011.

contract previous to the posting in the origin country, which creates difficulties for enforcement.

The diversity of approaches to undeclared work across Europe exists partly because of the complex nature of undeclared work and the diversity of actors who take part in it, different from one country to the next, but also because of legal and policy options. The intricacy, dispersion and sometimes bottlenecks of legislation related to labour and social fraud are a test for many inspectorates, for which investigation of cases, gathering of evidence and legal interpretation of possible offenses can consume several months of work, rendering labour inspection inefficient. The nature of the cases is quite diversified. For instance, in some countries non-declaration mostly takes the form of concealing wages as in other cases the hiring of undeclared workers who continue to receive unemployment benefits or even enterprises who sell "entitlements" to social benefits will be more common.[30] In other countries, the practice of employing workers without valid work permits is a major concern,[31] in addition to false independent work[32] and other bogus employment status like labour contracts with young workers disguised as internships. A more detailed exemplification of cases will be described below.

Overall, the quality of legislation is a relevant factor influencing the capacities of labour inspectorates to tackle undeclared work. A particular problem for labour inspectors, for instance, is the deadline for registration of workers in social security. In countries like Romania, deadlines for registration make it difficult for inspectors to prove the duration of an employment relationship. As reported by labour inspectorates, when the deadline is too flexible, the outcomes of inspection visits are quite narrow, as non-compliant employers are able to register the worker after inspection without incurring any kind of penalty. On the contrary, simplification of procedures can help labour inspectors. When there is an option of declaring the worker online, by text message or fax, for instance, businesses are offered better public services and there will be no justifiable reason not to register workers.

The lack of national legal definition leads in some cases to an increased difficulty for labour inspectorates to typify the cases to be considered as undeclared work and to some incoherence of legal approaches from different authorities or even the judiciary. In some countries, labour inspectors receive instructions on legal interpretation and protocols developed for the diverse cases they may encounter in work places (e.g. France, Italy, Spain[33]), but even on these cases harmonization with the dominant interpretation of courts remains a challenge, often leading to conflicting visions and contradictory application of the law.

1.2. Facts and figures

Undeclared work is influenced by a wide range of economic, social, institutional and cultural factors and appears as a particularly worrying feature of labour markets because of its individual, social and economic effects:

[30] Estonia, Poland, Bulgaria (information provided by governments).

[31] France, Spain (national studies).

[32] E.g. Belgium, Germany (national studies and information provided by the government).

[33] National studies.

- at individual level, excludes workers from the protection of labour law and excludes them from the coverage of social security in case of disease, work accident, unemployment and age;

- at social level, it constitutes an attempt against human rights and especially, decent working conditions and foments distributive injustice, as contributions for tax systems will be supported by some workers and enterprises while the others will be free riding most of the services offered by the State, without any or less onus;

- at economic level, obstructs growth oriented policies, damages the State through lack of revenues, creating serious risks for the sustainability of the European social model, and induces unfair competition with a high risk of submersion, where compliant enterprises will lower their working standards to face competitors, passing from the declared to the undeclared economy. In a long term, it reduces quality of work, as well as quality of production and potential losses of national competitiveness in the global market.

Effects of undeclared work for national revenues: the case of Belgium[34]

In Belgium, a construction professional working 40 hours per week, receives a minimum wage of 2,240 Euros (net of 1,440 Euros).

When summing taxes and other mandatory costs to the wage (all supported by the employer), the total cost for this worker is the equivalent to 4,480 Euros. When calculating the taxes paid by both the employer and the worker, the State receives for each month of work around 3,040 Euros.

If the worker is undeclared, this is the amount the State ceases to receive every month. In addition, for example, if the undeclared worker is receiving any kind of social allowance, the loss will be even higher.

These effects cross also national boundaries. The same Belgium authorities report serious unfair competition from Polish international transport companies practicing social dumping and almost all of the countries involved in the national studies have reported similar problems with posted or cross-border workers in construction.

Real losses for countries are difficult to estimate. Even if in the past decades a broad range of methods has been developed to assess the phenomenon of undeclared work in order to improve the understanding of its dimensions and causes, discussion regarding the "appropriate" methodology has still not come to an end.

The studies "Undeclared labour in Europe",[35] "Undeclared work in an enlarged Europe"[36] and "The European Employment Observatory review for Autumn 2004" included an overview of the subject,[37] providing some of the first estimates of undeclared

[34] Adapted from national study.

[35] Mateman, S. and Renooy, P.H. (2001), Undeclared Labour in Europe: Towards an integrated approach of combating undeclared labour, Regioplan, Amsterdam.

[36] Renooy, P., Ivarsson, S., van der Wusten-Gritsai, O. and Meijer, R. (2004), Undeclared work in an enlarged union: an analysis of shadow work - an in-depth study of specific items, European Commission, Brussels.

[37] EUROFOUND (2004), *Fighting the immeasurable? Addressing the phenomenon of undeclared work in the European Union*. European Employment Observatory Review: Autumn 2004. European Commission, Luxembourg. Available at: www.eu-employment-observatory.net/resources/reviews/eeo_review_autumn2004_en.pdf.

work in the Member States, as well as insights into its character. In more recent years, with the aim of improving understanding of the extent and nature of undeclared work, both a direct survey (European Commission,[38] and a review of indirect survey methods (GHK and Fondazione Brodolini, 2009)[39] have been undertaken and yet many methods and scientific models are used (macro-economic models, surveys, analysis of administrative data, evaluation of national accounts, etc).

Direct methods have been applied to determining the size of the informal economy at one particular point in time. An example is the survey method such as the Eurobarometer and the European Social Survey, which involve occasional or regular sample surveys where interviewees are asked certain questions about their employment relationship.

These methods are complemented by indirect methods, such as the discrepancy method measuring companies' incomes and consumption, and other methods analyzing labour market indicators. Econometric methods and statistical models use tools to estimate the undeclared economy as an "unobserved" variable influenced by certain causes (determinants) and influencing other variables. Once the determinants and the indicators are established, the relative extent and the development of undeclared work is calculated, with the aid of econometric modeling. Multiple causes multiple indicators models (MIMIC) or dynamic multiple-indicators multiple-causes (DYMIMIC) models[40] are used. They take into account the multiple causes that determine the emergence and expansion of the underground economy and its multiple effects in time.[41]

According to the MIMIC used by Schneider, in 2011, for instance, undeclared work represented 19, per cent of GDP in Europe though with large regional differences. Findings prove that in some European countries such as Bulgaria (32,3 per cent), Cyprus (25,8 per cent), Latvia (26,5 per cent), Lithuania (29 per cent), Poland (25 per cent) and Romania (29,5 per cent), the size of undeclared work is, in terms of the GDP, higher than in other European Union countries, like Austria (7,9 per cent), Belgium (17 per cent), France (13 per cent), Germany (13,5 per cent), Ireland (12,7 per cent), Italy (19,4 per cent), the Netherlands (9,8 per cent) and Spain (17,6 per cent).[42]

[38] European Commission (2007b), Special Eurobarometer 284: undeclared work in the European Union, Brussels.

[39] GHK and Fondazione G. Brodolini (2009), *Study on indirect measurement methods for undeclared work in the EU. Available at: http://ec.europa.eu/social/Blobservlet?docId=456&-lanld=en.*

[40] The MIMIC (multiple indicators, multiple causes) or DYMIMIC models are statistical techniques consisting of observed and unobserved variables that have specification of causal relationships among the unobserved variables. It is assumed that the shadow economy remains an unobserved phenomenon (latent variable) which can be estimated using quantitatively measurable causes of illicit employment, e.g. tax burden and regulation intensity, and indicators reflecting illicit activities, e.g. currency demand, official GDP and official working time.

[41] For better description see: European Commission (2009), *Study on indirect measurement methods for undeclared work in the EU- Final Report. Available at:* ec.europa.eu/social/BlobServlet?docId=4546&langId=en.

[42] Schneider, F. (2012), Size and development of the shadow economy of 31 European and 5 other OECD countries from 2003 to 2012: some new facts. Available at http://www.econ.jku.at/members/Schneider/files/publications/2012/ShadEcEurope31_March per cent202012.pdf.

The analysis using the same method shows a decline in the size of the undeclared economy from 22,3 per cent in 2003 to 18,4 per cent in 2012, whereas differences north-south and east-west are still visible, with east-central and southern European Member States still taking the lead,[43] differences going from 7,6 per cent in Austria to 31,9 per cent in Bulgaria. The estimates are confirmed by a recent EUROFUND 2013 study.[44] It reveals that besides a slight rise between 2008 and 2009 across most of the EU 27, undeclared work continued to decline in size relative to the declared economy across all Member States between 2003 and 2012. The current economic crisis has not reversed the previous trend of an on-going incremental decline in the size of the undeclared economy as a proportion of GDP. Most of the Member States with relatively large undeclared economies in 2012 are either east central European or southern European Member States. Those with below-average undeclared economies, meanwhile, are largely west European and Nordic Member States. This, as already mentioned, signals a clear north-south and east-west divide within the EU concerning the relative size of the undeclared economy.

Nonetheless, the empirical evidence can be inconclusive as well as the impact of the recent European crisis, as the estimated trends showing a uniform decline according to the econometric model [45] face a more varied picture, when compared to national studies or surveys, which reveal diverse figures.

When using survey techniques, such as demonstrated by the direct survey conducted across the EU-27 in May and June 2007 only 5 per cent of the surveyed population declared having conducted undeclared work. In some countries, however, the participation rate is higher such as in Denmark (18 per cent), Estonia (11 per cent), Latvia (15 per cent), the Netherlands (13 per cent), and Sweden (10 per cent). The study also looked at the occupational status of European workers engaged in undeclared work. It turns out that the two most over-represented categories of undeclared workers were the unemployed and self-employed.

When it comes to national studies, the figures also differ. For instance, a recent study of the Belgium national bank estimates that the shadow economy represents 3,8 per cent of the PIB, and that it is more developed in sectors producing for individuals (construction, retail, motor vehicle repair, food service industry,[46] etc.).[47]

As for the gender dimension, the European Commission revealed in 2007[48] that undeclared work is more common among men than women. While 6 per cent of the male population performed undeclared work in the previous 12 months, only 3 per cent of women did so. Almost two thirds (62 per cent) of all suppliers of undeclared work were men, except for Spain, France and Italy. Whereas in Spain and France, there was an almost equal ratio between men and women, in Italy, the latter predominate. In general, male

[43] Eurofound (2013), *Tackling undeclared work in 27 European Union Member States and Norway: Approaches and measures since 2008,* Eurofound, Dublin.

[44] See op cit. Eurofound (2013).

[45] Schneider, F., Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2012: Some New Facts, Working Paper, 2012, p. 5.

[46] From now on referred to as Horeca.

[47] National study.

[48] Special Eurobarometer 284 (2007), *Undeclared Work in the European Union, European Commission.*

undeclared workers were paid more than women (average earning for one hour of undeclared work of 19 and 12 Euros, respectively).

It is not just the scale but also the structure of the shadow economy and more specifically of undeclared work that varies from one Member State to another; this is owing to differences in the productive structure and also in welfare state systems.[49] The categories of workers most concerned by these phenomena, already worse off than average, are also affected by the recession and are seeing their income potential reduced.[50] The dynamics of the shadow economy and undeclared work, therefore, especially following the crisis, impact on the workforce in differing ways in the various Member States and also within individual economies. This diversity of impact must be taken properly into consideration in the shaping of policies to combat the shadow economy and when launching counter-cyclical social policies.

Visits and other statistical indicators from labour inspectorates can help to gather some evidence, not so much on the extension of the phenomena but on its scope. Labour inspection statistics are a reliable source of information, but cannot provide a precise idea of the number of undeclared workers existing in a country, as the figures presented will result from the information gathered on inspection visits and will represent only a small part of the undeclared work force,[51] considering that labour inspectorates have limited resources and only a small part of work places are visited. Estimations cannot also be purely based on figures reported by labour inspectorates because it is possible that their efforts were oriented to other areas than undeclared work and evidently, if so, the figures revealed for one year will be smaller than in comparative periods. Even so, crossing the data provided in labour inspection annual reports or extracted from labour inspectorates' information systems with other sources is quite useful, as it gives empirical evidence very difficult to collect by using social sciences methods.

Figures provided by labour inspectorates point out, in general terms, an increase of detected cases. In Italy, a total of 100,193 undeclared workers were identified in 2012, and over 295,000 workers were involved in any kind of undeclared paid activities (especially envelope wages) in the same period, representing a rise of 6 per cent when compared to 2011. Out from 243,847 inspected businesses, 63 per cent were irregular. The amount recovered for social security was superior to 1,631,700,292 Euros, an increase of 33 per cent compared to 2011 (1,225,165,438 Euros). By sectors, construction was the predominant (61 per cent).

[49] In the Nordic countries where spending on labour market, social protection and redistribution policies is higher and where, as a result, there is greater equality in income, records show a lower incidence of undeclared work, which relates predominantly to people having second jobs to supplement their income. In southern Europe, on the other hand, the shadow economy plays a substitutive role owing to the limitations of active labour and welfare policies, and it is therefore particularly prevalent among the unemployed and people who are on the margins of the formal labour market. See Eurofound, *Tackling undeclared work in 27 European Union Member States and Norway. Approaches and measures since 2008*, June 2013, Chapters 1 and 4.

[50] Hazans, M., Informal Workers across Europe. Evidence from 30 European Countries, Policy Research Working Paper, No 5912, World Bank, December 2011, pp. 22-39.

[51] All figures and information presented in this paper without a specific reference to the source were extracted from a questionnaire launched by the ILO in 2009, studies commissioned by the ILO to national consultants, notes taken from a workshop on undeclared work organized in Brussels on 29 and 30 April 2013 and websites of national labour inspectorates.

In Romania, the labour inspectorate also reported an increasing number of detected employers using undeclared work (9,731 in 2011 against 3,442 in 2004), the same applying for individuals without legal employment contracts (10,446 in 2004 against 29,095 in 2011).

Spain estimates that almost 50,000 workers covered by inspection visits were affected by violations related to undeclared work in 2012, 48,756 in 2011 and 50,839 in 2010. In total figures, the biggest number of infractions was found in hospitality (37 per cent of offenses), services (17 per cent) and commerce (14 per cent), but when considered relative rates between the number of inspections and identified violations, hospitality (17 per cent), agriculture (12 per cent) and industry (11 per cent) were the most represented sectors.[52]

In what refers to the scope of undeclared work, evidence shows that it can be found in a wide range of workplaces (from micro businesses to large enterprises), in a variety of sectors (from services to construction, from industry to agriculture) and involving workers with different profiles and backgrounds (e.g. skilled and unskilled; men, women and children; nationals and migrants). Such heterogeneity makes undeclared work difficult to measure and monitor and helps explain the diverse legal approaches taken by different countries, as well as the need for labour inspectorates to carefully analyze patterns and set priorities. Sectors such as construction, horeca, hospitality, commerce and services are under constant surveillance of the labour inspectorates. For instance, in 2011, the Belgium ONEM did 2,857 controls of horeca enterprises and 9,281 workers, having found 1,594 offenses affecting 1,950 workers.[53] In France, more than 67,000 establishments were inspected by different social monitoring services, construction sites, horeca and agriculture were predominantly targeted (respectively 41 per cent, 24 per cent and 19 per cent of all controls). Results confirmed the need to maintain strict vigilance as 11,000 enterprises were irregularly employing workers, some 79 per cent undeclared, from which 11 per cent were foreign workers without work permit. In the same year, 9,000 warnings were issued on the subject. From around 1,000 sentences imposed by the courts, 25 per cent were related to undeclared work, with 10 per cent resulting in imprisonment, with an average of 4,5 months and the rest as fines.

If it is a fact that the number of inspection visits to detect and control undeclared work is increasing in many EU countries, this is not a universal trend in the EU. Variation can have diverse causes, most of the times influenced by policy options, available resources and institutional capacity. In Romania, for instance, there has been a steady increase between 2004 and 2012. The number of visits rose from 66,736 in 2004 to 98,498 in 2012. In Spain, there was an increase of almost 10 per cent from 2010 to 2012 (476,844 against 519,402 visits). In France, visits increased from 251,100 in 2008 to 356,200 in 2011. On the contrary, in countries such as Ireland and Italy there has been a notable decrease. In Ireland, the reduction of the number of visits went down from 4,199 in 2011 to 3,140 in 2012 while in Italy the number fell from 315,170 in 2008 to 243,847 in 2012.[54]

Even if most of the inspectorates produce indicators on the number of visits, at least to incorporate in annual reports, data crossing is not yet explored, in many cases, to help to

[52] Figures provided by national studies.

[53] Annual report available at: http://www.rva.be/D_documentation/Jaarverslag/Jaarverslag_volledig/2011/RapportAnnuel2011/index.html. Other annual reports are available at: http://www.socialsecurity.fgov.be/docs/fr/publicaties/jaarrapport_si/jaarverslag-sociale-inspectie-2010-fr.pdf (Social inspectorate of the Federal Public Service of Social Security).

[54] Figures provided by national studies.

build scenarios habilitating decision makers to set roadmaps, on cause of the lack of specialists able to build and test models or poor information systems. Indeed, not all the countries disaggregate labour inspection statistics on undeclared work to the possible extent, while others like Belgium, make an extensive use of the data available based on sophisticated software and internal know-how to compile and read statistical outputs. Countries such as France, Italy, the Netherlands, Portugal and Spain are in a position to analyze and present variables by region, sector, gender and most frequent violations, but complain of not having sufficient internal know-how to extrapolate data. Other countries can only show the total figure on the number of visits and offenses encountered. Even when statistics are available, websites or annual reports do not always provide comparative data covering more than one year, making international comparison difficult. The multiple expressions of labour fraud and the lack of common definitions make benchmarking even more difficult.

When it comes to labour inspection priorities, undeclared work is often associated with irregular migrant work and institutional responses of many countries put a strong emphasis on control of immigrants working illegally. In Spain, for instance, from 2010 to 2012, 11 per cent of identified undeclared workers were foreigners without a valid work permit. This constitutes a demanding challenge for many labour inspectors, divided between their duty to report back any illicit fact they encounter as civil servants (for which they can be disciplinary or even criminally charged) and the role expected from them on protecting these workers' rights. Promotion of decent working conditions and requirements of national legislation on control of migratory flows needs to be equilibrated in a way to balance conflicting values.[55]

Protection of migrant workers' rights is challenging for labour inspectors in many ways. Even if the labour inspection policy recognizes its main role as being related to the implementation of decent work standards, in several countries like Ireland, redress of rights of migrant workers if they are undocumented is not possible for labour inspectors[56] or when possible, in-debt wages or compensation are in fact irrecoverable by workers after they are expelled from the country.

Undeclared work deserves a concentration of efforts from national authorities not only on cause of the individual harm produced in the individual sphere of the worker, but also by the accentuated risks for the State's financial capacity. Despite of this, it should be clear that the mandate of labour inspection is much wider and the attention given to this field of action should not distract labour inspectors from other areas of work. In Greece, for instance, occupational safety and health inspectors are participating in visits for control of undeclared work,[57] taking considerable part of their time. In Romania, all labour inspectors are engaged in control of undeclared work as a priority. This should not, in any

[55] At this purpose, the CEACR stated on 2008 in respect of application of Convention No. 81 in France, on the same sense as already had expressed on occasion of the 2006 General Survey on Labour Inspection (§ 150) that no workers should be excluded from protection on account of an irregular employment status and that the functions of labour inspectorates are to secure conditions of work in accordance with relevant legal requirements and not the lawful nature of their employment. It was also stressed that the mandate of labour inspectors should be distinguished from other bodies in order to maintain a climate of confidence between labour inspectors and workers, including the ones undeclared. See: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_-COMMENT_ID:2298193.

[56] Information provided by national studies.

[57] Circular No. 10243 of 9 September 2012.

case, lower the level of supervision on compliance with safety and health at work legislation

Undeclared work is linked with major violations of human rights in cases of forced labour[58] and human trafficking. According to ILO's figures, some 880,000 people are in forced labour in the EU, representing statistically almost 1,8 persons per 1,000 inhabitants, 30 per cent of which are also estimated to be victims of sexual exploitation. Domestic work, agriculture and construction are the main sectors where victims were found.[59] Labour inspectors are privileged actors to spot cases of forced labour as they have free access to all workplaces.

There are some sectors where intervention of labour inspectorates is particularly difficult, such as domestic work and the maritime, either because they may fall outside the scope of action of labour inspection, either on cause of limits to the inspection visit or lack of resources. The prevailing rule to provide access of labour inspectors to private households makes it dependent on the consent of the householder or prior judicial authorization, turning the inspection visit into a problematic operation and demanding from inspectorates innovative approaches still scarce. As for the maritime sector, questions such as territoriality, access to ships, mobility of the workforce and a lack of experience of inspectors makes it extremely hard to reach the vulnerable workers on board. Additionally, many of the EU countries have not yet ratified the Maritime Labour Convention 2006.[60]

1.3. Scope

As already mentioned, undeclared work can be found in a wide range of workplaces, sectors, and involving workers with different profiles and backgrounds. Such heterogeneity makes undeclared work difficult to approach and demand for specific strategies.

Even when they have a wide mandate, labour inspectorates do not generally cover all manifestations of the informal economy, such as economic voluntary exchanges or social non-profitable work, nor self-employment except on the few cases where they have competences related to social security on the latter. Yet they are increasingly focusing on the civil or commercial relationships to assess the validity of contracts, knowing that many of the apparent independent relations for provision of services may hide a genuine employment contract (bogus self-employment).[61]

The diversity of undeclared work conditions tackled by labour inspectorates in Europe is quite expressive differing from simple constructions where one enterprise or

[58] Forced labour is defined by ILO's Convention 1930 (No. 29) as *all work or service which is exacted from any person under the menace or any penalty and for which the said person has not offered himself voluntarily.*

[59] ILO Global Estimate of Forced Labour, 2012 accessible in: http://ilo.org/wcmsp5/groups/public/---ed_norm/declaration/documents/publication/wcms_182004.pdf.

[60] Entering into force on 20 August 2013 (after being ratified by 30 ILO Member States with a total share of 33 per cent in the world gross tonnage). In the EU, the MLC was ratified by Bulgaria, Denmark, Finland, Greece, Latvia, Luxembourg, Malta, Netherlands, Norway, Poland, Spain and Sweden.

[61] The recognition of the situations protected by labour law is fundamental so that a minimum social floor applies to all workers regardless of their occupational status in the formal or informal economy, as recognized by the Declaration on Fundamental Rights and Principles at Work.

individual tries to avoid social costs by not declaring work revenues to dynamic and complex schemes containing a myriad of enterprises on intricate networks operating beyond national borders and making billionaire profits.

Although a closed list of cases would be problematic, not only on cause of national circumstances but also on reasons of ever changing practices, the national studies and information gathered from governments makes it possible to exemplify the most common expressions of undeclared work in the EU, at this stage. The following non-exhaustive examples provide an image of the heterogeneity of the phenomenon.[62]

- Entrepreneurs or enterprises using a workforce fully undeclared to the authorities, especially social security, insurance and tax administration, or self-employed invisible to the system. Small businesses, sweatshops, manufacturing industries operating from households, warehouses, garages or premises with other apparent purpose, labour brokers, subcontractors integrated in large contracting chains in construction, isolated agricultural undertakings, moonlighters are the most common. Reasons for not declaring the business are many, from the lack of conditions to apply for a required licence, or the exact purpose of operating outside any kind of control, not paying taxes and minimum wages and other worker's entitlements.

- In some other situations, businesses are declared but work as letterbox enterprises, even with false corporate purpose, false address or with a fake office or shop with the exclusive purpose of keeping an appearance of normality. 'Bogus companies' operate mostly in the construction sector. These enterprises have no assets, are registered by straw men, often with false identity, that after registering employees with social security declare bankruptcy, never paying contributions. The starting capital and managers disappear. It was estimated that this practice in Austria, for instance, causes a damage superior to 1 billion Euros every year.

- Enterprises declaring only part of their activities and workers. Countries report practices such as using undeclared workers during night shifts or weekends[63] and registered workers during regular working hours; declared employees only in visible establishments or to which clients and suppliers have access. Often, people receiving unemployment or sick benefits are employed under these circumstances for lower wages than other workers.

- Enterprises regularly established using undeclared workers from suppliers and subcontractors in their premises or production in substitution of their direct workforce, under direct orders and supervision, as a way of avoiding payment of taxes, costs of occupational safety and health requirements and obtaining contractual flexibility. Extensive subcontracting chains offer fertile conditions for this kind of fraud, where subcontracted companies specialized on leasing the workforce on the margins of regulated private employment agencies or temporary work companies are selected with the sole purpose of escaping application of the law or collective agreements. The practice, denominated "*marchandage*" in France is well disseminated on construction sites, manufacturing industries or services,

[62] Information provided by governments and national studies.

[63] Commonly maintenance and cleaning workers or staff for pre-production or post production such as reception of raw materials or packaging in factories.

where the workers are directly subordinated to the final client but apparently responding to an intermediary, sometimes a disguised worker of the final user.[64]

- Complex schemes involving groups of "network" enterprises, where the mother company manages the brand and contractual operations, transferring the risks on the employees to the subsidiaries or businesses under its influence, for instance, with the same shareholders. Workers, that are not declared or only partially declared rotate continuously from one enterprise to another (carrousel method) to make detection difficult. Restructuration or closing of business becomes easier as contractual obligations with workers do not need to be met. Whenever there is suspicion from the authorities, the "leasing" companies disappear and are replaced by others.

- In relation to the previous cases, unregistered temporary work agencies placing workers, or registered agencies using fraudulent practices, which are difficult to detect and to act upon due to the volatility of the entrepreneurship, integration on complex contracting chains, and apparent financial profits for all parties involved. Gang masters with a fictitious appearance, a post box and no real existence are frequent. Workers are selected through adds published in local newspapers and contacts happen exclusively through mobile phones, internet or in coffee shops. These fraudulent schemes are often used by irregular migration gangs for recruitment of workers under deceit in European countries outside the EU, with the aim to introduce them into forced or sexual exploitation. Unqualified or young workers are promised a regular labour contract or paid internships or "au pair" occupation, ending up as irregular migrant workers, often exploited.

- Ill-defined labour relations on the margin of the provisions set by labour law recently incorporated in the domestic legal systems and prone to social fraud, such as very short term contracts for seasonal activities or on-call contracts (e.g. hospitality, entertainment) where workers are never declared, or have simultaneous employers where only one of them partially declares the worker.

- False occupational status, extremely common in some sectors,[65] often resulting from decentralization of production, restructuring processes or "post-fordist" flexible management models, and consisting on:

[64] In most of the countries this "staff" leasing is illicit. In any case, it should respect the standards set by the Private Employment Agency Convention, 1997 (No. 181).

[65] The practice is frequent in many countries. For instance, the Dutch Federation of Contractors stated, in 2012, that the total number of the self-employed in the building industry was estimated at 73,000, representing around 70 per cent of all alleged self-employed people, arising serious doubts about their real status. In France, national authorities estimate that 80 per cent of all cases of undeclared work detected in 2011 were related to the disguise of the employment relationship and other false employment status. Most affected sectors were construction, hospitality, commerce, services, seasonal work in agriculture, and road transport. In Belgium, 40 per cent of the European migrants working in the kingdom are false independent (93,668 by the end of 2011, representing an increase of 11,5 per cent when compared to 2009). Most expressive nationalities are the Dutch, French, Italian, Romanian and Polish (National study).

- Bogus self-employment, also known as false independent work or disguised employment relationships.[66] Frequently, false independent workers are registered and pay contributions as such, but the employer is exempted from labour and social security obligations as it is common for commercial contractual relationships. The cost of contributions to social security is exclusively supported by the worker or sometimes (for qualified professionals mainly) paid to the worker as part of remuneration. Public revenues decrease as a result of this, not only because employers do not pay the due contributions as in many countries, the scale applicable to independent workers is lower than for waged work. Enterprises often outsource non-core activities to false self-employed, in some cases former employees, who remain under direct orders and control.[67] In some cases, false independent workers accumulate with a regular declared job, from where they get social protection.

The outsourced truck-drivers[68]

These cases were reported by Portugal and Spain, consisting of transporting companies outsourcing their core business to self-employed drivers, former employees.

Simultaneously with the termination of the labour contract, the drivers sign an exclusivity commercial contract to render transportation services to their former employer.

Under the commercial contract the truck is sold or leased to the driver, who pays the equipment in instalments, often directly deducted from the price paid by user for the rendered services.

The alleged self-account drivers receive daily instruction on deliveries, times for accomplishment, and are controlled on their timeliness. In some cases, a fixed fee amount is paid on a periodic basis.

The contractor can, through this scheme, elude application of labour law and responsibility for road safety regulations, fixing maximum working periods and speed limits.

When there is enough evidence of subordination the worker is entitled to reintegration in the company.

[66] The legal studies and jurisprudence built around the determination of the employment relationship have helped labour inspectorates to shape guidelines on how to approach false independent work. This is usually operated by establishing criteria to recognize subordination or, in some cases, economic dependence of the worker towards the work receiver, according to the general rule of the primacy of the facts. Indicators provided by the law, judicial rulings or doctrine are the privileged tools used by labour inspectorates to build the criteria to recognize labour contracts disguised under the form of civil or commercial law arrangements. The "defocusing" of the employment relationship makes it extremely difficult, though, to assess "grey" situations where the frontier between labour and commercial law is not evident. The ILO's Employment relationship Recommendation 2006 (No. 198) provides examples of different methods used by countries, including the parameters for the recognition of the facts upon which to decide on the existence of a labour contract, and explicitly mentions that the determination of the employment relationship should be guided by the facts relating to the performance of work notwithstanding how it is characterized in contracts.

[67] Workers are dismissed as a result of reengineering processes or invited to denounce the employment contract or to sign termination by mutual agreement, being afterwards hired as self-employed, remaining under direction of the enterprise.

[68] A well-known practice of outsourcing/insourcing described by Bronstein A. (2009: 61) who explains that *where the work to be performed has not changed (…) the legal framework between the enterprise and the truck-driver has indeed changed significantly, for the truck-driver has become an independent contractor.*

- False internships, where young workers are hired under apparent qualification purposes, but rendering exactly the same tasks as regular workers, often non remunerated or receiving symbolic earnings for transportation and meals. Belgium, France, Portugal, Spain reported this on sectors like banking, insurance, and mass media. Cases exist where the difference between the labour contract and the internship is feeble, demanding strong analytic efforts from inspectorates to distinguish the reality of the facts.

- Abusive use of volunteering, often for NGO and other non-profitable private institutions such as corporations (ex: firemen), associations and foundations, where workers abusively characterized as volunteers receive undeclared sums as compensation for their efforts conducted under the same characteristics as in the employment relationship. In some cases, "compensation" applies only to over time, to which waged workers are compelled.

- Use of new technologies to hide the employment relationship. Undeclared ICT home workers developing software, call centres installed in private households or parking lots, where workers respond to supervisors, receive direct orders and instruction, have defined working hours but are not considered as employees or are completely undeclared, being paid by piece or on a commission base.

- Posting of workers in violation of the provisions set by the EC Regulation 96/71,[69] either on cause of a false employment status of posted workers, fictitious posting corresponding to an illicit placing of workers,[70] or exceeding the allowed maximum periods for posting (two years); or partially declaring the remuneration; or underpaying according to national minimum wages or wages set by collective agreements, in many cases declaring the wage as paid in the country of origin. Most affected countries are older EU member States towards movement of workers from newer Member States. Practices as ghost enterprises recruiting workers in lower wage EU countries for direct work outside a provision of services or recruiting migrant third country workers already residing in the posted country were reported.[71]

[69] According to Art. 2 of the Directive a posted worker "means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State on which he normally works." The definition of worker is given by the law of the State to whose territory the worker is posted. A legal posting presupposes a previously established employment relationship and the legitimate operation of the employer in another Member State, namely being declared. Furthermore the basis for the posting is a commercial relationship between two economic entities in the sending and receiving country and the occupation of the worker in the sense of that exact commercial relationship.

[70] Belgium authorities reported on a network placing Brazilian workers using Portuguese false ID.

[71] Source: national studies.

Fraudulent networks for posting of third country nationals[72]

Another case paradigmatic of the need of national labour inspectorates to internationally cooperate was presented again by Belgium. It consisted of a criminal network introducing migrant Brazilian workers with irregular residence as pretence Portuguese in construction sites.[73] The workers entered in Portugal as tourist and were taken to small villages where on the basis of a rental contract they would get a national fiscal number. On possession of the individual tax card, a permanent residence permit was forged with the exact elements contained in the Brazilian passport and the fiscal identification number.

On possession of the false permit, the gang master was in a position to post them to other EU countries as Portuguese workers.

The fraud was difficult to detect on basis of the forged documents and because the workers speak Portuguese, creating an appearance of normality for third parties. It was only after investigation of the Belgium labour inspectorate in contact with the focal point for posting of workers in Portugal that the national authorities were able to cope with the case, as some small errors existed, for instance, on the forged permit such as the reference to fictitious immigration officers as having issued the document.[74]

- Cross border organized trafficking, introducing migrant workers in irregular status, in many cases victims of forced labour to work in agricultural undertakings, construction, homework or the sex industry. In the Czech "client" system, for instance, migrant workers are placed through intermediary agents who make arrangements for work and work permits, accommodation and social protection, receiving part of the earnings of the workers in exchange, often keeping the workers misinformed and exploited.[75]

- Misuse of extraterritorial cost arrangements, were part of the wage of a foreign employee can be used for tax-free allowances for costs of housing, transport or other costs resulting from working abroad.

- Under-declaration of wages, one of the most reported practices, in all the countries, most commonly not declaring overtime work,[76] declaring only the minimum wage and paying the rest under the counter or not declaring the value of payments in housing and food benefits, false part-time were only a percentage of the real worked hours is declared, disguise of remuneration under apparent fringe benefits (use of car, fuel tickets, credit card, shopping vouchers), false per diem, etc. These payments are found in all sectors, in enterprises of all sizes and with all

[72] Adapted from a case reported by national study.

[73] The same practice was reported by Portugal and Spain.

[74] In Spain, Brazilian workers were being introduced in construction sites also as Portuguese, with fake identification. As the colloquial differences were not evident for Spanish labour inspectors, some joint visits were organized with Portuguese labour inspectorate in border regions or to sites with a high prevalence of workers declared as Portuguese. While the authority competences would be used only by Spanish inspectors, their colleagues would act as experts, helping to conduct interviews with the workers and to analyze documents.

[75] The extension of the phenomenon led to the intervention of State bodies and Caritas providing assistance to Ukrainian immigrants. A network of advice centers was set up in Ukraine and the Czech Republic providing information on employment opportunities, requirements for legal entry and residency, risks associated with illegal employment and residence, and facilitating the contact between job seekers and employers.

[76] Belgium reported extensive abuse of undeclared and underpaid overtime in the South region of Occidental Flandre, for instance. As workers complained only after the contractual relationship ended, the evidence is very difficult to collect.

groups of workers (qualified, unqualified; male, female; national, migrant). Acceptance from part of the workers is an obstacle labour inspectors have to overcome, as they do not get cooperation. Accurate document checking and special interviewing techniques among other soft skills are used to identify the reality of the facts. When it comes to fringe benefits such as the use of the car for personal purposes (managers, sellers, etc.) it can be particularly complicated to determine what is to be declared as remuneration.

The fraud of the 24/7 reception

A practice in the private security sector consists on using "ghost" workers for premises requiring permanent surveillance (24 hours/7 days). As maximum working hours are limited by legal ceilings, a minimum number of guards is required to keep uninterrupted security.

To reduce social costs, private security enterprises agree with workers to extend the working period paying overtime under the counter instead of hiring the required number of workers. As a smaller staff will be needed and overtime is not declared, the employer saves on direct and indirect labour costs. The worker, in return, receives a bigger sum every month.

One of the shifts is attributed to a fictitious worker or to a worker placed in a different client, so that a list with the names containing the minimum number of workers can be disclosed to labour inspectors in case of a visit. Workers constantly rotate from one workplace to the other to elude authorities.

Many other practices exist, such as the one reported in Spain, where to avoid payment of social contributions, some enterprises simulate termination of contract and new hiring of the same worker days after, faking the existence of a contractual rupture that never happened, or updating of salary scales as a result of collective bargaining mechanisms without the correspondent declaration to social security.

In what concerns workers, these can be involved in fraudulent practices such as:

- Individuals who are completely unknown to the administrative authorities as they do not declare any formal work and do not pay any tax on employment or self-employment income (ghosts);
- Individuals who are registered as regular workers with a second professional activity not declared (moonlighters);
- Individuals who have a false occupational status, voluntarily or not;
- Individuals with a regular labour contract where part of the wage is not declared;
- Individuals registered, receiving social benefits, and working at the same time on their own account or for a third party without declaring the work situation and the revenues.

A market niche appeared where businesses have specialized in selling forged documents so that citizens can get social benefits on cause of sickness, accident, etc. When social security is under the scope of labour inspectorates, these are also addressing these cases, like the illicit use of increased unemployment benefits on cause of a false dimension of the family aggregate, simulation of requirements to receive any kind of social allowances and others. In Spain, fraudulent or fictitious labour contracts are declared to obtain social benefits, where the enterprise creates apparent employment relationships, declaring the worker to social security, paying contributions for a short period and reporting afterwards false leaves entitling the worker to the benefits, who in turn will pay a

price to the alleged employer.[77] In Belgium, another practice was reported where enterprises declare their workers and immediately after report false voluntary absence days non contributable.

2. Governments responses to undeclared work

Undeclared work has been signalized as a political priority of the European Union for more than two decades, with a growing impact since the publication of Communication COM(98) 219. Several other official texts have been issued on the subject, revealing its importance in the EU,[78] namely the Council Resolution 2003/C260/01 which recommended to Member States articulated preventive and deterrent measures to reduce undeclared work, to which national governments responded through a vast array of strategies aiming at improving detection, preventing and strengthening sanctions.[79]

Aiming at preventing undeclared work, governments have used measures to enable people to work legitimately, to bring people already participating in the undeclared economy to declare their activities and making use of initiatives to increase the payment of taxes. At the same time, detection measures have been improved fostering the perceived offences to be spotted and deterring potential offenders of committing illicit facts. Exhaustive use of mass media driven by moralization purposes or alerting potential offenders on the risks of being detected and its consequences are a common practice in the EU.

Among the different approaches, penalization is the predominant (see chapter 5). In fact, according to Eurofound (2013), while the preventative,[80] curative[81] and commitment[82] approaches were rising in all countries of the European Economic Area and Switzerland the deterrence approach was still the preferred in 2010, with 93 per cent of countries relying on the use of sanctions.[83] On what refers to measures to improve

[77] In 2012, the Spanish authorities identified more than 23,000 enterprises creating fictitious jobs.

[78] Resolution A5-0220/2000 of the European Parliament of 21 September 2000, published in the Official Journal of the European Union C 146/102, of 17 May 2001, Council Resolution 2003/0260/01, Communication of the Commission to the European Parliament, the Economic and Social Committee and the Regions Committee COM (2007) 628, of 24 October 2007, and the Council resolution on transforming undeclared work into regular Employment (2003/C 260/01).

[79] Eurofound 2013, p. 9.

[80] Most of the countries were simplifying compliance procedures (87 per cent), making transition from unemployment to self-employment easier (65 per cent), giving direct tax incentives (61 per cent), among others.

[81] Measures to stimulate purchasers to buy declared goods (e.g. service vouchers) or to stimulate suppliers to formalize operations, through amnesties, Vat reductions, gradual formalization schemes, etc.

[82] Most the initiatives consisted of awareness raising campaigns to inform workers and employers of risks and costs of undeclared work (61 per cent), to inform users (61 per cent) or workers (57 per cent) of the benefits of declared work. Measures to improve knowledge of labour, social and fiscal laws were being used by 65 per cent of the countries.

[83] 87 per cent of which are administrative nature, against 74 per cent of criminal nature.

detection, 83 per cent of countries were sharing data and 74 per cent were using registration of workers prior to starting of work or on the first day of work. Certification of businesses, (65 per cent), mandatory workers identification in the workplace (65 per cent) and coordination of operation between different agencies were also being used (61 per cent). An interesting note provided in the same publication, is that only 45 per cent of the stakeholders from countries where preventative measures were implemented saw them as effective when compared to deterrence, demonstrating a strong prevalence of attitudes supporting the use of repression to tackle undeclared work, rather than enabling measures promoting formalization.

Undeclared work is generally seen as a phenomenon with strong negative results receiving high political attention in most of the countries, as the following examples reveal. In Belgium policy options on the subject are defined by the council of ministers and in 2008 a Deputy Minister for the fight against fraud was created under the Prime Minister's direct responsibility. In Spain, a national integrated strategy to prevent and correct fiscal, labour and social fraud was adopted in 2010[84] and later on in April 2012.[85] In Italy there is an ad hoc inter-ministerial coordination mechanism to fight undeclared work. Such initiatives paid off, as the countries assessed positive outcomes for the recuperation of millions of Euros. In France, the Prime Minister defined in November 2012 a new plan to combat undeclared work for the period 2013/2015, focusing on repression of all abusive forms of cross-border posting of workers, control of subcontracting, sanctioning of false professional statutes and illegal employment of unauthorized foreign workers. The envisaged programme adopts a massive coverage by the government and social partners, improves controls through the professionalization of services and coordination by the anti-fraud departmental operational committees (CODAF).[86] In Norway, a Joint Alliance against the Black Economy was also established in 2008.

In most times governments see undeclared work within the more comprehensive domain of welfare and tax fraud, appointing as leading agencies either the labour inspectorates or the social and tax inspection services. The approach of each country to the problem depends to a large extent on national legal and public administration systems and political options and is basically focused either on deterrence or on enabling compliance. The financial crisis, however, is leading some European countries to prioritize the recovery of revenues and budget control, attributing bigger importance to tax investigation than to protection of workers' rights. In Ireland, for instance, the revenues and the department of social protection are the leading agencies. In others, such as France, all institutions dealing with "illegal" labour have an equilibrated weight, and some like Spain, attribute a bigger role to labour inspectorates. Regardless of the precise weight of labour inspectorates in each system, labour inspection is considered fundamental and it heavily contributes to the sustainability of European social models. In Italy, as an example, the action of public agencies dealing with labour inspection (Ministry of Labour and Social Policies, INPS and INAIL) resulted in recuperation of 1,631,703,292 EUR for social security in 2012.[87]

[84] www.empleo.gob.es/itss/web/Atencion_al.../Plan_int_fraude.pdf.

[85] Knowledge Bank of Good Practices of Eurofound, available at: http://www.eurofound.europa.eu/areas/labourmarket/tackling/search.php.

[86] http://www.gouvernement.fr/sites/default/files/fichiers_joints/plan_national_de_lutte_contre_le-_travail_illegal.pdf.

[87] National studies.

3. Tackling undeclared work through the labour inspection system

3.1. The role of labour inspectorates

Several institutions address the diversity of issues related to undeclared work, mostly labour inspectorates, social security, tax and immigration authorities. Although labour inspectorates are among the leading agencies, some countries tend to focus more on compliance with tax laws rather than on protection of workers' rights. In Austria and Germany, for instance, the function to supervise undeclared work was transferred to the Federal Ministry of Finance in 2002 and 1991, respectively.

Even when they have a wide mandate, like it happens in Spain, where part of the surveillance of compliance with social security law is under the labour inspectorate, not all manifestations of the informal economy are relevant for labour inspection, namely when they are not remunerated, or they fall under the mandate of other institutions, such as it happens most often with self-employment.

The mandates of EU labour inspectorates are quite diverse, although they share common basis under ILO Convention No. 81. Characteristics such as the existence of one single institution or specialized inspectorates, coverage of both labour relations and occupational safety and health (e.g. Belgium, Bulgaria, France, Greece, Italy, Luxembourg, Portugal, Romania and Spain) or a mandate traditionally oriented to safety and health legislation (e.g. Cyprus, Denmark, Germany, Norway, UK) influence the importance given to labour inspection in each country when thinking of labour law violations. Other features like the administrative division of the territory, applicable models of roman or common law, and of administrative of criminal sanctions, existence of alternative compliance mechanisms, and others are considerable variables helping to understand the different roles of labour inspectorates within the EU.

Despite the differences, in some countries where the traditional mandate of labour inspection had a particular focus on occupational safety and health new agencies were created to deal with employment issues. This was the case of Ireland, where a National Employment Rights Authority (NERA) was established in 2007 to secure compliance with employment rights legislation, as a result of a framework Social Partnership Agreement signed between the government and social partners.[88] For the first time labour inspectors were involved in the enforcement of provisions of employment acts.[89] Restructuring processes have also taken place in the Netherlands, where a new inspectorate SZW was created to supervise compliance with regulations in the area of working conditions, prevention of major hazards involving dangerous substances, illegal employment and minimum wages, implementation of social security acts and detection of fraud, exploitation and organized crime within the chain of work and income (labour exploitation,

[88] Some other non EU European countries such as Switzerland, have created new authorities. On 1 January 2008, a Federal law came into force on undeclared work that provides the appointment of an inspection body at the cantonal level with reinforced investigative powers. Above all, this has led to a regrouping of the labour inspection services and the agency in charge of monitoring migrant workers.

[89] Formalized by the Employment Law Compliance Bill of 2008. At the time of writing, it is planned under a new legal act, that labour inspectors will be re-named Compliance Officers and will continue to deal with underpayment of national minimum wage, rates of pay, illegal methods of payment, unlawful deductions, failure to keep mandatory documents and registries, and work without valid employment permits.

human trafficking and large scale fraud in the area of social security), this latter under the direction of the Public Prosecution Service.

In Switzerland, on 1 January 2008, a Federal law came into force on undeclared work that provides the appointment of an inspection body at the cantonal level with reinforced investigative powers. Above all, this has led to a regrouping of the labour inspection services and the agency in charge of monitoring migrant workers. At present, for example, Geneva inspectors carry out joint inspections of working conditions in sectors with the highest incidence of undeclared work (janitorial services, hotels and catering, etc.) in which all the inspection authorities take part. Recently tougher penalties (fines, disqualification from public contracts and the publication of offending firms on the Internet) have been agreed and endorsed by law.

Other restructuring of public agencies happened in Belgium, where the Federal Board for the Fight against Illegal Work and Social Fraud and the Federal Coordination Committee were merged into the Social Information and Investigation Service aiming at figting large-scale benefit fraud. An increased mandate of labour inspection has taken place also in Romania and Poland, where respectively since 1999 and 2007, legality of employment of foreign workers is under supervision of the labour inspectorate.[90]

Inter-ministerial agencies, national steering groups and tripartite committees were also created. In 1998, Italy formed a National Committee for the Formalization of Non-Registered Labour with the aim to gaining knowledge on the informal economy. The committee proposes formalization policies and other initiatives.[91] More recently, the country strengthened the powers of the Ministry of Labour and Social Policy emphasizing the role played by labour inspectors, and enhanced coordination by setting a General Directorate for Inspection Activities.[92] In Luxembourg, an Inter-administrative unit to fight illegal work (CIALIT) has been in operation since 2000. In the same year, Finland created a Direction group to fight economic crimes.

Some other countries have formed specialized units or teams. This is the case of Spain, which in 2007 organized special teams for the informal economy, provided with guidelines for road transport and subcontracting chains. For the purpose of investigating social fraud related to posting of workers, the Federal Service of Social Security in Belgium created a cell of inspectors GOTOT. Moreover specialized teams for all cross border issues and for road transport[93] and a network of inspectors (COVRON) specialized in cross border activities and the control of foreign employers posting workers to Belgium were formed. Abuses in the use of the "*titres-service*" steered the National Office of Social Security to create a special team for analysis and detection of these practices. Other groups specialize in port work, maritime, and trafficking of human beings. In Portugal, an internal task force for undeclared work was formed in 2010 and later on, a work group to define the parameters of a campaign addressing the subject. The Polish labour inspectorate created the Department on legality of work in 2007, and a specialized unit in each district inspectorate. In Lithuania, a coordinating group was also formed to analyse trends of undeclared work, set priorities and approve particular approaches. In the UK the JoSets,

[90] National studies and Brussels workshop.

[91] Knowledge Bank of Good Practices of Eurofound, available at: http://www.eurofound.europa.eu/areas/labourmarket/tackling/search.php.

[92] Legislative Decree No. 124 of 23 April 2004 on the rationalization of the functions of social security and labour inspection.

[93] National study.

organized since 2001 articulated the forces of the Ministry of Work and Pensions (DWP), Revenues (HMRC) and the Employment Agency Job Plus to act in the sectors of construction, taxis and couriers, catering and hospitality.

Notwithstanding the differences between labour inspection systems in Europe, a common principle is the promotion of compliance with laws protecting the rights of the workers and this is the distinguishing feature of labour inspectorates towards other authorities. Labour inspectors often reinstate workers on their rights to wage and compensation. In Portugal, for instance, for the offender to pay the minimum fine, any outstanding rights of the workers will have to be readdressed. The acts of infraction refer all in-debt values towards workers, and can be immediately executed in courts by the public prosecutor, to which the labour inspectorate refers the cases, with a certification of the in-debt wages.[94]

Labour inspectorates face many difficulties and challenges to obtain results in the fight against undeclared work. Both employers and workers are often uncooperative, the latter because of fear of losing the job, or because of the immediate gains with envelope wages by not paying taxes or even on reason of a legal limitation to undertake the occupation such as the lack of certification, minimum age for employment, or illegal status in the country. Some workers choose to be undeclared when they are receiving unemployment or sick leave benefits, especially if they can work from home or work independently. Employers, by their hand, want to reduce operation costs and avoid the limitation imposed by labour law to their managerial flexibility. This resistance and the constant mutation of fraud practices oblige labour inspectorates to constantly update their capacities, where a strict analysis of the surrounding environment occupies a strong place. This explains the importance of collaboration with traditional stakeholders, such as social partners, as well as the overture to work with less usual stakeholders, like observatories, research institutes and universities, and NGOs.

3.2. Labour inspection planning experiences for undeclared work

Undeclared work has become a priority for many labour inspectorates and this is reflected in their annual planning (Belgium, France, Italy, Lithuania, Portugal, Spain, Romania). Planning on undeclared work as a regular activity to develop proactive action has become common for labour inspectorates in EU countries. When considering undeclared work, priorities of many labour inspectorates focus on high risk sectors and seasonal work.[95] These sectors include construction, agriculture, cleaning, retail, hospitality, tourism. In addition, employment and temporary agencies and all forms of recruitment with the use of intermediaries are also given a priority. Risk mapping is increasingly a major action for inspectorates, notably because of mandatory requirements of the EU Directive 2009/52/EC on sanctions against employers of illegally staying third country nationals.

Definition of priorities according to risks of non-compliance is based on accurate intelligence, in some cases. In Belgium, the Social Inspection Services Anti-Fraud Organization (OASIS) produces warning indicators useful to select individual targets, like

[94] Information from government.

[95] This, in many cases, brings upon ethical dilemmas for labour inspectors between the duty to report on immigrants with irregular permanence or work status and their mission on protecting workers' rights, as the signalization to the immigration authorities, mandatory on their quality of civil servants will lead to the deportation of the workers.

the increase of turnover while there is a decrease in the number of employees, reduction of registered staff above a certain threshold, large differences in total wage sums and numbers of employees compared to previous employment declarations.[96] In Portugal, priorities are set based on the indicators produced by the information system, cross checked with information provided by social security and social partners as a result of this, the action plan for 2008-2010 recognized as requiring major attention cases of totally or partially undeclared work; irregular use of fixed-term employment contracts; temporary work, placing and posting of workers in sectors reaching from the construction industry to seasonal works in agriculture and tourism. The multiannual plan established that 60 per cent of the 12,000 establishments to be inspected in the area of labour relations should be selected on basis of the risk of social fraud. One national coordinated campaign was developed every 3 months using all or a majority of labour inspectors. A central department prepared the intervention, developed guidelines, monitored execution and ensured coherence of approaches, and, for more complex or demanding action, intervened with the teams of inspectors in the field.

The accuracy of the chosen strategies depends on the access to reliable, complete and updated sources of information on enterprises, sectors, workers, previous inspection visits, imposed sanctions and interventions from other authorities. Political options, academic studies, official statistics and complaints received from interested parties are also considered as indicators on which to base future action.[97]

The expression of the phenomena in some countries led labour inspectorates to review their policies and integrate control of undeclared work in all of their visits. In Romania, regardless of the primary objective of the visit, detection of undeclared work is prevalent. OSH inspectors are deemed to immediately report to their colleagues any suspicion related to any form of irregular employment they may have noticed. This approach can produce results, but in any case, supervision of occupational safety and health standards should not be forgotten, as it is one of the main duties of labour inspection.[98] It should also be considered that statistics at the national and regional level in Europe[99] show that the economic crisis can considerably affect safety and health at all levels.

[96] National study.

[97] A massive inspection was conducted, for example, in the summer of 2010, where mobile teams of inspectors covered the whole national coastline in a week looking for unregistered workers in beach resorts, restaurants and bars. The same approach was used for other sectors such as construction and commerce, where teams of 20 to 60 inspectors covered selected neighborhood in few hours, visiting all establishments, in permanent contact by cellphone with coordinators in the headquarters. The sector and area to be inspected was announced to inspectors during a brief just before intervention to guarantee the surprise effect. Labour inspectors were required to gather all information immediately during the visit, having workers signing interview forms, to be used as evidence in court. A car of police officers patrolled the area to assist labour inspectors immediately in case of obstruction or refusal of any worker to be identified. These planned initiatives led to good results. In 2009, 5,622 employment relationships were regularized, more than 2,500 million euros for social security and a minimum of 5,500 million Euros in fines were collected and more than 15 million Euros were retrieved for workers, as in-debt payments (wages under the minimum set by collective agreements, unpaid vacation, overtime, etc.).

[98] National study.

[99] Review of the results of questionnaires on occupational diseases in the EU and the total incidence of occupational accidents among European Union countries. Senior Labour Inspection Committee. Internal document for the 56th meeting on 28 May 2009 in Prague, Czech Republic.

Although many inspectorates have a thorough experience of planning their activities based on risk analysis, this exercise is used more to classify levels of compliance with occupational safety and health standards than with labour relations. In fact, there are not many specific methodologies to map risks when thinking of undeclared work. Harmonized indicators at European level on what should drive the attention of labour inspection on this field are also still to be agreed upon.

Labour inspection action is particularly difficult when it comes to sectors where the employment relationship is either difficult to spot (domestic work) or demanding serious efforts to characterize the employment contract against civil contracts (professions where subordination is less evident and calls for accurate use of investigation techniques: doctors, lawyers, accountants, artists, journalists…).[100] On the latter case, lists of indicators provided by the law or central authority criteria helping to characterize the true nature of the facts work are the main tools used by inspectors.[101]

3.3. Labour inspection strategies and methods for undeclared work

According to Art. 3 of Convention No. 81, labour inspection has a twofold nature. On the one hand, it supervises the enforcement of legal provisions[102] (even prior to a formal and practical inspection[103]). On the other hand, it has a preventive function, providing information, and educative services. This multiple role makes the labour inspectorate a key institution to face the many challenges of undeclared work. As resources are limited, innovative approaches have to be found, especially by improving detection capacities, using complementary forces with other authorities and relying on the expertise and ground based knowledge of social partners. An analysis of the Eurofound has concluded that EU labour inspectorates still make a predominant use of deterrence when approaching undeclared work, though efforts on prevention and measures to transform undeclared work into formal employment are becoming common use.[104] In this regard, it should be noted that the European Commission Employment Guideline No. 9 had some influence on national options, by recommending a widespread approach including prevention measures.[105]

Among the preventive action information campaigns, hotlines, and call centres providing information on legal obligations and workers' rights are among the most usual

[100] National studies.

[101] See Bignami, R., Casale, G., Fasani, M. (2013), op.CiT.

[102] The workplace visit provides a unique opportunity to supervise compliance with a number of different aspects of the law and to improve labour relations with immediate effect.

[103] See Paragraph 2 of the Labour Inspection Recommendation, 1947 (No. 81), which calls on member States to make arrangements for reviewing plans for new establishments or new production processes, and Art. 17 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which specifies the preventive supervision of a new plant, new materials or substances and new methods of handling or processing products.

[104] Eurofound (2008), Measures to Tackle Undeclared Work in the European Union, available at: http://www.eurofound.europa.eu/pubdoc/2009/25/en/1/EF0925EN.pdf.

[105] Employment Guideline No. 9 on Undeclared Work, as adopted on 22 July 2003. Available at: http://eur-lex.europa.eu/LexUriServ/do?uri=OJ:C:2003:260:0001:0003:EN:PDF.

options of labour inspectorates. Enforcement is mostly based on the imposition of sanctions of administrative or criminal nature and increasingly on penalties relying on negative publicity given to enterprises using undeclared work, restriction to apply to public tenders and exclusion from financial benefits.

Strategies are developed either on a sectoral basis covering all forms of undeclared work (e.g. construction, retail), or focusing on particular manifestations (e.g. bogus self-employment), or on precise phenomena in sectors (e.g. false internships in mass media), or addressing precise economic groups (e.g. subcontracting for a given multinational company), or delimited regions and sectors (e.g. informal employment in small construction sites in a district).

Sectoral approaches are the most common. Italy, for instance, defined a strategy for agriculture and construction aiming at four regions (Calabria, Campania, Puglia and Sicily). Teams were made up of 550 labour inspectors from INPS, INAIL and Carabinieri. 10,000 agriculture firms and 10,000 building sites were selected for inspection from March to December 2010. As a result, more than 20,300 irregular workers were identified around which 9,150 were undeclared. Simultaneously with this, more than 10,000 violations of occupational safety and health standards were recorded in the inspected companies.[106]

Integrated approaches are increasingly being used. For instance, inspectorates covering occupational safety and health have been including psychosocial risks in their action, considering forms of employment and informality at the workplace as being related with their mandate (e.g. Germany). It is also being considered that there is a probability that non-compliance with occupational safety and health requirements goes hand in hand with violation of labour law and vice-versa. This reflects the importance of cooperation between inspectorates or different areas in the same inspectorate, as a way to gain efficiency and improved outcomes. Awareness of the need to approach undeclared work through multidisciplinary lens is also leading the labour inspectorates to define job profiles of labour inspectors in a way to include capacities on finance, accountability and information technologies, in addition to the legal expertise (e.g. France, Portugal).

Visibility is an important deterrent factor. Labour inspectorates are making use of mass media as a regular channel to disseminate information on legal obligations and as a marketing tool, were outcomes of inspection actions are revealed, such as the number and amount of sanctions imposed after an inspection campaign.[107] Interventions in a sector are announced through newspapers, so that enterprises can self-regulate their working conditions according to legal parameters, before the visits (Belgium, Italy, Portugal, Spain). Media are used for blame and shame purposes, where following judicial condemnation the labour inspectorate publicly reveals bad practices of offending enterprises.

The inspection visit is a crucial moment to gather evidence on undeclared work. Success depends to a large extent on accurate planning and use of institutional synergies. Databases, archives, information about the enterprise available on internet are sources used by labour inspectors to gain knowledge of the enterprise and the sector before intervention. There are some challenges for inspectors at this moment, like the need to pinpoint the location of hidden workplaces, locating the head of businesses, as well as during the visit the ability to identify all the workers in establishments, especially if these are disperse or do not have delimited physical borders, like construction sites and agricultural

[106] Eurofound knowledge bank.

[107] See an example on http://www.telebruxelles.net/portail/info/info-regionale/23114-manfestation-contre-la-fraude-sociale.

undertakings (reports of workers hiding or escaping from work places are common) or determining liability in subcontracting chains.

Additional problems consist of regularizing cases of non-compliance, sanctioning and compensating the workers whose rights have been violated without putting the workers' jobs or enterprise survival at risk. False independent work can also be a serious trial for labour inspector's effectiveness given the difficulty in gathering the indicators of existence of an employment relationship particularly if they are not unmistakeably defined by the law. Occupations less visible such as telework, homework or domestic work present particular problems, especially for identification of cases and access to workplaces.

The most common visits used by labour inspectorates to spot undeclared work are unannounced, usually blitz controls, where labour inspectors go to the premises, ask for personal identification and interview workers, cross results of interviews with enterprises' registries, social security inscriptions and other documents.[108] Often, police forces help to identify workers or to secure the premises avoiding workers from leaving the worksite while the inspection is being carried out. This type of "muscled" approach generally pends towards the imposition of sanctions and recovery of social contributions and it is used for high risk sectors or where other approaches were already tried without success, or where the use of informal employment on large scale was signalized. Comprehensive visits in joint intervention teams, in cooperation with other authorities and backstopped by the police are also organized on these cases.

The nature of many sectors (agriculture, commerce, hospitality, entertainment, tourism, private security, etc) demands for inspection visits outside of regular working hours, at night or resting days. The Spanish ITSS, for instance, increased night visits by 63 per cent and weekend visits by 234 per cent from 2007 - 2009. The outcome was an increase of identified undeclared workers from 34,784 in 2007 - 48,762 in 2009 and a growth of around 10 per cent in social security revenues.

Besides identifying the workers, interviewing them and cross checking their declarations with the content of documents, observation of working conditions with analysis of individual operations and tasks is also used as a method to define their precise occupation, especially when there is a need to establish the existence of the employment relationship. Extensive interviews with employers and their representatives, sometimes lawyers and accountants, to obtain information on the nature of contracts (e.g. bogus self-employment), signal underpayment of minimum wage, paid holidays and other benefits and identify the employer in extensive contracting chains. The interviews are often conducted at the labour inspectorate to avoid interference and create a neutral environment. Electronic files are accessed on the spot or downloaded for further analysis.

At operational level, the surprise effect of the inspection visit is fundamental to identify undeclared workers. If inspectors cannot have a swift access to premises the success of intervention is put at risk. However, it is reported that access to premises requiring biometric certification can be a modern and discrete method of obstruction to the labour inspection visit or at least a challenge to overcome for many inspectors. In fact, many enterprises are using sophisticated access controls to their premises, via conformity

[108] Most common documents checked by labour inspectors are the work contracts, staff registries, internal regulations, third country nationals' permits, registries of working hours and overtime, payslips, payments to social security, and licences (ex: temporary work agencies). Fiscal documents and commercial contracts are also verified to compare for instance, the declared workforce against the size of deliveries to clients, identify subcontractors placing workers on margin of legal requirements, bogus self-employment, or for the precise identification of the owner and relations with other enterprises.

of fingerprints, iris, etc. on reasons of control of absenteeism or security. The freedom of entry of labour inspectors is limited by these legitimate management options, especially on occasion of blitz controls. The time consumed to gain access to the premises is reported as allowing less compliant employers to hide or send away undeclared workers using separate exits such as garages. Special efforts of labour inspectorates are required to gather any kind of evidence on these cases, particularly when planning the visit.

Innovative approaches have led to successful cases. In Sweden, the ID06 project for construction has proven to be an effective control measure aimed at tackling undeclared work by requiring all workers at construction sites to register and carry proper identity cards. Similar measures have been introduced in Italy, Luxembourg, Norway and Portugal. In Italy, identity cards have been used on construction sites since 2006, although employers with fewer than ten employees are released from the obligation of issuing these cards by keeping a daily register. Also in Sweden, on January 2007, a law obliged staff registration for those working in restaurants and hair salons. The national tax agency estimated that about 4,200 workers were regularized as effect of this measure. Other innovative methods for identifying undeclared work include comparing the different bid prices for public tenders. When a bid is significantly lower than other competing offers, this is considered as an indicator of the risk that the employer does not pay social security benefits or other contributions, thereby allowing him to offer the services at below market value. This approach is used, for example, in Estonia and Portugal.[109]

Estimating undeclared work in plantations[110]

Spain uses a technique to disclose seasonal undeclared work during harvest seasons on orange plantations and vineyards.

Labour inspectors collect information on the size of the undertaking by consulting land registries, along with the production levels declared for effects of harvest. They then estimate the number of workers and working days needed to obtain such production levels. If the number of workers registered in the social security data base does not match with the calculation, employers are summoned to explain the reason for the mismatch. In case they do not reply or fail to convince, visits are rendered to the plantation to check and identify undeclared workers and severe penalties are issued in case they are found.

As the farms are in isolated areas, visits are prepared using Google maps.

The method produced good results, with an increase of 217 per cent of registration of workers with social security authorities in 2009 in the regions and sector.

Access to electronic files with information on the workers, wages and working hours is also creating some problems for labour inspectors. A practice of given businesses exists where they use software that allows for immediate modification of files whenever and only if labour inspectors ask them to provide evidence. As inspectors are not always trained on how to detect these fraudulent techniques, how to have access or even analyze electronic data, investigation may be difficult and not precise. To deal with this, Belgium inspectors can seal computer equipment when this is required for investigation or gathering of evidence.[111]

A sector where serious difficulties are reported is domestic work, on reason of the limitation of access of labour inspectors to the private household. In a large number of the EU countries, in line with the obligation of respect for privacy set by Art. 8 of the

[109] Eurofound knowledge bank.

[110] Information provided by the government.

[111] Article 35 of Penal Labour Code.

European Convention on Human Rights,[112] access to the private domicile depends on consent from the householder or judicial authorization. As inspection visits for control of undeclared work rely very much on the surprise factor, many inspectorates tend to see their intervention on the sector as leading to poor results and overall inefficiency. This, as well as the reduced number of complaints[113] can help to explain the low coverage of the sector. In Ireland, NERA has developed a pilot experience where employers are summoned by mail to let the labour inspector gain access into the household when the visit takes place. In case it is refused, the employer has to provide an alternative place for the meeting. The method has produced good results, but it still does not help to map where undeclared domestic workers can be found.

Violence against inspectors is a problem in many countries when visits are paid to high risk sectors and deal with clandestine businesses, but not only. Most serious cases happened in France, where two labour inspectors were killed on a farm in Dordogne, but particularly notice of verbal menaces are frequent. This is a reason why countries like Poland and Portugal always send inspectors in a team of two[114] or equipped with mobile phones. Commonly, when harassment is expected inspectors are accompanied by the police.[115]

Experiences from other inspection systems could be adapted to labour inspection, improving effectiveness. This is the case of an initiative organized in 2008 in Estonia, where the Tax and Customs Board notified 1,000 enterprises with wages below the sectorial level to justify the difference. As a result, 46 per cent of the notified companies adjusted the wages and increased declared amounts. This proved to be productive to control under-declaration of remuneration.[116]

3.4. Tools and technical support for labour inspectors

The first and better tool for labour inspectors to tackle effectively undeclared work is the law. The EU legislation provides some rules helpful for the control of legality of labour

[112] Article 8 of the European Convention provides as follows: "(1) everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[113] In Latvia, for instance, only 2 complaints from domestic workers were received in 2011, while in Portugal less than 20 complaints were received and in Spain none.

[114] Information from government.

[115] Following the creation of a workgroup in 2005, the Senior Labour Inspectors' Committee sent a questionnaire to Member States to get information on cases of violence against inspectors. From 25 responses, only two countries declared not to have observed violence. The acts reported took mainly the form of obstacles to the inspection visit and verbal violence. It was not signalled any relevant difference between Northern and Southern Europe nor between newer and older Member States, violence being observed mainly in very small companies and sectors such as construction, hospitality and agriculture. The SLIC elaborated a good practice guide on how to evaluate, prevent and deal with violent behaviours.

[116] Eurofound knowledge bank.

relations such as the obligation set for the employer to inform the worker on the conditions applicable to the contract set by the Council Directive No. 91/533/EEC.

Some legal provisions can, in fact, be quite helpful to address informal employment, false independent status, such as legal presumptions establishing the existence of an employment relationship[117] as prescribed by ILO's Recommendation 2006 (No. 198). In countries like Portugal there is a legal presumption of the existence of a labour contract when two or more indicators identified by the law are verifiable.[118] In Spain, the levels of subcontracting were limited for the construction industry and the concepts of contractor, subcontractor and independent worker were defined, facilitating the supervision of compliance and law enforcement.[119]

Technical tools developed for undeclared work include planning maps, criteria to select enterprises, manuals, operational guidelines, checklists and scripts for interviews, visit protocols and visit follow up procedures. As regards the latter, in Ireland, NERA inspectors carry out inspections using agreed case management procedures– including inspection checklists and questionnaires –which deal with the conduct of the visit and the follow up in cases of non-compliance. In Belgium, the SIRS (*Service d' Information et de Recherche Sociale*)[120] develops common tools for the different social inspectorates, such as manuals on enquiry powers of inspectors according to the Social Penal Code, instructions for monthly controls, instructions on the production and communication of statistics and a manual on the use of common forms, among others. Guides on legal interpretation (e.g. Guide on Transnational posting of workers, 2009), periodical information such as the CODAF newsletters, inform flash news about inspection operation, jurisprudence and press articles on undeclared work are prepared and, additionally, the regional permanent secretariat of CODAF is available to help inspectors on the legal and technical treatment of most difficult cases.[121] Also in Belgium, a fraud observatory at the ONEM inspectorate analyzes new forms of fraud and develops control tools. The UNIZO test can help to determine the nature of a contractual relationship through the use of a formula which

[117] E.g. Article 6 (3) of Directive 96/52/EC sets that a legal presumption of the employment relationship of third country nationals of at least three months duration should be presumed, unless any of the involved parties can prove the contrary. The common criteria to determine the nature of a professional relationship is the link of subordination from one party to the other. The Belgium law of 25 August 2012 establishes a legal presumption when more than half of predefined criteria on the existence of subordination exist. These criteria are, for example, the absence of economic risk for the independent, or the absence of any capacity of fixing the price of the services rendered. The presumption applies only to some sectors (construction, real estate, surveillance, transport and cleaning). See also Casale, G., (2011), the Employment Relationship. A Comparative overview, Hart Publishing, Oxford, ILO, Geneva.

[118] Article 12 of the Labour Code, approved by Law No. 7/2009 of 12 February 2009. The presumption can be established on the basis of the following indicators: when the activity is conducted in a place owned or determined by the beneficiary, when the work equipment and tools are property of the latter, hours of work determined by the beneficiary, payment of equal amount on a periodical basis as counterpart of the work rendered or when the work provider has a management position in the organizational structure of the beneficiary of the activity.

[119] Act No. 32/2006 of 18 October 2006.

[120] Public service created by the Programme Law of 27 December 2006 under the ministries of Labour, Social Affairs, Justice, ministry competent for independent and the deputy ministry in charge of coordinating social services and the fight against social fraud.

[121] National study.

mathematically defines whether a person is an employee or self-employed.[122] Spain has produced, in 2006, an operation guide for the control of irregular economy and work of migrants, added by operational criteria developed in 2007[123] and in France labour inspectors receive permanent legal and methodological support through inter-ministerial instructions.[124] In Portugal, the Central Directorate for Support of Inspection Activities, under the national Authority for Working Conditions keeps a database of legislation, jurisprudence and collective agreements on the intranet, where all the methodological tools are also uploaded.[125]

The National Employment Rights Authority codes of practice[126]

NERA has developed a Code of Practice and a Guide to Inspections document for employers, both available on their website. A code of practice for determining employment or self-employment status of individuals, prepared under the Programme for Prosperity and Fairness and updated by the Hidden Economy Monitoring Group in 2007 intends to eliminate misconceptions on who is a self-employed or a dependant worker. The code defines criteria on whether an individual is an employee[127] or a self-employed, alerts to the consequences arising from the determination of the individual's status and provides the contacts of organizations to contact in case of doubt.

Databases with information on businesses, workplaces, inspection visits and procedures are fundamental tools and exist in most of the inspectorates, though at different levels of sophistication and completeness.[128] ICT can improve labour inspection performance not only in detecting undeclared work but also on preventing non-compliance. In the Netherlands, for instance, a register containing identification of people fined for fraud warns the labour inspectorate and the tax authority whenever that person is registering a new temporary work agency. In Belgium, inspectors use encoded unified models with individual electronic signature to report offences to the competent body for imposition of fines. In Ireland, a web-based tool for registration of construction sites available since April 2012 accessible to the labour inspectorate provides a good basis to plan intervention in the sector.[129] Software can be used to map risks of incompliance, select targets and help when investigating companies or legal persons, but not many labour inspectorates are still making full use of these tools to the extent tax authorities do. In

[122] Bronstein, A. (2009), op. cit.

[123] National study.

[124] E.g. Circular of 11 February 2011 on the implementation of the national action plan against illegal work 2013-2015, signed by the ministers of economy and finances, budget, interior and labour).

[125] Information from government.

[126] National study.

[127] The criteria are as follows: Someone under the control of another person, who directs as to how, when and where the work is to be carried out; supplies labour only, receives a fixed periodic wage, cannot subcontract the work, does not supply materials or equipment for the job, is not exposed to personal financial risk in carrying out the work, works set hours or a given number of hours per week or month, etc.

[128] The lack of specialized staff to administer and produce intelligence is a challenge for some inspectorates. Even if the software responds to the main needs, it is not used to its full capacities because of lack of data extrapolation and shortage of automated intelligence options.

[129] National studies.

Ireland, for instance, the Revenue authority examines electronic systems of businesses, copies and downloads electronic data for further analysis with use of computer-assisted intelligence automated techniques. Digital information extracted is stored on encrypted storage devices guaranteeing confidentiality of data.

Measurement of minimum costs of activity if all labour obligations are met can help labour inspectorates to identify fraud. In Italy, a tool was developed to measure labour costs in construction in 2010 following a social partners' agreement on defined reference minimum labour costs. *Cassa Edile* (social security institution) at provincial level certifies if a firm complies with these costs, on which case a reduction in social contributions can be offered. Companies offering lower costs should explain the reason for the difference. Failure to convince will imply a declaration of irregularity which will only be cleared if the firm pays the difference between the declared costs and the due level.[130] In another case, the Portuguese Authority for Working Conditions has created with sectorial social partners a reference table for private security where costs related to collective agreements' minimum wages, social contributions, work accidents insurance, medical surveillance and other indicators are considered. When enterprises or public services are selecting a security service provider they are recommended not to go below the minimum cost. By requesting to client companies or ministries the commercial contracts where the price of the service was set, labour inspectors are able to calculate if there is a profit margin for the private security provider. If not, the provider will be selected for further inspection and signalled as a high risk target to be kept under strict surveillance.

New formal obligations for employers can sometimes be useful for control purposes. In Greece, a measure was introduced by Law No. 3996/2011, under the second memorandum of the Greek government with the Troika. Enterprises from sectors to be selected by ministerial decision have to use electronic labour cards to register all working time. Adherence to the measure is compensated by a reduction of indirect labour costs, while non-compliance is punished with strict sanctions. Labour cards depict automatically the times of arrival, departure and pauses of workers. Information is sent electronically to a common database accessible to SKEE, IKA and ETAM.[131] In Belgium, a law from 27 December 2012 introduced the obligation of daily registry of all persons in construction sites with at least two entrepreneurs working simultaneously or in succession or where the surface is at least of 1000 m^2.

The use of electronic devices can also facilitate the work of labour inspectors, such as it happens with the control of overtime of road transport workers under EC Regulation No. 561/2006,[132] by accessing the digital tachographs with authorized cards, providing the immediate reading of distribution of time or allowing the download of accumulated data for analysis of working and rest periods with use of a software.

3.5. Training programs for labour inspectors

Undeclared work is included in the training programmes of many inspectorates both at occasion of initial or continuous training. For example, France and Portugal, during the

[130] Eurofound knowledge bank.

[131] Eurofound knowledge bank.

[132] Regulation (EC) No. 561/ 2006 of the European Parliament and the Council of 15 March 2006, on the harmonization of certain social legislation regulating the road transport and amending Council Regulations (EC) No. 3821/85 and (EC) No. 2135/98 and repealing Council regulation (EEC) No. 3820/85, published in the Official Journal L102, of 11 April 2006.

initial training, an average of two weeks is dedicated to inform new appointed inspectors on how to detect and use different techniques to investigate fraud, with particular attention to atypical forms of work in violation of labour law, such as bogus self-employment and informal employment. In the latter, half of the labour inspectors received extensive training on labour fraud.[133]

In France, the trainers are experienced labour inspectors, magistrates and agents from other supervisory bodies. The INTEFP (*Institut National du Travail, de l'Emploi et de la Formation Professionnelle*) provides specialization inter-institutional trainings covering analysis of illegal work cases and improvement of evidence gathering and interviewing techniques. The programme includes modules of control methodologies, road transport, international provision of services, false subcontracting, agriculture and illicit exercise of regulated professions such as ambulance drivers and private security agencies. A new Inter-regional training center (CIF) inaugurated in Montpellier in 2011 in collaboration with the National School of Competition, Consumption and Fraud Repression (ENCRF) has inaugurated a common training for labour inspectors and economic inspectors. The national network of public service schools also organizes common trainings for civil servants under probation, helping to mindset future collaboration. In 2012, 700 officers were trained.[134]

In the Netherlands and Spain,[135] training is equally developed on how to detect fraud. Spain trains inspectors on how to cross data sources such as revenues declaration and accounting logs. In Belgium, every office has a permanent training group to organize regular training on new subjects, for instance recent legal acts. E-learning is also available, for instance on the "process-verbal". The Czech Republic has recently (2012) transferred 178 employment officers to the State Labour Inspection Office, following which training was provided.

On cause of the economic crisis, though, some countries are not in condition to train the inspectors. In Romania, in the last four years no actual training addressing undeclared work was given to labour inspectors, weakening considerably their capacities. Past training incorporated a comprehensive set of information on types and causes of undeclared work, legislation and inspection procedures.

Labour inspectors need to be capacitated on the use of soft skills to conduct visits on undeclared work as they will be dealing regularly with non-cooperative employers, poorly informed workers, migrant workers and can face obstruction to inspection. Joint visits with other authorities will require high levels of assertiveness for which training is also suggested.

Recently, at the EU level, the project Euro Detachment[136] coordinated by the French INTEFP and ASTREES, provided training to 30 labour inspectors and other officials from five countries[137] on control of the effectiveness of the "*acquis communautaire*" on posting of workers, building capacities on supervision of the application of Directive 96/71. The training was designed under an approach of problem solving and included immersion visits

[133] Information from governments.

[134] National study.

[135] International studies.

[136] http://www.eurodetachement-travail.eu.

[137] Belgium, France, Luxembourg, Poland, Portugal, and Spain.

where participants could observe how their peers were dealing with real cases. An interactive site was created to foment cooperation between inspectors of the participating countries. Networks such as RIIFT (*Réseau international d'Institutions de Formation dans le domaine du Travail*[138]) also help to facilitate experience sharing of training schools or departments of labour inspectorates and other labour administration institution on their practices and tools, aiming at building an international community of practice on training strategies.

When it comes to a possible European training, the countries involved in the studies revealed caution, as the legal frameworks are diverse and do not share common basis besides the specifics of the Directive posting of workers, on contrary of what happens on occupational safety and health, labour inspection systems themselves are diverse and institutions involved in the fight of undeclared work and social fraud are equally different from one country to the next. Training on subjects such as soft skills or experience sharing was welcomed, nevertheless, as well as possible workshops for decision makers on strategy setting.

4. Preventive approaches to undeclared work

4.1. Incentives for compliance

Although, many measures which are provided by the legal system are not under direct use or control of labour inspectorates, they are helpful for their action, and are used with a view to reducing the phenomenon, such as:

- Reduction of administrative burdens for enterprises. In Hungary, employers can use simplified labour contracts for seasonal work (agriculture and tourism) and declare workers by text message or electronically via a client gateway system.[139] Taxes are paid on a daily basis by entering a code into the text message or into the gateway. Between 1st August and 31st December 12.5 million work days were registered using this method.[140]

- Facilitation of creation of new businesses. In Portugal, an enterprise can be created in a one-stop-shop in a couple of hours, receiving all the documents required for immediate operation.[141]

- Simplification of compliance. In Spain, a common certificate of compliance with fiscal, social and labour obligations can be obtained through a single request.[142] Luxembourg simplified registration of domestic workers in 1999. The employer pays the net wage to the domestic worker, fills in a single declaration and sends it

[138] http://riift.itcilo.org.

[139] Simplified Employment Act (Act 2010/LXXV) introduced on 1 August 2010, amended on 29 December 2011.

[140] Eurofound knowledge bank.

[141] Ibidem.

[142] Ibidem.

to social security (CCSS), which directly calculates the gross salary and collects the contribution from the employer. Every six months, a declaration is sent to both parties of the employment relationship with information of what has been paid.[143] A simplified declaration system is equally provided by LIMOSA[144] in Belgium. Employers register electronically new employees and the system automatically notifies all social security institutions.[145]

- Incentives for purchasers or for workers. In Belgium and France, the government introduced the "*titres-services*" to encourage citizens to stop using undeclared domestic work (see box below).[146] Denmark introduced in 1994 the home service scheme, administered by the Danish Commerce and Companies Agency, which makes it possible to receive a subsidy for garden work, shopping for daily goods, cooking, cleaning, laundry, bringing children from and to school, walking animals and packing in connection with moving.[147] In Finland, a tax credit for domestic workers was introduced in 2011, where it is more advantageous to the householder to ask for a receipt than to use undeclared services. In 2004, more than 155,000 households availed of this credit. Since 2009 the scheme has started to cover installation and maintenance of ICT in the home.[148] Similar schemes exist in Switzerland.

The services voucher in Belgium[149]

In Belgium, vouchers can be bought from registered enterprises (approved by the Service Voucher Recognition Commission at the National Employment Office) to pay for domestic work. Each voucher corresponds to one hour of work. The payment is partially deductible and in addition the registered company is entitled to a government subsidy. Workers have a service voucher employment contract for fixed term or open ended, full or part time, accumulating social security rights and are insured against occupational accidents. Users date and sign the voucher and hand it over to the worker, who passes the voucher to the enterprise, which in turn sends it to the issuing company in charge of refunding the value. Users can buy a maximum of 500 vouchers per year. From 1 January 2013, each voucher costs 8,50 Euros. The initiative has proved to be successful. In 2010, over 136 000 people worked in these companies. Users have grown from 120,247 in 2004 to 857,471 by June 2012.[150]

- Introduction of preventive controls. In the Czech Republic, the DONEZ programme allowed the government to identify about 10 per cent of people to be likely expelled from the unemployment register because of being engaged in undeclared work, during the first five months of implementation. The programme obliged the unemployed to present themselves in person at the post office at

[143] Ibidem.

[144] Electronic communication of beginning and end of a labour relationship between an employer and a posted worker.

[145] National study.

[146] Ibidem.

[147] Eurofound knowledge bank.

[148] Ibidem.

[149] Ibidem.

[150] Source: Federal Public Service for Employment, Labour and Social Concertation.

prescribed but unpredictable times.[151] In Belgium, employers posting workers are obliged to disclose to Belgium clients the L1 certification, whom on their part have to report to social security all cases of posted workers for which certification was not exhibited. Failure to comply creates penal liability.

- Active employment measures that can prevent people from engaging in undeclared occupation, such as the test trading scheme generated in the UK, where the unemployed can test a business idea for self-employment for a time period without losing the unemployment benefit, or in Belgium, where long term unemployed can work a determined number of hours per year in areas such as gardening or caring, placed by a local employment agency, paid by users with cheques bought in their commune of residence, and keeping unemployment benefits.[152]

- Cooperative relations with biggest tax payers setting good examples of collaboration of public authorities with private initiative. In Spain, major problems of reference companies are discussed in a common forum with authorities. This helps the administration to better understand the perspective of companies and to have a wider view of the problems in each sector.[153]

- Promotion of self-regularization initiatives. In Spain, in 2011, following the Royal Decree No. 5/2011, of 26 May 2011, employers were provided with the possibility to regularize undeclared work situations. They were invited to sign labour contracts lasting at least six months and to register workers in social security before 31 July 2011. If they did so, no sanction would be imposed nor backdate social contributions would be demanded. After this deadline, stringent sanctions would be applied.

In Italy employers regularizing migrant irregular construction workers were offered fiscal incentives. In 2001, an automatic regularization procedure was installed where employers who declared their willingness to regularize taxes and undeclared workers were given a general amnesty from contributions and taxes not paid in previous years. A progressive regularization process was also installed, through individual plans submitted to the Committee for Formalization of Irregular Labour (CLES). This committee consists of members from the Ministry of Labour and Social Policies, the Ministry of Environment and Territory, INPS, INAIL, local health units, prefectures, municipalities and trade unions. However, the initiative was not as successful as expected.[154] Similar initiatives happened in Belgium, Ireland, and the Netherlands.[155]

Other initiatives for self-regulation exist, targeting different sectors. In Portugal, this is a method used at least since the late 1990's with good results. The initiatives are planned and monitored with deep involvement of social partners. Employers' organizations, for instance, had a strong participation and were decisive for regulation of the merchandising sector where bogus self-employment was widely used.

[151] Ibidem.

[152] Ibidem.

[153] Ibidem.

[154] Eurofound knowledge bank.

[155] These initiatives are not always successful, in both cases of Spain and Italy there was a small adhesion from employers. In Italy, for instance, in 2002, 800 applications were submitted, involving 1,500 persons.

The trend for simplification coexists with more stringent obligations for employers, especially of pre-declaration, reliable registration and self-assessment. In Slovakia, for instance, since December 2009 employers of risk industries have been obliged to report new recruited workers to the labour inspectorate within 30 days from start of activity.[156]

4.2. Preventive measures of labour inspection

Labour inspectorates have introduced press campaigns, partnership agreements and other incentives to try to encourage registration of undeclared workers. This preventative approach intends to change community attitudes. For instance, the Polish labour inspectorate issues press material concerning prevention of illegal employment and provides training on the subject to social partners and other public authorities entrusted with the supervision of working conditions. This kind of regular information services is provided by many inspectorates.[157] Release of information is also a strong feature of the Irish approach to fostering compliance. NERA has information officers providing guidance on labour law compliance by phone, additionally to the information available on the website and printed resources.[158] In France,[159] construction owners are elucidated about their obligations when applying for a licence. Countries such as Spain develop education programmes in schools.[160] Belgium organizes road shows, and introduced FAQS on institutional websites.

Campaigns are one of the main tools used by inspectorates to reduce undeclared work. The nature of these tools differs depending on the objectives and more or less repressive orientation of national authorities. Some campaigns reside on providing information to employers, workers or the civil society while others consist on the development of targeted operational visits to a given sector or to tackle a precise problem. Many campaigns are developed in two different stages, first providing information and then visiting workplaces to enforce the law. Spain, for instance, has engaged in preventive campaigns for seasonal work in agriculture and planned a major campaign for 2012 aiming for the complete control of production chains making use of the mechanism of social corporate responsibility. Similar initiatives are carried out in almost all of the EU countries usually targeting sectors where risks of non-compliance are higher or specific phenomena were spotted. Campaigns are not only addressing informal employment, but very much under-declared work. The preparation of communication and inspection campaigns for undeclared work is quite detailed in countries like Belgium, France, Italy, Portugal and Spain, with a strong support from social partners and involvement of other institutions. In France, an initiative focusing on seasonal tourism work was based on the idea that satisfied workers will provide quality services. This was a main argument to deter employers from using illicit practices.[161]

Control of access to given sectors or to the labour market is also used as a preventive tool against social dumping. In Norway, there is since 2011 a compulsory approval scheme

[156] Ibidem.

[157] Ibidem.

[158] National study.

[159] Eurofound knowledge bank.

[160] Ibidem.

[161] Information provided by the government.

where companies rendering cleaning services have to seek for approval from the labour inspectorate, which can ban companies that were not approved. Spain created a register of accredited enterprises for construction, whose licence can be cancelled as a result of inspection.[162] The same applies in most of the countries for private employment agencies, being either the labour inspectorate or other service of the system of labour administration to certify the companies.[163]

The EU has set as minimum requirements to prevent the employment of illegally staying third-country nationals, that employers should check if the third-country national has a valid residence permit or another authorization for stay before recruitment and notify the authorities about the employment relationship.[164] Measures were also undertaken in several countries to promote legalization of undeclared migrant workers. In Belgium, France, Italy, Spain[165] and Portugal[166] several programmes have been carried out, in many with direct involvement of labour inspection providing information to migrant workers and engaging in visits with the purpose of promoting the formalization of contracts. In Poland, there were three amnesties for immigrants with irregular status in 2003, 2007/2008 and 2011. Finally, the Act on Legalisation of Stay of Some Foreigners in the Territory of the Republic of Poland, which came into force in 1 January 2012, allows for irregular migrants to seek for a residence permit provided that some conditions are met, such as a continued stay with no interruption since at least 20 December 2007. Foreigners awarded with the permit are allowed to work. By mid-August 2012, a total of 9,154 applications were submitted, of which 2,883 were approved.[167] Some different initiatives have been taken. In Belgium, the abuse of false self-employment status by European migrants led the government to legislate in a way to demand payment of their respective social security taxes from the day they arrive in the country.[168]

Prior declarations to the labour inspectorates can act as a deterrent. This is the case of the prior declaration of posting of workers, usually consisting of the name of the worker, dates and place of posting, and predictable duration, or working schedules and wages in the case of France, or the address of the person in possession of social documents in the territory of the country where the work is executed, in the case of Luxembourg, or even a clause according to which the posting employer engages himself to respect the rules of the receiving State.

[162] Law No. 32/2006, of 18 October 2006 and Royal Decree No. 1109/2007, of 28 August.

[163] Eurofound knowledge bank.

[164] EU Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards and measures against employers of illegally staying third country nationals published in the official Journal of the EU L 168/32, of 30 June 2009.

[165] National studies.

[166] Information from government.

[167] Eurofound knowledge bank.

[168] Programme Law of 27 December 2012 (articles 42-43).

4.3. Sanctions for undeclared work

As mentioned in the Report of the 100th ILC, labour inspection cannot be fully understood without sanctions.[169] Most countries use fines and administrative proceedings as sanctions in labour inspection. In general, a good number of countries have amended their laws so that sanctions may be deterrent, with higher amounts for fines and more expedite procedures (Austria, Czech Republic, Denmark, France, Greece, Italy, the Netherlands, Portugal, Slovakia, and the UK).[170] Criminal sanctions are usually reserved for the most serious cases of social fraud and violations of human rights like human trafficking for forced labour. This is the case of Greece, where labour inspectors can impose fines from 500 to 50,000 Euros and can submit reports to the public prosecutor for criminal liability as well.[171]

In countries such as France, Germany and Norway, penalties for undeclared work can include detention. In others administrative fines are imposed. The relative seriousness of infringements is considered in many systems when calculating the exact amount of the fine. In the Czech Republic, illegal employment is classified as an offence for which a natural person or foreign national may be fined up to CZK 10,000 (about €362 as at 22 January 2009). A natural or legal person who enables the performance of illegal work and thus commits a misdemeanor may receive a fine of up to CZK 2,000,000 (€72,375).[172] In Belgium, the Social Penal Code establishes four levels of administrative sanctions (see table below).

Social Penal Code: sanctions (with additional decimals)

Level of sanction	Imprisonment	Judicial fine	Administrative fine
Level 1			60 to 600 euros
Level 2		From 300 to 3,000 euros	150 to 1,500 euros
Level 3		From 600 to 6,000 euros	300 to 3,000 euros
Level 4	From 6 months to 3 years	From 3,600 to 36,000 euros	1,800 to 18,000 euros

Belgium penal and administrative fines according to Art. 101 of the Social Penal Code

Most of sanctions applicable to undeclared work and social fraud are level three or four. Most severe sanctions are applied to cases of employment of illegally resident migrants or absence of immediate declaration of new employees. Administrative and penal fines can never be imposed together for the same facts, the first ones being applied when the public prosecutor decides not to make use of the penal sanction. Recidivist offenders can be sanctioned by the double. If the injured party is not a civil party in the judicial procedure, the judge will order back-payment of social contributions and interest.

A so called solidarity contribution is calculated by the National Social Security Office and forced on a basis of a report of the labour inspector or of a judiciary police for violation of the DIMONA obligation (declaration of workers). It equals the triple of the contribution corresponding to the applicable minimum wage, by a minimum of 2,500

[169] ILO (2011), *labour Administration and Labour Inspection,* Report V, 100th session, ILC, Geneva, § 340.

[170] Information provided by governments.

[171] Law No. 3672/2009.

[172] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/cz003.htm.

Euros, to which some deductions can be applied. If the worker is an illegal resident, the immigration office will ask the employer for reimbursement of the repatriation costs.

As mentioned before, in order to ensure an increased deterrence effect, several reforms have been enacted in a number of countries setting harsher punishment or speeding up procedures. Slovakia is paradigmatic on this sense, where the sanction for not registering a worker rose from 100 SKK for each worker and working day to 500,000 SK in 2004. Spain has increased fines for serious offences (3,126 to 10,000 Euros). All companies sanctioned for a very serious offence became deprived of public benefits for a period of two years and of applying for public tenders for a period of five years.[173] In Romania, new criminal offenses were introduced in 2011.[174] In Greece, the Act No. 3966/2011 introduced a new obligation for employers to pay pecuniary fines on-the-spot. In Belgium, sanctions procedures of the four inspectorates dealing with social fraud keeps increasing since 2008.[175] In Italy, the fine is multiplied by the number of workers and working days (maxi-sanction). In 2007, Austria increased the maximum fine for violation of the obligation of registration of workers in social security from 3,360 Euros to 5,000 Euros for each worker. Sanctions have been strengthened in many other countries including Denmark and the Netherlands,[176] but despite this, inspectorates report that there is an insufficient application and success of enforcement depends very much on the courts capacities to follow up on the cases.

Other sanctions are sometimes considered to be more effective than fines. Closure of the establishment is possible in France, Greece,[177] Slovakia[178] and Portugal,[179] but is rarely applied. In Greece, for instance, closure of business was imposed on 20 companies in the period from 1 January to 31 October 2012.[180] In Italy, if the presence of undeclared workers equals a percentage equal or greater than 20 per cent of the workforce in an establishment, labour inspectors can order the immediate suspension of the business activity.[181]

In Belgium, the bank accounts of the offender can be blocked. In France, successive revisions of the Labour Code, have added a set of penalties (Art. L.324) which can be applied cumulatively for violating provisions on undeclared work, consisting of up to three years of imprisonment and up to 45,000 EUR in fines (for instance for use of disguised employment relationships), or even up to five years of imprisonment when minors in school age or foreign workers in irregular situation are involved or as much as five year

[173] National study.

[174] National study.

[175] 7,965 criminal procedures in 2008, 7,997 in 2009, 8,093 in 2010, 9,035 in 2011, 9,059 in 2012 (national study). From beginning of 2007 to 30 June 2012 the value of imposed fines was of 22,711,813,17 Euros, from which more than 18.

[176] National study.

[177] Information provided by the government.

[178] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/sk016.htm.

[179] Art. 562 of the Labour Code, approved by No, 7/2009, of 12 February 2009.

[180] Information provided by the government.

[181] Article 14 of Legislative Decree No. 81 of 2008.

prohibition from operating as an employer in the same sector. Deprivation of social benefits is also foreseen.

In most countries, labour inspectors can advert or notify employers to any non-conformity with the law, such as underpayment of wages. In Spain, labour inspectors can equally notify employers to pay social security contributions and even to promote the registration of the company.

Reforms of labour law have also introduced mechanisms turning labour inspection into a more effective function, by establishing reversals of the burden of proof and lists of indicators for the determination of employment contracts against false commercial agreements, legal presumptions of minimum periods of employment when undeclared workers are detected on inspection visits and joint liability schemes.

These later prove to be effective as the main contractor is held responsible for the offences or for the payment of fines for violations committed by subcontractors. In Spain, a recent law extended the liability of contractors for social security debts of subcontractors for the duration of the contract. In Finland, according to Law No. 1233/2006, of 1 January 2007, amended in 2012, contracting parties are required to ask for and obtain documents certifying registration and payment of taxes from subcontractors, as well as compliance with collective agreements. The contracting party has to inform its workers' representatives of the use of subcontracting or temporary work. In 2010, more than 2,500 contracts were examined by the authorities and about half were non-compliant. By March 2011, more than 300,000 Euros in fines had been imposed.

Joint liability schemes were also introduced in Austria by the 2009 Customer Liability Act and 2011 Fraud Prevention Act. The so called Art. 30bis in Belgium[182] is paradigmatic on this sense. The developer who pays for work to a contractor or subcontractor which at the moment of payment has debts to social security is deemed to retain and send to ONSS 35 per cent of the total amount. Where the developer uses a contractor that has social security debts at the conclusion of the contract, the developer will be jointly liable for the debts of the contractors. The same applies for the contractor with respect to the debts of any subcontractor. Given the extent of false independent work in large subcontracting chains, Spain introduced the responsibility of the main contractor for debts of contractors to self-employed workers.[183]

Liability is also attributed to individuals behind enterprises. In the Netherlands, estimates have shown that for every 50 - 60 illegal labour brokers caught, 70 per cent of fraudulent temporary work agencies are closed down. Considering this, national authorities and social partners engaged in a new programme (the Rotterdam project) with the aim of getting to the individuals behind these agencies. The same has recently taken place in Ireland with inspectors going after individual directors and company accountants.[184] In Portugal, the labour code sets the liability of the director of a business for the payment of fines imposed on the company in conjunction with this latter for breaches of labour law.

[182] Article 30bis of law of 27 June 1969, amended by Article 55 of the Programme Law of 27 April 2007, published in the official gazette of 8 may 2007.

[183] Charter of Self-Employed Work approved by Law No. 20/2007 of 11 July, published in Buletín Oficial del Estado, No. 166 of 12 July 2007.

[184] Information provided by the government.

Sanctions for employers accepting workers from third countries in irregular status have become stricter, as an effect of EU Directive 2009/52.[185] In most countries, the use of irregular migrant workforce creates criminal responsibility both for employers and undeclared migrant workers. In Greece, a 500 euros fine is imposable to employers of third-country nationals living legally in the country, but that are not able to demonstrate the necessary documents at the time of inspection.[186] In France these workers can face one to three years in prison or fines for unauthorized entry into the national territory. Moreover, in Portugal banned undeclared workers will not be allowed to re-enter the country.

It must be reflected, in any case, that enforcement of sanctions should be accompanied by measures for protection of migrant workers' rights, as recommended by the mentioned EU Directive, according to which the employer should be required to pay to the third-country national any outstanding remuneration for the work undertaken and any outstanding taxes and social security contributions. It highlights that if the level of remuneration cannot be determined, it should be presumed to be at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches. The employer should also be required to pay, where appropriate, any costs arising from the sending of outstanding remuneration to the country to which the illegally employed third-country national has been returned. It further states that Member States should ensure that claims are or may be lodged and that mechanisms are in place to ensure that recovered amounts of outstanding remuneration are able to be received by the third-country nationals to whom they are due (…) Member States should (…) consider the possibility and added value of enabling a competent authority to bring proceedings against an employer for the purpose of recovering outstanding remuneration.

For this purpose, the French National Plan against Undeclared Work 2013-2015[187] directly expresses that additionally to the sanctions for employers, it is important to inform workers about their entitlement to compensation even after their return to their country of origin.

Adoption of deterrence measures imposing administrative sanctions that target the economic interest of enterprises is being used, like stripping a business' eligibility to compete for public procurement contracts and public tenders (Ireland, Portugal), the withdrawal of public subsidies (Hungary[188]), or the temporary or final closure of an establishment (France, Greece, Italy). Naming and shaming measures such as the publicity of lists of enterprises that commit gross violations of labour law is equally used. In Portugal, enterprises that have committed very serious offences can have their name publicized on the labour inspectorate's website.[189]

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[185] Directive 2009/52/EC Of The European Parliament and of The Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The Directive has set a general prohibition of the employment of third country nationals who do not have an authorization to be a resident. The definition of employment for this purpose comprehends all activities that are or ought to be remunerated, undertaken for or under the direction and/or supervision of an employer, irrespective of the legal relationship.

[186] Information provided by the government.

[187] http://www.gouvernement.fr/sites/default/files/fichiers_joints/plan_national_de_lutte_contre_le-_travail_illegal.pdf.

[188] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/hu016.htm.

[189] Art. 562 (1) of the Labour Code.

When it comes to installment of workers' rights, effective measures have been introduced in the domestic law of many countries. In Slovenia, amendment to the Prevention of Illegal Work and Enterprises Act of December 2006 imposed on employers that are caught with undeclared workers to conclude a contract for an indefinite period with the workers. The employment relationship is formed automatically with no need for a judicial decision. Attestation of employment is given to the worker within three days after a labour inspector established the facts.[190] An attention-grabbing approach exists in Belgium for illicit placing, where the worker can force the user to conclude a work contract for an undetermined period, if the violation of the law is proved.

Workers are also sanctioned when involved in undeclared work. This is the case in most of the countries when they receive undue social benefits for unemployment, sickness, etc. while being employed or for false declarations to public services or when they do not declare new employment.

In terms of procedures, Belgium introduced in 2011 the ePV, electronic reporting of infractions available for social inspectorates,[191] where all reports are signed electronically by inspectors using an eCard and stored in a central electronic archive. A measure to speed up procedures was also created, where if the labour auditor renounces to public action or does not decide within six months from reception of the "*procès-verbal*", the administrative authority may follow on with the administrative sanction procedure.[192] The Programme Law of 29 March 2012 also introduced new causes of interruption of limitation of social debts.

However, even though much effort is being undertaken, sanctioning remains a challenge, in particular with regard to enforcement, still problematic when dealing with subcontracting chains or cross-border infractions. In countries such as Belgium, inspectorates are limited on the recovery of social security contributions since there is no joint liability scheme and even if the criminal law provides some mechanisms, such as the immobilization of bank accounts or property to recuperate benefits obtained by illicit practices, its use is not frequent.

5. Cooperation and collaboration experiences

5.1. Cooperation with other administrative authorities

In order to effectively tackle the multiple features of undeclared work labour inspectorates need to cooperate with other actors as set in Art. 5(a) of Convention No. 81 and Art. 12 (1) of Convention No. 129. The number and nature of institutions dealing with undeclared work in Europe is multiple, among which labour inspectorates, social security, tax administration, immigration services and to some extent the police, all of them with a specific nature and mandate quite varied and in some cases not well known to their

[190] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/si002.htm.

[191] The project won an eGovernment award from the Federation of Technology Industries and it is estimated as originating cost savings of 5 million Euros per year.

[192] Circular No. 12/2012 of the General Prosecutors' College, of 22 October 2012. Available at: http://www.google.be/url?sa=t&rct=j&q=poursuite%20infractions%20sociales%20&source=web&cd=1&cad=rja&ved=0CDAQFjAA&url=http%3A%2F%2Fwww.om-mp.be%2Fextern%2Fgetfile.php%3Fp_name%3D4332732.PDF&ei=lrTyUJ2BHou10QXs7IFw&usg=AFQjCNFj6N8XhGtQR49Xw160dOHAJQUNcg&bvm=bv.1357700187,d.d2k.

counterparts or to a large extent not known from one country to another. Projects as ICENUW (Implementing Cooperation in a European Network against Undeclared Work)[193] identified the competent authorities in some countries, but still an inventory constantly updated of all public services working in the subject at European level is to be done.

At country level, France was one of the first countries to establish an innovative system of cooperation by setting up an inter-ministerial team to fight against illegal work in 1997 (DILTI[194]) and currently with the DLNF,[195] in charge of inter-ministries coordination. Since then, other experiences have followed.

Cooperation on undeclared work as in other issues resides on formal Memorandums of Understanding, informal arrangements or participation in joint committees, councils and similar structures. Poland, for instance, concluded agreements in 2007 under which the tax authority is notified of any unlawful activity revealed in the course of inspection and employment offices are informed of workers without contracts found in inspection visits. In Spain, a Fraud Observatory involving the General Treasury of Social Security and the labour inspectorate was created in 2008 for permanent update of a catalogue of fraudulent practices and risk profiles in different sectors, establishment of action protocols and study of legal gaps. Previously, at least since 2005, joint plans were already being defined between the ITSS, TGSS (General Treasury of Social Security), INSS (Social Security National Institute), ISM (Social Institute for Marine) and SPEE (Public Employment Service). In Ireland, a joint High Level Group of the Department of Social Protection and Revenue meets quarterly to ensure a multi-agency approach to undeclared work.

France has enhanced its cooperation mechanisms in 2012 by establishing an inter-institutional experts' working group to analyze legal complex issues, harmonize interpretation and improve work practices by studying in detail complicated judicial cases and flaws that can result in failure before the court. New territorial cooperation based on cells to fight against undeclared work was established. In Luxembourg, an inter-administrative unit for combating illegal work set up in 2000 is coordinated by the Labour and Mines Inspectorate to conduct unannounced joint inspections.[196] In the UK, by March 2011, 200 staff worked in the JOSETs, teams joining the forces of the Department of Work and Pension, Revenues (HMRC) and the employment agency Jobcentre Plus to tackle social and fiscal fraud.[197] Other countries have created multiagency teams, such as the case of the multi-ministerial body to control illegal employment of foreign workers

[193] Project sponsored by the European Commission in 2010 to explore the possibilities of cooperation between national institutions in charge of combatting undeclared work, involving Belgium, France, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania and Spain. For more details consult: http://www.socialsecurity.fgov.be/en/conferences/icenuw/.

[194] *Délégation Interministérielle à la Lutte contre le travail illégal*.

[195] *Délégation national à la lutte contre la fraude* created by Decree No. 2008-371 of 18 April 2008, later amended by Decree No. 2010/333 of 25 March 2010. The delegation assumed the secretariat of the national committee for the fight against fraud and the head of delegation was appointed by the council of ministers under proposition of the Prime Minister.

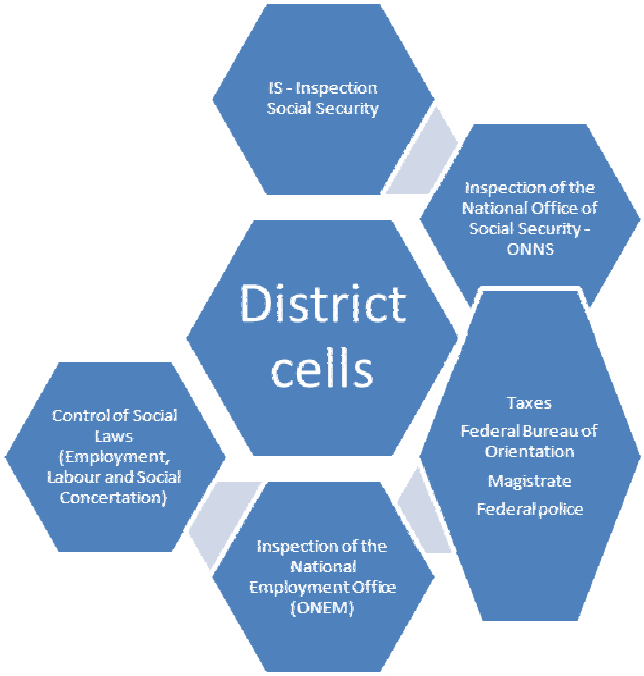
[196] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/lu002.htm.

[197] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/uk004.htm.

institutionalized in the Czech Republic.[198] In Finland, a steering group for the fight against economic crime was established in 2000.

Belgium created a cooperation mechanism involving the inspectorates in the area of working conditions, social security and taxes with a strong local impact, where 21 district cells meet once a month, headed by the public prosecutor. The cell organizes two days of multidisciplinary inspection by the regional intervention groups (GIR) every month, under the annual plan defined by the SIRS. In 2012, these cells paid a total of 11,377 controls, especially in construction and horeca (see figure below).

Simplified structure of the District cells in Belgium



The Social Penal Code entitles the federal services of Employment, Labour and Social Dialogue, the Control Service of ONEM, the inspectorate of the Federal Service Social Security and the inspection service of ONSS to inter-exchange all types of information as long as it is useful for application of the law, and serious steps are to be taken until reaching a stage where data mining is possible.

Access to information of other institutions is at different stages of development in the EU. If direct access or electronic exchange between labour inspectorates and other relevant authorities is used for data mining in countries like Belgium and the Netherlands, it is still a problem for other countries, particularly when it comes to tax authorities.

Belgium provided a good practice, of shared databases. The Crossroad Bank for Social Security, a sophisticated gateway managed by the BCSS (*Banque Carrefour de la sécurité sociale*), is a federal service with tripartite management which provides to labour inspectorates information useful to plan action and investigate cases. More than 2,000 institutions, including at local level, are connected and more than 722 million messages were exchanged in 2011 using the platform. Each institution registers and updates the data accessible via the platform. Protected data on reason of privacy is accessible only for the central managing institution. Around 40 electronic applications are available for employers

[198] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/cz002.htm.

relieving administrative burdens, such as Dimona (Immediate Declaration of Employment) to register new employees with the ONSS.

The three Belgium labour inspectorates have access on a permanent basis to:

- DIMONA (Declaration of Employment and Registration in Social Security);

- LIMOSA, a database set up to prepare the country for the complete opening of the labour market for workers from new EU Member States on 1 May 2009, representing an instrument of control in the fight against fraud and the unfair competition of foreign workers who accept work at below-market wages and disregard Belgian labour laws and regulations;

- OASIS (*Organisation anti-fraude des services d' inspection sociale*), designed to combat social security fraud in a systematic and structured way. The data used by OASIS is supplied through the information channels of the Crossroads Bank for Social Security. The application analyzes fraud indicators like abnormal increase or decrease of turnover, sudden hiring or dismissal of large number of workers and classifies enterprises in risk levels;

- GENESIS (Gathering Evidence from National Enquiries for Social Inspection Services), a common cadaster of investigation with access to Dimona, Limosa and other database avoiding the risk of duplicating inspection by different authorities. The software, daily updated, contains information on the inspection visits, reasons for the visit and results;

- DOLSIS,[199] a new application (since November 2011) that allows public institutions to gain direct access to ONSS data;[200]

- The Crossroad bank of enterprises, where all businesses and economic units are registered, with identification of responsible persons.

In addition to this, common tools are shared by labour and social security inspectorates to better ensure uniformity of intervention, developed by the SIRS (*Service d' Information et Recherche Social*).[201] Furthermore, a cooperation agreement was signed between the federal social inspectorates and the tax authority (SPF Finances) in January 2010 for exchange of information and at this moment, negotiation with France is exploring the possible direct access of authorities from both countries to the information systems.[202]

[199] http://pub.storage.serverpark.be/dropbox/DOLSIS/121128_DOLSIS_5.mov.

[200] One example of the advantages offered by DOLSIS: A foreign worker wanting to work in Belgium has to ask a work permit in the regions. By using DOLSIS, the regional employment office can control the situation of the workers, if he had previous employment relationships. If after one year, the same worker asks for prorogation of the permit, the office can check if the requirements are still met.

[201] These include a code of practice, manuals on control of foreign workers, bogus self-employment and enquiry powers of inspectors, instructions for monthly controls, briefings for district cells, production of statistics and common forms for audition.

[202] National study.

Countries such as Spain are looking for access to information from commercial or property registration services, and recently the General Labour and Social Security Inspectorate gained access to data from notaries and land registries.

Another good example of cooperation exists in the Netherlands. Authorities carry out investigations centered on individuals to search for those unemployed who are on benefits while working undeclared, by matching the databases of different agencies via a common application (Suwinet) with data from municipalities, the Chamber of Commerce, the tax authority, and social security. In Bulgaria, the General Labour Inspection Executive Agency has access to the register of employment contracts managed by the State revenue agency. The Polish labour inspectorate has access to the national register of economic entities of the central statistics office, the social insurance institution register and the general electronic system of citizens' identification.

Many countries organize inter-institutional joint teams to visit workplaces. In Belgium, France, Ireland, Spain, Portugal and Romania common inspections with other governmental bodies are conducted according to the annual national plan and on ad hoc basis. Joint evaluations are also carried out afterwards, and solutions are discussed namely as regards to irregular immigrants and their possible integration into the labour market. In Italy, the staff of DPL works together with the *Carabinieri, Guardia di Finanza* or Police corps in the sectors most frequently cited to have a high prevalence of undeclared work.[203]

Referral of law infringements to the appropriate authorities related with fiscal fraud, human exploitation, unacceptable housing conditions, and abuse of social benefits is another form of cooperation of labour inspectorates with other authorities. As some exploitation cases are considered as crimes, labour inspectorates work closely with police authorities. In Poland, for instance, the Border Guard is informed of all cases of undeclared work carried out by migrants.[204]

Cooperation presents some risks if the roles and complementarities of each institution are not clearly defined. In the negative scenario, it can lead to confronting work methods, rivalry, duplication of efforts and a negative institutional image, plus creating unnecessary constraints for employers. To avoid this, it is fundamental to establish roles and mutually understand competencies, capacities and limits, as well as keep a constant dialogue.

Cooperation with actors representing the civil society and academia are not frequent. Experiences show good outcomes when they exist. This is the case of a pilot of the social Belgium inspectorate with the University of Gant to analyze social fraud trends.

[203] National studies and information provided by governments.

[204] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/pl007.htm.

The 3D cooperation model

A model of 3D cooperation was suggested by round-table participants[205] as the most appropriate to deal with undeclared work, as this is a subject involving many authorities. The model consists of simultaneous and interacting horizontal concentric circles, and a vertical pyramid.

The horizontal concentric circles, such as the waves produced by a stone thrown into a lake represent the different actors, from the representatives of public authorities involved to social partners, media, judiciary, police, civil society organizations, the academia, who are placed in different angles and are affected by the actions committed by each other.

A good model of coordination demands to consider both the concentric horizontal level and the vertical one.

5.2. Relations with the judiciary

In many EU countries, special methods have been developed to allow the inspectorate and the judiciary to cooperate to the maximum extent possible with a view to ensuring the effectiveness of inspection interventions, as well as the enforcement of the labour law through prosecutorial action. In this regard, it is worth recalling the comment by the ILO Committee of Experts that the effectiveness of measures taken by the labour inspectorate "depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at, the recommendation of labour inspectors," and that measures should be taken "to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate."[206] In order to improve relations with courts, special units have been established within the Ministries of Labour to deal with records of administrative and criminal proceedings and ensure coordination with the Ministry of Justice to enhance the handling of cases. In Belgium, there is extensive formal collaboration between labour inspectorates and the judicial system in prosecuting cases of undeclared work. Social inspection services and the judicial federal police cooperate in the so called mixed cell support unit, created in 2011, that operates in the fight against serious and organized social fraud. The cell is made up of four social inspectors from ONSS, ONEM and IS, two members of the police, and one statistician of the judicial federal police.

As already noted, the process of imposing sanctions is not always smooth, notably when the sanction procedures require follow-up action by a judicial body. Some countries have established specific forms of collaboration between the inspectorate and the judicial authorities, with the aim of ensuring that the inspectorate's action is effective. In Belgium, the *Cheop* system provides labour inspectors with access to data on labour law jurisprudence and the procedures are sent to the court electronically.

In France, a monitoring agency has been established within the Directorate General for Labour to monitor legal proceedings arising from the inspectorate's actions. It collates information pertaining to administrative and criminal proceedings and manages the collaboration process with the Ministry of Justice, in order to ensure a better follow-up of each case. Public prosecutors are also co-presidents of the Anti-fraud Departmental Committee (CODAF), aimed at the operational coordination of the fight against illegal work. Regular meetings are held to present labour policies' priorities, current issues existing at the work places, difficulties encountered in the control actions in the field, and

[205] Round-table with heads and senior officials of labour inspectorates from Belgium, Greece, Portugal and Spain, and the INTEFP, from France, held in Geneva on 10 and 11 July 2013.

[206] CEACR: General observation concerning Convention No. 81, 2008, p. 97.

also to share records and cases under prosecution in attendance of judgment, and to prepare, where appropriate, the participation of enforcement officers at trial hearings.

In Austria, alongside administrative proceedings, which rely on ad hoc tribunals and involve the inspectorate, parallel proceedings also exist to deal with violations of the criminal code. Through this process, proceedings are instituted when a labour inspector submits documents and reports to the Department of Criminal Investigations or the Department of the Public Prosecutor. In any case, the courts must inform the inspectorate services of the termination or completion of any proceedings, though not necessarily of the court's decision. In Portugal, there are different means of informal collaboration based on common training, joint publications and meetings based on a Memorandum of Understanding celebrated between the Authority for Working Conditions and the Centre for Judicial Studies, where prosecutors and judges are trained. In other countries such as Greece, inspectors have the authority to prosecute violators in a criminal court for serious offences. However, because of delays in the court system, inspectors often prefer to impose fines instead.[207]

In France, an inspector is considered to be an agent of the judiciary in certain specific and urgent cases. In other EU countries, inspectors are called as witnesses, though not as legal experts, whereas both these roles are recognized in Spain. Also in Spain, collaboration with the judiciary focusing on specific sectors such as the domestic sector is becoming more important. In this sense, the recent Law 36/2011, of 10 October, regulating the labor jurisdiction, provided that the Inspectorate General of Labour and Social Security may request judicial authorization to inspect domestic premises, if the owner opposes or risk of such opposition existed, provided that the inspection is related to administrative procedures that subsequently can be brought to the social jurisdiction, or to enable any other inspections or control related to fundamental rights or freedoms. A Framework Collaboration Protocol between the General Council of the Judiciary, the Ministry of Employment and Social Security, the Ministry of Interior and the Attorney General of State for effective and fast investigation of crimes against the rights of workers and against social security is being established, facilitating cooperation channels in the submission of reports to the courts and exchange of information. Under Law 13/2012 of 26 December, it is anticipated the creation of a special unit for partnership and support to the Courts and the Attorney General's Office to combat illegal employment and Social Security fraud, under the central authority of the Inspectorate General of Labour and Social Security.

In Romania, all sanctions applied by labour inspectors may be subject to appeal by the employer or offender. In this instance, the inspection report and its annexes are used as proof for the court of justice. The labour inspector is not entitled to make any testimony, but the labour inspectorate delegates its lawyers for representation and support of the respective cause. The court should communicate their judicial decision to both parts involved. As the course of labour law trials can be long and court decisions are often delayed, a protocol has established a joint committee composed of labour inspection and judiciary officials, to develop joint programs to improve national compliance.

Innovative approaches in areas not related with undeclared work could be extended. In Spain, for example, and within the context of social courts, the action plan for the development and implementation of the Spanish occupational safety and health strategy (2007-2012) created special prosecutors in each autonomous community to pursue breaches of labour laws and regulations. The prosecutors work alongside the trade unions and the inspectors, especially on violations related to the prevention of occupational risks. In practice, the prosecutors must notify the inspection service when opening any criminal

[207] Information provided by the governments.

proceedings which have the effect of suspending administrative proceedings. The court is also required to provide the inspector with all relevant court documents, including witness statements.

Also in Spain, there is a provision for periodic meetings between the judiciary and the inspectorate at the national and regional levels. A circular of 15 February 1994 required a strict collaboration between the ministry of labour and social security, the prosecution and the judiciary in cases of crimes against freedom as described in Art. 318-bis of the Penal Code, consisting of permanent communication between the Head of Provincial or Territorial inspection department and the prosecution. Nonetheless, the lack of specialization of judges is reported to be a problem.

In France, there are periodic meetings with prosecutors, but problems of specialization are also reported. Belgium has tackled this by having the labour inspectorate represented at all levels of the public prosecution system. In other countries, the absence of labour courts is mentioned as a bottleneck.

Overall, feedback from courts on the results of sanction procedures and the delay of judiciary procedures, antagonist interpretation of the law and unshared professional cultures are challenges reported by almost all of the countries involved in the study.

5.3. Collaboration with social partners

On the 2006 General Survey on Labour Inspection, the CEACR pointed out that "the labour inspectorate can attain its objectives only if appropriate measures are adopted by the competent authority to promote effective collaboration with employers and workers in its activities.[208] Indeed, social partners have a fundamental role on defining responses to prevent and fight against undeclared work.

In most of the countries they play an advocacy and educative role, such as Ireland, where IBEC (Irish Business and Employer's Confederation), SFA (Small Firms Association), SIPTU (Services Industrial Professional and Technical Union) and ICTU (Irish Congress of Trade Unions) submit policy proposals to government, educate employers and workers on their rights and obligations and in some cases pursue claims on behalf of the latter. In Bulgaria, a National Rules for Business Centre was launched in April 2010, implemented by the Bulgarian Industrial Capital Association in partnership with the Confederation of the Independent Trade Unions. A public council for the restriction and prevention of the informal economy was created in 2009, comprising representatives of the government control institutions, ministries, social partners and other stakeholders. The aim is to achieve better coordination and cooperation at national level in tackling the issues of the informal economy. Analytical and information materials have been published and disseminated to the target groups, national representative surveys, branch and company audits have been conducted, round tables and national and regional awareness-raising campaigns have been organized. An information system, including a distance learning platform, a forum on the web, a hotline for reporting informal economy practices and e-alerts, were established.[209]

Collaboration with labour inspection is either informal, following a needs based approach, or more often, formalized in agreements. In Romania, an agreement was

[208] ILO: General Survey of reports concerning labour inspection conventions and recommendations, ILC, 95th session, Report III (Part B), Geneva.

[209] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/bg015.htm.

concluded in 2011 with the Builder's Social Fund, a private welfare organization represented by trade unions and employer's organizations in the construction and building materials industry providing for a multilevel approach, where, for instance, welfare services are made available to legal workers only.[210] In France, the ministry of labour is trying to increase engagement of trade unions in sectorial partnership agreements. Since 1992, 17 of these agreements have been signed,[211] but with few participation from the union movement. Similar intention was revealed by the Spanish Government on its National Strategy for Prevention and Correction of Fiscal, Labour and Social Security Fraud for 2010-2012. In Belgium, a partnership commission responsible to prepare tripartite conventions between competent ministries and social partners, foreseen in the Social Penal Code (Art. 15) produced good results in risk sectors such as construction and the food industry, where national agreements were finally signed in 2012. Tripartite working groups were established to discuss control measures adapted to the sectors. Parties in the partnership convention have the right to be appointed as civil party in judicial proceedings to impose a sanction related to undeclared work or social fraud, if the committed facts are of a nature to harm the collective interests it represents.[212]

Institutional collaboration with social partners in many cases is set at the level of consultative tripartite bodies, taking part in the definition of general labour inspection policies, programmes and plans of action. In countries like Greece, Italy, Lithuania, Spain and Portugal labour inspectorates meet regularly with employers' and workers' organizations as a direct requirement of their statutory laws.[213] In Spain, a tripartite consultative commission for Labour Inspection and social security provides advice for action strategies. In Lithuania, social partners also participate with the labour inspectorate on the planning of measures to combat undeclared labour.

Informative and regulatory campaigns are privileged tools to engage in joint action. Countries such as Belgium, France, Romania, Slovenia, Spain, Poland, Portugal and UK have regular action with social partners to raise awareness and to launch initiatives for particular sectors or regions, defining objectives, strategies and even mapping targets with assistance of employers and trade unions. Campaigns are sometimes initiated by social partners and later on joined by national authorities. This happened in Bulgaria, where the "Come to Light" initiative launched in 2007 by BIA (Bulgarian Industrial Association) and BICA (Bulgarian Industrial Capital Association) with eight media outlets (TV, radio and press), was afterwards adhered by national trade union Promiana, the labour inspectorate, the Ministry of Finance and the Economic and Social Council.[214]

Spain adopted a simple method to better engage social partners on campaigns in regions or sectors where the acceptance of undeclared activities is high, by organizing free publicly announced gatherings in city halls where the purposes, reasons and methods of the campaign are explained, with coverage from local mass media. The use of this practice over the years has promoted a better commitment from social partners and even buyers.

[210] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/ro001.htm.

[211] In sectors such as agriculture, private security, temporary work, construction, cleaning, entertainment, textile, and hairdressers.

[212] National study.

[213] Act No. 47/2012, of 31 July 2012 and Bill No. 3996/2011.

[214] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/bg003.htm.

The approach consisting of the participation of employers' and workers' representatives on the definition of strategies and programmes or at workplace level is being complemented by other initiatives. There are self-regulation schemes for temporary work agencies, and social certification mechanisms provided by employers' organizations to businesses complying with specified standards. In addition, there are self-audit mechanisms using accredited private inspectors to supervise compliance. In the Netherlands, the SNCU, a foundation representing employers and unions, also known as the "collective agreement police" checks compliance with collective agreements, through specialized "private inspectors" and verification enterprises, with the origin on risk analysis or on reports received from a hotline. In 2011, SNCU obtained 6.45 million Euros of back payments. These audits can complement the action of labour inspectors as long as it remains clear that on the light of Convention No. 81 labour inspection is a public service independent from employers and workers, with the prerogative of use of the State authority, namely the possibility of imposing sanctions.

Collaboration with other actors like NGOS's is gaining consistency, but is still not a common practice even if experience proves this could be useful. For instance, in Belgium, social inspectorates report they receive useful "hints" on cases of exploitation from O.R.c.a. an association for defense of illegally resident immigrants.[215]

5.4. Cross border cooperation

Labour inspectorates are cooperating at cross-border level to control undeclared work. The main aim of collaboration consists usually of the exchange of information about enterprises and workers from one country operating in the other, but also on capacity building by sharing views, experiences and tools. Manuals and checklists are exchanged or commonly produced providing information on applicable laws and regulations, exemplifying the models used for official mandatory documents consulted by inspectors on occasion of visits. Besides informal networks and contacts, bilateral agreements have been signed, some in the frame of larger agreements signed between ministries of labour. Administrative cooperation concerning application of Directive 96/71 on posting of workers in the framework of the provision of services is a major reason for these arrangements. Agreements were also signed in the context of Regulations 1408/71 and 883/2004 on coordination of social security schemes and on occupational safety and health. Such cooperation is common for neighbouring countries or countries sharing cultural identities or with expressive workforce flows.

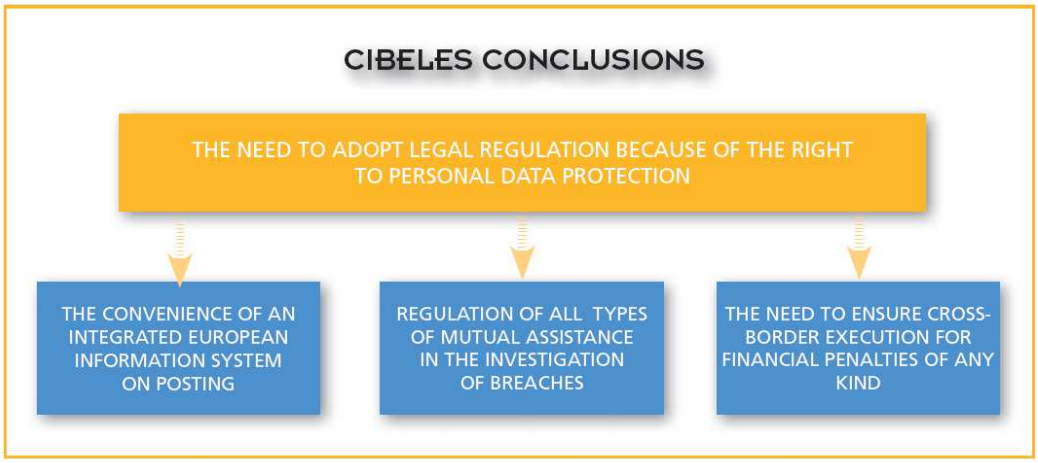
At EU level, the use of common platforms such as the KSS on occupational safety and health has not yet found a match when talking about undeclared work, mainly because of the limits imposed by the protection of privacy of individual data, even if a step was already taken with the IMI (Internal Market Information System) on posting of workers,[216] a secure online application that allows national, regional and local authorities to communicate with their counterparts abroad through pre-translated sets of questions and answers, in place since June 2011.

[215] http://www.orcasite.be/?id=24.

[216] http://ec.europa.eu/internal_market/imi-net/index_fr.html. Also see Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation').

At multilateral level, on 18 February 2011, labour inspectorates of 11 EU countries[217] signed the Bruges Chart, promoting a common endorsement on the need for further European cooperation reinforcement of administrative cooperation in the fight against undeclared work cross-border social fraud, aiming at the constitution of a European network. On a smaller scale, a regional network of social inspectorates of Benelux countries meets every two years.

In the EU, some initiatives were created to strengthen administrative cooperation between labour inspectorates to fight against undeclared work, as for instance the already mentioned ICENUW (Implementing Cooperation in a European Network against Undeclared Work) which ended up with the signature of the Brussels Chart, where participating authorities committed to increase efforts in the fight against transnational social fraud, the Committee of Experts on the Posting of Workers on the application of Directive 96/71[218] and Project Cibeles (Convergence of Inspectorates building a European Level of Enforcement Systems), headed by Spain and focusing on mutual assistance between EU labour inspectorates on cross border controls and imposition of administrative sanctions. The involved countries[219] concluded that steps should be taken to improve cross-border cooperation under a general need to regulate the right of access to information while guaranteeing protection of personal data.



The project addressed the problem of enforcement of administrative sanctions from a national authority to employers established in another Member State, generally considered as a major obstacle for the effectiveness of labour inspection, as these sanctions are not included in the scope of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition of financial penalties. If criminal sanctions can be enforced in another country on basis of the Directive, penalties of administrative nature remain mostly ineffective when the perpetrator is established in another EU country.

[217] Austria, Belgium, Bulgaria, France, Italy, the Netherlands, Norway, Poland, Portugal, Romania, and Spain.

[218] Group of experts to assist Member States in identifying and exchanging experience and good practice, and examine questions arising from the application and enforcement of the posting of workers legislation. The group was established by Decision of the European Commission of 19 December 2008, published in O.J. L8 of 13 January 2009, pp. 26-29.

[219] Austria, Belgium, France, Germany, Hungary, Italy, Malta, Portugal and Spain.

Permanent forums or committees for undeclared work such as SLIC (Senior Labour Inspectors' Committee)[220] for occupational safety and health or the Committee of Experts on posting of workers[221] still do not exist, although the latter covers some of the related problems whenever a transnational provision of services exists. For example, is the set-up of the IMI (Internal market information system), the electronic communication exchange platform, is used by the competent authorities for monitoring the posting of workers. In this regard, the use of the IMI opens up new horizons to detect cross border fraud.

Aside of this, the ambition revealed by initiatives for administrative cooperation between tax authorities such as FISCALIS is not yet common for labour inspectorates dealing with employment and labour relations. This programme set by the European Parliament and the Council Decision No. 1482/2007/EC of 11 December 2007 aims at improving the operation of taxation systems in the internal market combating tax evasion and tax avoidance. Besides training, seminars, working visits for officers, and the improvement of communication and information exchange systems the programme promotes multilateral controls funded by the EC, where tax authorities can effectively investigate cross-border fraud.

Coordination of social security institutions is also more developed than labour inspection, where a set of rules makes the articulation between EU countries more clear and based on a legal background.[222]

Even if bilateral agreements have become a common practice, there are not many experiences going beyond that. Platforms, networks or other forms of multilateral cooperation are still not effective. In fact, the majority of international cooperation between labour inspectorates (occupational safety and health excluded) in the EU resides, though, in bilateral cooperation where multiple agreements exist and informal networking. France and Germany signed a cooperation agreement in 2001 for the direct exchange of information and joint action. Offices of both countries have regular meetings, exchange internships and conduct joint visits in border zones. Similar agreements were signed between France and Bulgaria (2008), France and the Netherlands (2011), Poland and Portugal, Poland and Belgium (2007), Belgium and France (2003), Belgium and Poland (2007), Belgium and Portugal (2009), Belgium and Luxembourg (2009), Portugal and

[220] The Senior Labour Inspectors' Committee (SLIC) was established in 1982 to assist the European and received formal status through the Commission Decision (95/319/EC), its mandate is to give its opinion to the Commission on all problems relating to the enforcement by the Member States of Community law on health and safety at work. It meets regularly twice a year, gathering all heads of EU labour inspectorates dealing with occupational risks. Regular or ad-hoc working groups discuss specific issues such as enforcement, work equipment and chemicals. SLIC organizes every two years a communication and inspection campaign on selected subjects. Initiatives already cover different fields such as construction safety, asbestos, risk assessment, chemical hazards, manual handling of loads and psychosocial risks. Labour inspectors of the 27 EU member states are commonly trained on occasion of the campaigns and harmonized methods and tools are prepared and used.

[221] The Committee was established by a Commission Decision of 19 December 2008 and intends to support and assist Member States in identifying and exchanging experience and good practice, promote the exchange of relevant information, examine any questions and difficulties which might arise in the practical application of the posting of workers legislation (Directive 96/71), as well as its enforcement in practice. Similarly to SLIC, the Committee meets twice a year.

[222] Regulation (EC) No. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing regulation (EC) No. 883/2004 on the coordination of social security systems, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0987:20130108:EN:HTML.

Spain (2003) and many others. In line with Art. 4 of Directive 96/71 many countries established focal points or liaison offices to cooperate with sister organizations in the other Member States. A limited number of cases exist where these offices provide information to the public, for instance Belgium and Luxembourg. On this latter, a "*guichet unique*" rends information in four languages on posting conditions.[223]

In some regions, inspectorates are organizing joint visits to construction sites established over national borders. Experiences between Spain and Portugal in the construction sector were successful to help to dismantle criminal networks of irregular migration, where Brazilian workers were being introduced in operation as Portuguese nationals, with false ID (see above). This kind of initiative is taken at a more or less regular basis in the regions of Galicia-Minho and Extremadura-Beja-Guarda. Similar experiences have taken place in other countries such as France and Italy, especially on the domain of occupational safety and health. In 2012, an initiative from both countries analyzed irregular labour relationships of cruise crews. In given regions, labour inspectors often cooperate on an informal basis, given the constant flow of commuting workers, such as in Belgium/Germany/Netherlands, Belgium/France and France/Italy. In 2011, for the first time, two Latvian companies operating in Lithuania were inspected by both national labour inspectorates.[224] Informal networking is frequent between Belgium and Dutch inspectors with meeting every six months to discuss cross-border issues.

The "Trueno" Operation in Spain[225]

In 2010, the Spanish labour and social security inspectorate launched an initiative in the island of Ibiza, involving ten officers of the tax authority, four labour inspectors, two employment assistant inspectors, two anti-corruption officials and the local fiscal and police bodies to address a case of transnational fraud committed by a hospitality consortium managing more than 70 hotels in Ibiza and Mallorca.

The workers were hired in Brno, Czech Republic, through a ghost company of the group and were subsequently posted during summer to Ibiza to work as waiters, receiving salaries inferior to the minimum wage and being declared to the Czech social security for only 300 euros per month, violating the Spanish minimum wages. The group had around 100 puppet enterprises, most of them without workers and domiciled in Ibiza, Palma and Barcelona.

At the request of the Spanish inspectorate, the Czech labour inspectorate visited the office of this ghost company and confirmed that this office was closed without any signal of activity. In parallel, the Spanish Fiscal Administration Agency had initiated an investigation for presumed fiscal fraud. On occasion of visits to the private domicile of the entrepreneur, inspectors found evidence of contracts with female workers from other countries with indicators of labour and sexual exploitation. At the headquarters, files with paid wages not declared to the tax and social security administration were found, covering around 300 workers.

As result of the joint action, commission of several offenses against workers' rights were detected, as well as many offences concerning posting of workers, discrimination of foreign workers, abusive working hours and 80 false independent workers were identified.

6. Conclusions

Undeclared work (UDW) if not properly confronted, threatens to undermine the EU's ability to meet its employment targets for more and better jobs and stronger growth. UDW

[223] http://business/belgium.be/fr/gerer_votre_enterprise/ressources_humaines/detachement/index.jsp For information on Luxembourg: http://www.guichet.public.lu/fr/enterprises/gestion-juridique-commerciale/affaires-commerce/prestation-transfrontaliere-services/index.html.

[224] http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/lt017.htm.

[225] National study.

is a form of social dumping that introduces unfair competition between firms on the basis of low wages and the non-payment of social security benefits and leads to working situations that violate the rights and dignity of workers.

Increased taxation, the controversial public perception of the role of public institutions, the diminished expectation of decent retirement or social benefits in the long run, the under financing of lifelong learning programs, the decrease of public revenues in a downturn spiral are all factors deeply rooted in a series of long-term problems which affect the size of informality. The European financial crisis is leading Governments to look more carefully at labour market problems, where phenomena such as undeclared work can, if properly tackled, have a positive impact on the creation of formal employment, improved working conditions and an increase of exchequer revenues.

The international dimension of undeclared work is today a reality. Given the opening of EU markets to the free circulation of enterprises and workers, the effects of non-compliance with national legislation can influence businesses, societies and governments beyond a country's borders. In fact, the costs of undeclared work can influence negatively the competitiveness of the EU, lowering working conditions, obstructing skills development and aggravating the overall crisis.

Labour inspection is a public function with a wide and variable mandate in the EU. It is the leading service on preventing and fighting against undeclared work. It represents the relevant, institution working with social security and tax authorities, which will lead to the implementation of laws and public policies depending on the country's circumstances.

Even if labour inspectorates are beginning to look more broadly at their mandate or new institutions are being formed to tackle undeclared work in countries with a tradition of labour inspection on occupational safety and health, there is still much to be done, especially in terms of international cooperation. Bilateral memorandums of understanding, cross border inspections and different networking are transforming labour inspection action in Europe, but a consolidated forum where national institutions could exchange their views or even go further on planning common strategies and initiatives is still inexistent. Yet some related groups are already addressing parts of the problem such as SLIC with the safety and health at work strategy, the EU committee of experts on posting of workers or, in correlated domains dealing with social fraud, the administrative commission for social security coordination.

Estimates of the dimension of UDW in Europe do not give a precise idea on the extension of the phenomenon. Figures change depending on the method used to gather and analyze data, such as indirect methods or surveys. Even more relevant, there is no updated source of information on the various heterogeneous forms that undeclared work assumes, each one demanding for a specific approach.

Further than this, national institutions do not use a minimum set of common definitions, safeguarding national idiosyncrasies. UDW is neither legally defined (beside the EC definition) nor measured (or insufficiently measured) in most of the EU countries, nor the forms of social fraud related to undeclared work specific to a country or common to the EU are properly identified. In fact, even though there is a broad EC definition, national legislations need to provide a better legal basis to define the scope of labour inspection in relation to UDW as well as to delimit its responsibilities and liabilities.

Nonetheless, UDW is regarded as a critical problem in all countries. The lack of definitions or standardization may provide bigger flexibility to accommodate the evolution of labour market practices, but can also produce problems of enforcement, as there is a need to typify wrongful conducts for which administrative or criminal punishment can be imposed.

UDW is a complex phenomenon that by its characteristics is hidden. If this peculiarity makes it difficult for law enforcement, it is even worse in specific circumstances when workers render their services at home, such as domestic work, or telework. Access to private households is limited in almost all countries to the authorization of the householder or prior judicial authorization. In this context, some pilot experiences have proven successful, but still do not address the problem effectively, especially for what concerns the identification of cases and practical arrangements for the inspection visit. This also includes the need to gain access to the judiciary.

Problems related to UDW are addressed in most of the countries in the context of the broader fight against the shadow economy by different national enforcement agencies dealing with social and tax fraud. In addition, social partners are active in addressing this phenomenon as it hinders fair competition and constitutes an attempt against the values of decent work.

At the labour administration level, while there have been efforts in many countries to strengthen labour inspectorates, they still have many financial and human resource gaps, especially in those Member States most affected by the crisis, like Greece, Spain, Portugal or Romania, where labour inspector's recruitments, training programmes, salaries and benefits have been frozen or even reduced, leading to increased turn over and less attractiveness of the career, or in Italy where the current number of labour inspectors is considered to be inadequate to the new realities. For the last few years, political pressure and economic shortage have weakened the institution and the professional quality of labour inspection, exposing the institutional system, as most other public authorities, to a continuous reorganization of processes and reduction of staff while at the same time increasing their responsibilities.

At the same time, the economic crisis has strengthened (even with budgetary cuts) the institutional role of labour inspection as it has become a fundamental mechanism in the fight against labour and social fraud. In fact, the importance of labour inspectorates in times of economic hardship where the downward cost pressures increase the need to protect workers and to ensure that adjustments to contractual types, working time, wages and other working conditions are done in accordance with the law. Court procedures are usually cumbersome and slow, and labour inspection represents a flexible service that can achieve better results in a more pragmatic way. In parallel, the new labour market needs have in many respects limited the labour inspectorates' scope of action. Inspectors have understandably focused their efforts on certain aspects related to the economic crisis (For example, mass redundancies, wage arrears) with a risk that inspection visits may not be conducted in a comprehensive or balanced way. The impact of this imbalance should be evaluated carefully, because it could have a negative effect on working conditions, such as occupational safety and health which may be neglected at the expense of crisis-specific issues.

Labour inspection has a primary policy and operational responsibility for tackling undeclared work, and this is not likely to change. However, the reduction of financial and human resources as well as the working conditions in EU labour inspectorates (particularly those affected by the economic crisis) undermined action and motivation. Inspection plays a key role but it is not enough. National and creative policies focused on awareness raising and information, as well as new preventive forms and specific strategies for particular categories of workers would need to be further strengthened.

There is also a need to improve the policy of incentives for avoiding illegality. The lack of law enforcement asks for new sanctions and procedures that could deter infractions and create a sound compliance environment.

In parallel, cross-agency co-operation, in its widest sense, is a strong feature in the fight against undeclared work. However, exchange of information between public

authorities still remains a big challenge in some countries, due to the protection of private data laws or by the weak tradition of cooperation or information systems not responding to the needs. If special efforts have been concentrated in some countries to improve the cooperation with other enforcement authorities and judiciary, such as the fraud cellules in Belgium or the agreement with the National Prosecutor in France, in some other countries the exchange of data or the relations with courts are cumbersome and would need to receive close attention by the public authorities, as they endanger the effectiveness of the labour inspection system.

Properly addressing UDW would assist in finding an adequate solution to this complex issue. This would require clearly defining and measuring UDW and in some countries assigning lead responsibility to one specific institution. In addition, clear data are needed to improve planning and target action. Operational planning and mapping is essential in the fight against UDW. Labour inspectorates should be able to elaborate risk profiles to strategize action. For this, they should rely on accurate and updated data. These data on UDW should be collected by sectors, regions and issues. Modern software, exchange of information between labour administration institutions and other stakeholders, and involvement of experts on tracing scenarios enabling to draw mid and long term plans on which to base operational field action are fundamental. Where public institutions are sharing information, for instance through electronic portals and gateways, labour inspectorates do not always have sufficient statistical expertise. The latter, would facilitate the use of IT.

All leading authorities would need to have adequate resources dedicated to such a task, and not being continuously downsized. From an operational perspective, a constant challenge for inspectorates is to pursuit the fight against UDW with ever-decreasing resources, appropriate tools, training and guidance. Therefore, it is important to create synergies. Joint activities become highly visible throughout the wider community and help to foster tax and law compliance.

Labour inspectors need to be constantly updated on the practices of the labour market. In fact, UDW is not a static phenomenon, as social fraud and non-compliance continuously progress. Labour inspectorates should have the analytical capacity to recognize these changes and be proactive to adopt new approaches and enter into partnerships with a view to giving appropriate responses to the evolving labour market. There is a clear need to encourage interaction among all involved parties, in particular with workers and employers.

Labour inspectorates need to overcome the punitive approach as a main focus and to look for a balance between prevention and sanction (reminding that, for instance, the “maxi-sanction” as provided in some national laws have not had a clear success). It will also be necessary that a cross border sanctions system be applied to foreign enterprises.

At the EU level, the best approaches and methods to fight UDW should be further examined with a view to improving the national and regional perspective (specific units, multidisciplinary teams, ad hoc groups, specific campaigns, etc.) The cross border enforcement of administrative labour sanctions is still a pending issue on the construction of an effective system of sanctions in the EU.

Finally, the EU should consider the need to enhance an EU cooperation of different enforcement bodies such as labour inspectorates, tax and social security authorities, with a view to preventing and deterring UDW.

7. Recommendations for strengthening labour inspection in combatting undeclared work

a) At EU level there is a need for a proper identification of the types of UDW and measurement of its size. The opportunities to adopt a common terminology following the EC definition, to analyse common practices of UDW in the countries, assess the impact of different legal approaches, policies, strategies and particular measures, and to enhance cooperation between national enforcement agencies should be carefully considered. This might lead to the adoption of an international legal instrument on undeclared work.

b) An effective national policy on UDW should start with a strong commitment from Governments, translated into an enabling institutional and legislative framework defining the role of the central authority in charge of strategy implementation. Roles and responsibilities of concerned bodies and coordination mechanisms should be clearly defined, including expected results, time frame, follow up and evaluation.

c) A general approach through social dialogue on UDW should be taken as a preliminary step to further strengthen the engagement of employers and workers on all cases of remunerated labour activities, with an emphasis on the informal economy. Governments should take the necessary steps to improve the economic background by creating the conditions for healthy competitiveness for business, sound labour market regulations, and social protection policies properly sustained and financed. Concerning labour inspection, the main target should be the use of existing resources in a more focused and coherent way ensuring the protection of working conditions and workers' rights. In this context it would be important to focus particularly on the rights of vulnerable groups of workers such as third country nationals.

d) Appropriate legislative measures should be defined at national level providing a clear distinction among different related concepts such as illegality, undeclared work, informality, labour and social fraud. This distinction can lead to a clear identification of the UDW situation to better allow its measurement and strategy setting.

e) Administrative burdens, where appropriate, should be reduced for employers in a way to improve labour law compliance, namely by making registration of workers, declaration to social security and payment of social contributions easier, through expedite and accessible procedures.

f) National strategies for UDW should include a strong awareness raising dimension, with campaigns aiming at changing the mentality of people on what is not socially acceptable, not only because it is "legal" or "illegal" but because of being a violation of human rights at work. Both prevention and deterrence measures should be included in the strategy. Concerning the latter, an effective system of sanctions should exist in line with a solid cooperation with the judiciary. Incentives for formalization should be studied and proposed where appropriate.

g) A set of guidelines on key elements and considerations to define a system-approach for a national strategy of labour inspection on UDW should be envisaged. The EU labour inspectorates can share their common approaches on the issue.

h) Clear criteria of cooperative action among different enforcement authorities should be defined. Governments should pursuit on improving and consolidating the

networking, providing the policy and legal background so that effective forms of cooperation can be established, including cross sharing of data, by safeguarding the protection of such data.

i) There is a need to consolidate common views on inter-agency cooperation. Cooperation between different actors should be established through agreements and cooperation strategies. Special importance should be given to the collaboration with social partners at all levels.

j) The central authority of the labour inspection system should define a labour inspection policy for UDW, taking into consideration that an appropriate balance with other areas such as occupational safety and health should exist. Considering the complexity and the different scope of labour inspectorates, possible specialization of groups of inspectors or units should be evaluated and eventually put in place. Labour inspectors dealing with UDW should receive adequate and regular training namely on applicable legislation, labour and social fraud, and the complementary roles of other institutions tackling similar subjects.

k) The effects of inspection visits should be enhanced through improved planning, including the elaboration of 'undeclared work risk profiles'. Operationalization could rely on the design and implementation of new tools to prepare, conduct and follow up the inspection work.

l) As regards tools, information technologies should have a wider use in terms of prevention, detection and publicity. Specific importance should be given to combine different databases with a view to discovering infractions at all levels (social security, taxes, labour law, occupational safety and health). Improvement of the quality and accessibility of data should be a main objective.

m) Joint inspection actions, particularly between labour inspectorates dealing with labour relations and occupational safety and health, social security and tax authorities should be developed to get a holistic approach of undeclared employment related aspects.

n) The ineffectiveness of sanctions is a major obstacle for law enforcement. Labour inspectorates need to better use their role of informing the appropriate services of the ministries of labour on how to improve and make use of international best practices. There is a need to improve sanctions procedures and the liability mechanisms at national and cross border levels.

o) The inter-European scale of the problem demands for an EU approach where challenges should be discussed, good practices disseminated and joint actions envisaged. Forums, sessions for decision makers, platforms, group of experts, and exchange of inspectors are possible options for European level action. The ILO could further assist in this dissemination and information on good practices.

p) International action should also take more proactive forms, beyond any formal or signed official bilateral agreements between Member States. A European Forum on a shared strategy towards UDW, taking into account national specificities, should be put in place.

Annex I

RECOMMENDATIONS FOR FOLLOW UP

Round-table discussion on Labour Inspection practices for combatting undeclared work

The following recommendations are the result of a round table discussion with heads and senior officials of labour inspectorates from Belgium, France, Greece, Italy, Portugal, Spain and SLIC's representative held in Geneva on 10 and 11 July 2013. The key purpose of the Round Table– which was part of the ILO-EC joint research project "*Labour Inspection Strategies for Combatting Undeclared Work in Europe*" – was to formulate concrete proposals for the development of tools and learning products based on good practices and needs analysis in this EU.

During the 2-day brainstorming and experience-sharing, participants formulated practical suggestions concerning initiatives that the ILO and the EC could jointly develop in order to fill gaps in tools, guidelines, training and networking.

1. **Common Terminology on UDW**

The concept "*undeclared work*" is defined in very different ways and often together with other labour market terminology, sometimes as a synonymous (i.e. illegal work, irregular work, illegal employment, unregistered employment, hidden unemployment, "black" labour, etc.), even though their content can be fundamentally different. Illegal work is used in many countries to refer to more broad concepts, such as in France, or on the contrary to undeclared work conducted by individuals with an irregular status, most usually migrant workers without a work or residence permit, such as in Greece or Cyprus. Other concepts such as "informal employment" are more frequently used in applied research, wherein it is defined as the number of people working in the informal labour market, as the illegal purchase and sale of labour force devoid of a labour contract and ignoring other laws that regulate labour relations.

Participants consider that the multiple expressions of undeclared work and labour fraud and the lack of common definitions in EU member states make benchmarking quite difficult and represent an obstacle in moving towards a more coherent and sustainable approach. For this reason they recommend to the ILO and the EU to cooperate in developing a glossary on undeclared work.

2. **Guidelines on key elements and considerations in adopting a system-approach to design a national strategy on undeclared work.**

In the round table, participants presented their experiences and good practice concerning national policies and strategies. The following elements were considered as crucial for a sustainable system-approach in tackling undeclared work:

- Strong will and commitment by the Government to tackle undeclared work.
- Clear framework, including law provisions, defining the central authority with clear mission and power as well as roles and responsibilities of concerned bodies and coordination mechanisms.
- Definition of the expected results, time frame, monitoring and evaluation mechanisms.

- Awareness-raising through multi-media campaign to sensitize and promote a change in the mentality of people on what is acceptable or not, not only because it is "legal" or "illegal" but because it is a violation of human rights at work.

It is suggested that the ILO develops simple guidelines on key steps and elements for designing a national policy and strategy on undeclared work.

3. **Workshop for policy and decision makers**

It is recommended to organize a 3-day workshop for policy and decision makers from EU member states on *Elements for a National policy and strategy to tackle UDW*. The programme will be designed in order to combine: (a) structured inputs to frame the discussion (based on the key elements included in the above suggested Guidelines); (b) presentation of selected good practices; (c) structured experience sharing and reflection. In order to benefit from the added value of an international comparison, the ILO will organize international meetings with a view to show good practices with among different countries.

In this, the ILO International Training Centre (Turin, Italy) will be asked to assist in these events.

4. **Sharing curricula, training materials, methods and tools on how to tackle UDW**

During the meeting participants shared their practices in terms of the type of training and learning opportunities provided to labour inspectors, labour administrators in general and social partners on issues related to undeclared work. Several inspectorates include training on undeclared work and detection of fraud in both the initial and permanent training of labour inspectors. For example, in France and Portugal, during the initial training, an average of two weeks is dedicated to inform new appointed inspectors on how to detect and use different techniques to investigate fraud, with particular attention to atypical forms of work in violation of labour law, such as bogus self-employment. In Spain, inspectors are trained on how to cross data sources such as revenues declaration and accounting logs; in Belgium, every office has a permanent training group to organize regular training on new subjects, for instance on recent legal acts.

The ILO, jointly with its International Training Centre, could facilitate the exchange of practice, curricula, tools and approaches, modeling a "European" expertise in this area.

5. **Guidelines on how to design bilateral agreements and "*Vademecum*" on undeclared work**

During the workshop two interesting experiences were presented by participants concerning bilateral agreements, and joint documents of the type "*Vademecum*" between the Labour Inspections and other concerned public authorities of two EU neighbouring countries concerning the cross border enterprises. One concerned Spain and Portugal, the other France and Belgium. From their practical experience, it is recommended to prepare Guidelines with key steps, in order to inspire and assist other countries to adopt similar arrangements.

6. **Elaborate a limited set of parameters which can provide "ALARMS" for potential undeclared work**

Even if most of the inspectorates produce indicators on the number of visits, at least to incorporate in annual reports, data crossing is not yet explored in many cases to help to build scenarios habilitating decision makers to set roadmaps, since there is a lack of specialists able to build and test models or poor information systems. In fact, not all the

countries disaggregate labour inspection statistics on undeclared work and can only show the total figure on the number of visits and offenses encountered, while others have given particular attention to this issue. For example, France, Italy, the Netherlands, Portugal and Spain are in a position to analyze and present variables by regions, sectors, gender and most frequent violations. During the round table discussion, the representative of Belgium illustrated how they make an extensive use of the data available based on a sophisticated software and internal know-how to compile and read statistical outputs and cross data from different sources in order to identify areas of potential risk. Crossing the data extracted from labour inspectorates' information systems with other sources is quite useful, as it gives empirical evidence to the phenomenon of undeclared work.

Participants suggest taking inspiration from good practices and elaborate a limited set of parameters from different sources to help labour inspection in identifying potential undeclared work and help in set priorities and focus visits.

7. Monitoring trends in sanctions and coherent balance between advice/enforcement

During the round table discussion, participants debated on the evolving situation, in terms of labour inspection approaches and sanctions. On one side, in order to establish strong deterrence and discourage the use of UDW, several countries have increased the amount of sanctions (for example, Spain and Italy with its "*maxi sanction*"); on the other side, the impact of the crisis on enterprises, in particular SMEs, is making the imposition of high fines difficult and obliges governments to revise their strategy (for example Greece). Considering the frequent and fast changes in this matter, ILO should continue to facilitate experience sharing and consolidate a comparative study on labour inspection strategies and approaches in the EU, in the context of the economic crisis, with reference to the balance between advice/enforcement and to the use of sanctions (deterrence/economic sustainability).

8. Methods for assessing the impact of sanctions

As consequence of the trends and challenges mentioned above, it becomes very important for EU member states to assess the impact of fines. Some countries (such as Portugal and France) have developed methodologies for this purpose and are in the process of implementing them. These experiences, when finalized, could be systemized, modelized and shared with other countries.

9. Guidelines on promoting co-operation

One of the persistent problems is the lack of coordination within the Labour Inspection (vertical and horizontal) and between LI and other bodies (public authorities, judiciary, social partners, academia, etc). Several countries register a lack of communication in particular between Labour Inspection and the Judiciary.

To try solving this problem, some countries have developed practices concerning communication and cooperation among different actors, experiences that could be "modelized" in order to be the source of inspiration for other countries.

Some success for good communication has been identified during the meeting, based on participants' experience, such as:

- **Recognize and value differences**
  Each body has its mission, mandate, purpose, composition, modus operandi, interests. Differences should be recognized and valued as an asset.

- **Fix a common goal**

In order to benefit from different perspectives, all components should set a clear common goal. Cooperation will work only if all bodies involved really share it, not if it is imposed from the top as an "obligation" to cooperate.

- **Articulate the common goal, objectives and operations**
  Cooperation should be able to produce evidence, results and outcomes. People should see the advantage of investing time in cooperation; if results will not be produced, the perception of "waste of time" will frustrate participants.

- **Institutional ←→ Personal**
  Personal contact and trust are recognized to be an important part of a sound institutional cooperation. Initiatives could be taken to promote personal networking, taking example from member countries, such as conferences, joint training (Spain, Belgium and France), and joint inspection visits.

Three recommendations concern the adoption of a sectoral approach in tackling undeclared work. In particular:

10. **Collect information and samples of campaigns on UDW in specific sectors (Construction and Agriculture)**

    It is suggested, in collaboration with the SLIC (the EU Senior Labour Inspectors' Committee) to select economic sectors (such as construction and agriculture) and collect examples of campaigns run by EU member states on tackling undeclared work in those sectors. A template should be designed and sent to member States for this purpose. States will be asked to provide a short description of the campaign as well as supportive documentation with samples of the material used.

11. **Design guidelines on how to organize a sector-focussed campaign on UDW**

    Based on the analysis and systematization of the collected experiences, it is suggested to elaborate a guideline with key steps and elements to be taken into consideration in designing and organizing a national campaign on UDW in the respective selected sectors.

12. **Organize a workshop for LI decision makers**

    The outcome of the above-mentioned activities could be used by the ILO International Training Centre when preparing learning material. In this regard, it is recommended that the ILO with the assistance of the ITC, Turin organize a 5-day workshop for LI decision makers on *Elements for a National Campaign to tackle UDW in Agriculture and Construction*.

Further suggestions

In addition to the above listed recommendations, participants discussed the need to further develop a set of core competences that a Labour Inspector should have (in terms of knowledge, skills and behaviours) in order to be able to tackle undeclared work at the workplace. Further discussion and comparative analysis are needed on this issue. The ILO and the ITC would develop a European training module with key common elements (in term of concepts, methods, interdisciplinary approach, communication, coordination, soft skills, etc) on Labour Inspection and undeclared work as a further step in this area.

Acronyms

ASTREES	Association Travail Emploi Europe Societé
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CIBELES	Convergence of Inspectorates Building a European Level Enforcement System
CIF	Centre interrégional de formation (Inter-regional training center – France)
CLS	Contrôle des lois sociales (Belgium)
CNLF	Comité national de lutte contre la fraude (National Commission for the fight against illegal work – France)
CODAF	Comité opérationnel départemental anti-fraude (Anti-fraud Departmental Committee – France)
COLTI	Comité opérationnel de lutte contre le travail illégal (Committee to Combat Illegal Work – France)
ENCCRF	École nationale de la concurrence, de la consommation et de la répression des fraudes (National School of Competition, Consumption and Fraud Repression – France)
ENUW	European Network against Undeclared Work
EU	European Union
DNLF	Délégation Nationale à la lutte contre les fraudes (National Delegation for the fight against undeclared work – France)
DILTI	Délégation Interministérielle à la Lutte contre le Travail illégal (Inter-ministerial Delegation for the fight against illegal Work – France)
DPL	Direzione Provinciale del Lavoro (Provincial Labour Directorate – Italy)
DYMIMIC	Dynamic Multiple Indicators Multiple Causes Model
GDP	Gross Domestic Product
HORECA	Hotel, Restaurant and Catering sector
IBEC	Irish Business and Employer's Confederation
ICENUW	Implementing Cooperation in a European Network against Undeclared Work
ICTU	Irish Congress of Trade Unions
ILO	International Labour Office
INAIL	Istituto Nazionale per l'assicurazione contro gli infortuni sul lavoro (National Work Accidents Agency – Italy)
INTEFP	Institut national du travail, de l'emploi et de la formation professionnelle (National Institute of Labour, Employment and Vocational Training - France)
INPS	Istituto Nazionale Previdenza Sociale (National Social Security Agency – Italy)
IS	Inspection sociale du Service Public Fédéral (Social Inspectorate – Belgium)
IT	Information technology
ITSS	Inspección de Trabajo y Seguridad Social (Labour and Social Security Inspectorate – Spain)
KSS	Knowledge Sharing System (OSH)
KIAB	Control of Illegal Employment of Workers
LIMOSA	Landenoverschrijdend Informatiesysteem Migratie Onderzoek Sociaal Administratief (The international migration information system – Belgium)
MoU	Memorandum of understanding
MIMIC	Multiple Indicators Multiple Causes Model
NERA	National Employment Rights Authority (Ireland)
NGO	Non-governmental organization
OASIS	Organisation Anti-fraude des Services d'Inspection Sociale (Social Inspection Services Anti-fraud Organisation – Belgium)
OECD	Organisation for Economic Co-operation and Development
ONEM	Office National de Sécurité Sociale (Office national de l'Emploi (National Employment Office – Belgium)
ONSS	(National Office for Social Security – Belgium)
OSH	Occupational Safety and Health

RIIFT	Réseau international d'Institutions de Formation dans le domaine du Travail (Network of Labour Training Institutions)
SFA	Small Firms Association – Ireland
SIPTU	Services Industrial Professional and Technical Union – Ireland
SIRS	Service d'Information et de Recherche Sociale (Service for Social Information and Research – Belgium)
SLIC	Senior Labour Inspectors' Committee
SNCU	Foundation for the Compliance with Collective Agreements in the Temporary Work Agency sector – The Netherlands
UDW	Undeclared work
URSAFF	Union Pour Le Recouvrement des Cotisations de La Sécurité Sociale et des Allocations Famiales (Union For The Recovery of Contributions and Family Social Security Allowance – France)

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