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**Labour Administration and Inspection Programme  
LAB/ADMIN**

**Labour inspection in Europe:  
undeclared work, migration, trafficking**

**International Labour Organization – Geneva**

**January 2010**

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## Foreword

The European Commission stated that undeclared work, if not properly dealt with, threatens to undermine the EU's ability to meet its employment targets for more and better jobs and stronger growth.<sup>1</sup> 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. The ILO, like the EC, emphasizes the need to encourage transitions from informal to formal work as a prerequisite for achieving decent work.

Nowadays, undeclared work is highly topical in the context of the crisis. One can expect that with layoffs, rising unemployment and increased cost pressures on businesses, the number of workers in undeclared situations will rise. This translates into more precarious jobs and lower protection for workers. It also means that labour inspectorates need to focus more on monitoring, preventing and acting against undeclared work. Strengthening labour inspection systems is therefore an integral part of responding to the crisis as noted in the Global Jobs Pact adopted by the International Labour Conference in June 2009.

The following text was prepared by LAB/ADMIN team as reference document for a meeting held in Budapest (29-30 October 2009) on labour inspection and undeclared work migration and trafficking in Europe. It highlights some of the different labour inspection measures taken in law and practice by EU countries and is based in part on a questionnaire filled out by participants prior to the event (see Annex 4). After the meeting, a series of guidelines were prepared and endorsed by the experts based on the discussions (See ANNEX 5). The hope is that these guidelines will assist labour inspectorates and policy makers as they work towards developing more effective and better coordinated labour inspection responses to the phenomenon of undeclared work.

Both the meeting and paper were the result of excellent collaboration and synergies between ILO officials in Geneva and Budapest. Particular thanks go to Maria Luz Vega that facilitated the workshop and coordinated the paper, Nadine Fischer and René Robert for helping in preparing and drafting the materials and to the assistance of Caroline Augé, Grace Che and Johanna Rüefli. Thanks also to our Geneva colleagues Patrick Taran (MIGRANT) and Beate Andrees (DECLARATION) for their substantial inputs on the paper and contributions during the meeting. A special word of thanks to the staff from the ILO Budapest Subregional Office, in particular Carmen Bueno and Ildiko Rigo for helping organize the event, and to the Director, Mark Levin, for his much appreciated support. And of course, we are most grateful to the participants who attended and for their invaluable contributions.

Giuseppe Casale  
Director  
Labour Administration and  
Inspection Programme  
(LAB/ADMIN)

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<sup>1</sup> COM (98) – 219 final, Communication of the Commission on Undeclared Work, 7 April 1998.



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## Context

Undeclared work is a complex phenomenon. Any attempt to counter this pattern of employment requires an equally sophisticated and balanced approach between prevention and law enforcement. The purpose of this paper is to consider the particular role that national labour administrations and especially labour inspectorates have as part of a strategic policy response to undeclared work.

Furthermore, undeclared work has a strong connection to migration. In many cases, migrant workers – particularly migrants with an irregular or unauthorized status – are recruited into undeclared work. They thus become vulnerable and subject to lower level standards. Demands that labour inspectorates cooperate in enforcing immigration law may, however, compromise the core function of labour inspectors (which is the application of labour legislation for all workers). At the same time, migration issues have to be taken into account when considering how labour inspectorates can contribute to preventing and regularizing undeclared work..

While labour inspectorates are important allies for dealing with the problems associated with undeclared work, they commonly lack the necessary resources, tools, procedures and coordination with other relevant authorities to identify, prevent and remedy such cases. In particular, labour inspectorates face practical obstacles in planning and carrying out visits since undeclared work is by its nature hidden and not easily detected. Even when inspectors uncover situations of undeclared work, a delicate balance must be considered taking due regard of the interests of workers, legitimate enterprises and, in certain cases, the applicable law on unauthorized immigration. As discussed below, many European countries have adopted different approaches in collaboration with their labour inspection services to discourage and sanction undeclared work. In addition, the paper takes up the issues of labour migration and trafficking and the particular challenges they pose for labour inspection.



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# 1. Undeclared work

## 1.1 Definition

Undeclared work is variously referred to as underground or hidden labour, clandestine employment, “black” labour, moonlighting or, commonly, *illegal* work. These terms are for the most part used in industrialized countries and refer to kinds of work whose activities are covered by labour law, but are not in conformity with its administrative requirements. 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.

According to the EC’s Communication on Undeclared Work, undeclared work refers to “paid activities that are lawful as regards their nature but not declared to the public authorities, bearing in mind that differences in the regulatory system of Member States must be taken into account.”<sup>2</sup> 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. For its part, 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”.<sup>3</sup>

The ILO’s approach to undeclared work is 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.”<sup>4</sup> This definition includes the notion of undeclared work as understood by the EC, while also covering workers who sometimes falls outside of 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. 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 work nor is it sanctioned under German law. 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.<sup>5</sup>

Moreover, depending on the country, the focus on undeclared work might be different, which is reflected in the use of distinct definitions. 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.<sup>6</sup> In other cases, the notion of legal work is defined but not the notion of illegal or undeclared work.<sup>7</sup> Undeclared work might be described in law as a

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<sup>2</sup> Ibid.

<sup>3</sup> OECD Employment Outlook, 2004.

<sup>4</sup> ILC 2002, Decent work and the informal economy, <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf>.

<sup>5</sup> Pfau-Effinger, Brigit. Varieties of undeclared work in European societies, *British Journal of Industrial Relations*, 47, 1 March 2009, pp. 79-99.

<sup>6</sup> Latvia, Bulgaria, Former Yugoslav Republic of Macedonia. Information taken from the ILO questionnaire in September 2009.

<sup>7</sup> Hungary. Information taken from the questionnaire.

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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.<sup>8</sup> In some cases, there is no official definition.<sup>9</sup>

The diversity of definitions and approaches to undeclared work across Europe exists partly because of policy choices but also because the nature of undeclared work and the actors who take part are different from one country to the next.

For instance, in some countries non-declaration takes the form of concealing wages or in other cases the hiring of undeclared workers who continue to receive unemployment benefits.<sup>10</sup> In other countries, the practice of employing workers without valid work permits is the main concern,<sup>11</sup> in addition to false independent work.<sup>12</sup>

The lack of a legal definition might be 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 undeclared workers' rights.

Undeclared work 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 at once difficult to measure and monitor and helps explain the different legal approaches taken by different countries.

## 1.2. The situation in Europe

At the time of the EC's 1998 Communication on undeclared work, it was estimated that this phenomenon accounted for seven to 16 per cent of the EU's GDP – the equivalent of 10 to 28 million jobs or seven to 19 per cent of total declared employment.

A decade later in 2007, the European Commission undertook a study to measure undeclared work across the entire community.<sup>13</sup> The study looked at both the share of people buying undeclared goods and services as well as the profile of workers who take up such jobs. Only the second aspect of this study is relevant to the current discussion.

To begin, the study found that the undeclared 'workforce' is mostly male (62 %) except in France and Spain where the ratio is roughly even. Italy was the only country where more women than men were engaged in undeclared work. Undeclared workers were also more likely to be young with almost two-thirds under the age of 40. This pattern was observed across all EU countries although younger undeclared workers (15-24 years) were especially active in continental and Nordic countries as compared to Central and Eastern Europe. The study further found that the proportion of non-nationals to national residents in undeclared jobs was about the same. The authors were quick to point out, however, that

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<sup>8</sup> France, Poland; information taken from the questionnaire.

<sup>9</sup> E.g. Belgium, Spain, Portugal, United Kingdom; information taken from the questionnaire.

<sup>10</sup> Estonia, Poland, Bulgaria.

<sup>11</sup> Spain, Portugal.

<sup>12</sup> E.g. Belgium, Germany.

<sup>13</sup> EC. Undeclared work in the European Union, Special Eurobarometer Report 284, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_284\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_284_en.pdf).

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illegal immigrants were likely under-represented in the survey due to language barriers and sampling reasons, suggesting that the immigrant population represented a larger proportion of undeclared workers than was in fact measured. This is important since, as discussed below, migrants face additional challenges in the context of undeclared work due to both their precariousness in the labour market and their immigrant status. Geographically speaking, the report noted that the share of undeclared work was just as prevalent in rural as in urban areas.

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. By contrast, the occupational groups found to be the least active in undeclared work were house persons and, above all, pensioners. The study also found that students represented an above average involvement in undeclared work in all countries except in Central and Eastern Europe.

Despite their admitted weaknesses, such findings are useful to craft targeted policy approaches specific to the situation of undeclared workers in each country. Recent studies suggest that given the diverse features of undeclared work and workers in Europe, a broader range of innovative policy measures should be considered.

### 1.3. Challenges, trends and developments

In general, undeclared work in Europe and elsewhere 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 to develop tailored policies and improved inspection practices for preventing, reducing or at the very least monitoring the incidence of undeclared labour. The common challenges governments face in reducing the incidence of undeclared work, as well as the need to ensure conditions of decent work for undeclared workers speak to the need for shared policy guidelines for labour inspectorates across the community.

The European Foundation 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.<sup>14</sup> In fact, the transformation of undeclared work into formal work is an important issue for the current employment policy of the European Commission.<sup>15</sup>

Tackling undeclared work requires a number of challenging actions on the part of governments. 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, should relieve the burden on measures for detection and enforcement, which, in the end, 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,<sup>16</sup> the most widespread approach to addressing undeclared work was through punishing infractions

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<sup>14</sup> European Foundation for the Improvement of Living and Working Conditions (2008), Measures to tackle undeclared work in the European Union, <http://www.eurofound.europa.eu/pubdocs/2009/25/en/1/EF0925EN.pdf>.

<sup>15</sup> EC. Undeclared work in the European Union, Special Eurobarometer Report 284, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_284\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_284_en.pdf).

<sup>16</sup> Employment Guideline No. 9 on undeclared work, as adopted on 22 July 2003. Cf. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:260:0001:0003:EN:PDF>.

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through greater detection efforts as opposed to penalties.<sup>17</sup> 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.

Improving the application and enforcement of workers' rights and protections through more robust and responsive labour inspections remains a necessary and important part of addressing undeclared work. The approach that inspection services take again depends largely on the national context. In some countries, particularly in new EU Member States where undeclared work is widespread and deeply interconnected with 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.

#### **1.4 The response of the ILO Labour Administration and Inspection Programme**

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

Workers in the informal economy, undeclared workers, or workers that are subject to a non-declaration often face disadvantages. They usually earn less than formal workers and often perform overtime work. They may be deprived of social security benefits and may suffer from unstable living conditions. Formal employers suffer from unfair competition caused by employers who use informal workers and pay below legal or market wages. Labour inspectorates are often in a dilemma as they are supposed to protect and ensure decent working conditions for all workers, regardless of whether they are formal or informal, legal or illegal migrants, or if their work is declared or not. Moreover, in Europe there is more and more cross-border mobility of services and workers, which makes prosecution of labour law infringements more difficult. There is also an emerging conflict between policies to ensure the greatest freedom of movement for the provision of services

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<sup>17</sup> European Foundation (2008), *op. cit.*

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within the internal market and the need to maintain a certain standard of social protection so as to avoid social dumping.

In addition, more and more immigrants from third countries enter the European Community as a consequence both of increasing labour demand in the EU and the absence of decent work in third countries. Guidance is needed in this regard for labour inspectorates to help them identify undeclared work without exposing the workers concerned and jeopardizing worker protection.

The ILO's newly established Labour Administration and Inspection Programme (LAB/ADMIN) has worked out a set of guidelines for how labour inspectors can address the issue of undeclared work while respecting the standards set out in ILO Convention No. 81 to help ensure decent work for all.

## **2. Labour inspection and undeclared work**

### **2.1 The issue**

Dealing with undeclared workers is high on the list of challenges facing labour inspection in Europe both at the national and regional levels. Looking for effective solutions has become an EU priority and action is needed (and in fact has already begun since early 2000) to have clear guidelines on a better labour administration policy including labour inspection. This is especially important if we consider that the main administrative causes associated with illegality in Europe are the lack of reliable registries (enterprises and workers), non-payment of social security dues, and the lack of effective means and procedures for monitoring.

In response to this need, a first and obvious step should be to increase resources (financial and human) dedicated to collecting appropriate and accurate information on enterprises and the movement of ad hoc categories of workers (e.g. posted workers, migrant workers). This means the creation and management of coordinated registries or databases, which can in turn be shared with other units of public administration at the national and European level. Secondly, these information systems should be complemented by a rigorous recruitment and training process for inspectors who should be able to recognize situations of undeclared work and act quickly, effectively and with sensitivity for the human dimension of these cases. Even though progress on these matters in most European countries has been remarkable (information systems, targeted campaigns, special fraud labour inspectors), much still remains to be done.

An additional problem concerns determining the main sectors and enterprises where there are substantial risks of non-compliance. In most countries, the relevant decisions in the programming and planning process (i.e. targeting economic sectors and establishing campaigns) have been taken by ministries of labour. Even still, the growth of irregular employment and undeclared work is ever present. A more comprehensive solution depends on taking decisions at the highest levels of policy makers and involving different bodies of public administration with the support of the social partners. In this context, inspection systems should be guided by clear instructions and targets as well as guidelines for collaborating with other authorities connected to the problem of undeclared work at all stages of control (from the police to prosecutors and judges). Since most irregularities occur in micro and small-scale enterprises, inspectorate activities in many countries focus primarily on such firms in sectors with high rates of personnel turnover and temporary employment such as construction, hotels, transport, retail stores, garments and textiles. From a labour inspection viewpoint, it is necessary to combine pre-programmed visits with complaints-based visits in order to cover as much ground as possible.

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The instructions should set criteria for deciding where to focus inspections, depending on the resources available, and should set priorities which include paying attention to reports denouncing non-registration of enterprises and non-declaration of workers. Inspectors should not, however, be used as a form of “immigration police”. Inspectors should focus on the control of working conditions. In fact, this distinction has been addressed, for example, by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its 2006 and 2008 comments regarding the application of ILO Convention No. 81 by France. In its 2008 Observation, the Committee underlined that no worker should be excluded from protection on account of their irregular employment status. The functions of the labour inspectorates are intended to secure conditions of work that are in accordance with the relevant legal requirements and the protection of workers while engaged in their work. Their function is not to control the lawful nature of their employment. In this sense, the Committee urged the government to take measures to ensure that powers of inspectors to enter workplaces were not misused for the implementation of joint operations to combat unauthorized immigration.<sup>18</sup>

Likewise, in the same 2008 Observation, the Committee stressed the need to distinguish between the mandate of labour inspectors and officials from other bodies responsible for combating undeclared work in order to maintain a climate of confidence between labour inspectors and workers, also vis-à-vis those who are undeclared.

With regard to this aspect, some countries like Austria decided to exempt labour inspectors from the need to monitor undeclared employment. In fact, their duties were transferred to the Federal Ministry of Finance as of 1 July 2002 and a special customs unit (KIAB) for combating illegal employment by checking work permits and thus the employment of foreigners were created. Linkages were established with the labour inspectorate who reported relevant findings from their own visits to the competent authorities (administrative sanction authorities, employment services). This reform required the recruitment of 300 additional staff, showing that such coordination required the mobilization of considerable resources in terms of staff and time to the detriment of the inspectors’ primary duties. Ultimately, this function was again transferred to the tax authorities in January 2007 since undeclared work often relates to tax evasion and non-declaration of social security contributions.

Likewise, in Germany, the federal customs service under the Federal Ministry of Finance has been monitoring and supervising illegal employment and undeclared work since 1991. Since then, its mandate over this topic has grown, with the government granting customs officers certain police and public prosecution functions such as the right of investigation and detention, personal searches and seizure. In 2004, inspection staff dealing with undeclared work for the National Employment Agency and customs service officers were grouped together into one unit under the Federal Ministry of Finance called the Tax Enforcement Unit for Undeclared Work (*Finanzkontrolle Schwarzarbeit*). Today this unit comprises 6,600 officers divided between a central authority and 113 branch offices.

Even with this development, the labour inspection services of the German states still have the competence for monitoring the registration of commercial activities and independent workers in the industrial sector.

It is worth mentioning that collaboration between the labour inspectorates and the Tax Enforcement Unit takes the form of regular information sharing and sometimes they do joint inspections. In 2007, the Ministry of Finance concluded a framework agreement with the Ministries of Economy of the German states setting out the modes of cooperation between these two bodies.

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<sup>18</sup> ILO, CEACR Observation 2008, Convention No. 81, France.

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A further issue has to do with the difficulties encountered during the inspection visits themselves. These may include pinpointing the location of hidden enterprises or of undeclared workers, locating the head of the firm, identifying undeclared workers in concert with other authorities, finding ways to verify the number of hours actually worked, calculating wages and social security contributions due and identifying possible social security fraud. In some cases, only part of an enterprise's workforce is declared. In other cases, when undeclared personnel work for contractors or sub-contractors, labour inspectors need to review the chain of responsibilities. Inspectors may also find foreign workers who do not possess work permits. In fact, sanctions related to irregularities in migrant employment contracts account for the greatest number of inspection visits and sanctions in the annual reports of most inspectorates. If inspectors can refer to lists of workers in each firm, drawn from social security or tax authorities' databases, the task of proving employment irregularities becomes more straightforward.

An additional issue concerns how to regularize situations of non-compliance that have been found and compensate those whose rights have been violated. Non-compliance must be dissuaded, but without putting a worker's job or the enterprise's survival at risk. This problem is much more complex when it comes to migrants without the authorization to stay or work in a given country. Detection or denunciation of their irregular status usually triggers procedures for expulsion or deportation. This in turn creates a contradiction for labour inspectors who are as a rule supposed to protect vulnerable workers but who cannot redress the situation of workers without work permits. Ethical problems related to the obligation to communicate these irregularities to the police or migration authorities present a new challenge for labour inspectors.

Faced with the dilemma between issuing a warning and applying sanctions, several countries have opted to subject the offending firms to procedures entailing the immediate payment of wages and contributions owed, in addition to punitive measures. The sanctions applied are, in many cases, proportional to the number of workers affected and the size of the enterprise. However other countries consider that increasing sanctions does not discourage undeclared work and provokes instead a lack of collaboration from some entrepreneurs in certain sectors (see below). When looking at policy measures taken to address undeclared work by immigrants who do not have residency permits, the policy focus in recent years has been on improving the implementation of sanctions against both managers and undeclared workers alike.

These measures have often emphasised better co-operation between police, border control, labour inspectorates and other government agencies and have been at the core of policy initiatives in countries such as the Austria, Cyprus, the Czech Republic, France, Italy, Latvia, Lithuania, the Netherlands, Portugal, Spain and the United Kingdom.

An innovative approach in this sense is being developed within the European Union through the transposition of the recently adopted EU Directive 2009/52/EC which provides for the obligation to impose sanctions on employers who hire workers from third countries without work permits.<sup>19</sup> Sanctions must among other things include the payment of appropriate remuneration to workers – at least equivalent to the minimum wage. In serious cases, workers may receive residence permits for as long as the proceedings require, notably in the case of criminal prosecutions. Moreover, in addition to financial sanctions, employers should be excluded from public tenders, public aid or subsidies. Such benefits might even be withdrawn, or the enterprise might be permanently or temporarily shut down.

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<sup>19</sup> Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The Directive must be transposed into national law by 20 July 2011.

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In some countries, awareness of the scale or growth of undeclared work has led to the creation of new administrative bodies, inter-governmental coordination systems, as well as special initiatives aimed at combating the various forms of undeclared work. France, for example, was one of the first European countries to establish such a body when it set up an inter-ministerial team in 1997 to combat undeclared work. It brought together various bodies onto a single committee composed of a national commission, departmental commissions, and working groups. Similarly, a plan was established in Italy inside the Ministry of Labour to shine a light on undeclared work.

Some sectors, such as textiles and garments, conduct special comprehensive monitoring campaigns in view of the high number of immigrants employed who are in irregular work situations and face persistently poor working conditions. As these workplaces are often connected to complex supply chains, governments have also looked at ways to assign greater accountability to the main contractors and distributors of goods. In a number of European countries, where a significant proportion of undeclared labour is performed by undocumented immigrants, governments have organized regularization campaigns. In these campaigns, workers and employers are encouraged to declare employment relationships, without the risk of sanctions. During such a campaign in Spain, for example, more than half a million foreign workers enrolled in the social security system in 2005. Regularization efforts have also been conducted recently or are under way in several countries such as Belgium, Ireland, Italy, the Netherlands and Portugal.

## **2.2 Current practises in combating undeclared work**

### **2.2.1 *The experience of labour inspectors***

In most European countries, combating undeclared work usually forms part of a wider strategy directed against undocumented employment in general.<sup>20</sup> It is usually translated into a legal instrument aimed at regulating the labour market. Consequently, it is incumbent on the labour inspectorate to deal with it. For example, in countries such as Bosnia-Herzegovina, France, Hungary, Poland, Portugal and Serbia it is one of the priority activities of the State labour inspectorates. However, labour inspectorates encounter numerous difficulties when implementing measures against undeclared work – quite similar to those found in the context of forced labour monitoring and control. The jurisdiction and capacity of these agencies are, however, often insufficient.<sup>21</sup>

Labour inspectors face a multitude of challenges in combating undeclared labour. A widespread absence of effective arrangements for cooperation and coordination at all levels can lead to fragmentation of responsibilities, draining limited resources. Labour inspectors frequently have no proper or organised contact with those responsible for particular aspects of forced labour, such as the police, the judiciary, (excepting industrial courts or labour tribunals), or immigration or prison authorities. At worst, there can be rivalry, leading to duplication or one authority leaving the problem to the other – as a result, nobody does anything.

Such structured cooperation raises several questions. First, it is necessary to know where the work of the labour inspectors ends and where that of the police or other authorities begins. Each inspectorate needs to be clear about its responsibilities and how to fulfil them, where these may overlap, and how cooperation between inspectorates can be ensured on the basis of separate but complementary responsibilities.

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<sup>20</sup> See: *Combating the Illegal Employment of Foreign Workers*. OECD Paris, 2000 (p. 8).

<sup>21</sup> *Ibid*, p. 134.

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A major challenge faced by labour inspectors is that informal employment, such as in domestic services, is mostly invisible to labour inspectors. In this type of situation community awareness of the problem of forced labour can be very helpful and can lead to reporting of undeclared work. The situation is even more complicated when workplaces shift on a regular basis, such as street vendors, small mobile construction sites, or seasonal agricultural activities.

Moreover, all European countries accept the constitutional principle of the inviolability of the private home. Therefore, the law provides that when workers live and work on the same premises, labour inspectors may only gain lawful access to the workplace with the consent of the occupier, though not necessarily the owner or employer. In such cases, consent can often be obtained “ad-hoc” by making use of the surprise element of an unannounced visit. But if permission is refused, the labour inspector has little power to investigate.

Extreme cases can raise the problem of forced labour. Labour inspection will often not be the primary actor in the global fight against forced labour, but it can make a decisive contribution. Labour inspectors are the principal labour administration representatives in the world of work. They usually have first-hand information about affected workplaces and labour law violations. They have the right of legal access to those workplaces and, under ILO Convention No. 81, freedom of entry at any time. They are usually the only State institution mandated to deal with labour protection matters in the context of their above-mentioned sectoral functions. Simply put, labour inspectors enforce standards as laid down by national law. This makes them a far more effective tool than any voluntary compliance regimes.

Inspectors need to be sensitized to the problems involved and how best to deal with undeclared work. They need to develop new, strategic partnerships, at home and abroad, with their traditional partners, i.e. the social partners, but also with other actors, in government and in the NGO community. Inspectors must be trained and have access to good practice in high-performance systems. As well, the issue of inspectors’ ethical conduct needs to be addressed.

Labour inspectors have to be trained for their task to ensure decent work for foreign and national workers alike. They must be able to deal with the particular conditions of employment, and to be familiar with migrant related problems such as discrimination, language barriers and different cultural context and behaviour. Moreover, they have to be trained for the sectors where clandestine work predominates. The challenge would furthermore be to carry out inspections without intimidating clandestine migrant workers. This would allow for complementary and parallel administrative approaches such as the setting up of hotlines or websites, provided in several languages, to enable undeclared workers to lodge complaints. Labour inspectors also need training on how to enforce new legislation relating to joint liability in supply chains, which is being enacted in a couple of countries, to assess employment relationship abuses such as disguised forms of the employment relationship.

### **2.2.2 Preparing the inspection: improving detection**

To fight against undeclared work, public authorities have taken several measures with a view to preparing or facilitating “labour inspection” work (i.e. monitoring working conditions). Such measures have sometimes focused on preparatory activities (e.g. issuing identity cards in the construction sector (see below)) and information and dissemination campaigns.

In a country such as Italy, the National Committee for the Formalization of Irregular Work was created in 1998. Its main objectives include creating an institutional network

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between the central government and regional authorities with the aim of gaining knowledge about the characteristics of the informal economy. It also works to develop formalization policies, encouraging workers and employers to be tax compliant, and fighting undeclared work.

In Ireland, the Hidden Economy Monitoring Group is tackling undeclared work. The group is part of a broader employment rights framework concluded by the government and the social partners under Ireland's social partnership agreements. It is accompanied by a number of other measures designed to tackle the informal economy, including the enactment of the Employment Law Compliance Bill.

Another useful initiative has to do with the coordination of strategic operations, including through data sharing. New coordinating institutions have been established. As already mentioned, Germany set up the Tax Enforcement Unit for Undeclared Work to coordinate government action. In Luxembourg, the Inter-administrative Unit for Combating Illegal Work (CIALTI) has been in place since 2000, while in Finland the Steering Group for the Fight against Economic Crime was established in 2000 under the Virke project. In Lithuania, the State Labour Inspectorate (*Valstybinė darbo inspekcija*, VDI) has been operating since 2001, while Poland's National Labour Inspectorate (*Państwowa Inspekcja Pracy*, PIP) was established in 2007. Elsewhere, in France, the Inter-Ministerial Delegation to Combat Underground Work (*Délégation interministérielle à la lutte contre le travail illégal* – DILTI) has, since 1997, been pursuing a highly coordinated approach to data, strategy and operations cooperation at national, regional and local government levels, with the participation of a wide array of social partners.

In Belgium several information networks help with the detection and prevention of undeclared work. Dimona (Déclaration Immédiate/ONmiddellijke Aangifte) is an electronic system all employers are requested to use to register new employees with the National Office for Social Security (Rijksdienst voor Sociale Zekerheid, RSZ). Each time an employee is hired by or leaves an employer, an electronic notification is submitted to all social security agencies. The international migration information system LIMOSA (Landenoverschrijdend Informatiesysteem Migratie Onderzoek Sociaal Administratief) is a federal government project which was 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. LIMOSA represents 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. The Social Inspection Services Anti-fraud Organisation (Organisation Anti-fraude des Services d'Inspection Sociale, OASIS) is a data warehouse, set up in 2001 in the framework of a common anti-fraud project organised by federal government ministries and national offices. OASIS is 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 (Kruispuntbank van de Sociale Zekerheid, KSZ).

Data sharing and access to registries managed by other administrative bodies such as tax authorities or social security institutions have been broadly introduced during the last years in several European countries in order to improve coordination in the detection of undeclared work.<sup>22</sup> For instance, the General Labour Inspectorate in Bulgaria now has access to the register for employment contracts which is managed by the State Revenue Agency. In the Former Yugoslav Republic of Macedonia, software is being developed which would link the labour inspectorate to institutions such as the Public Revenue Office and the Employment Agency. The Polish labour inspectorate has access to the National Register of Tax Payers, the official register for national economic entities hosted by the

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<sup>22</sup> For instance Spain, Poland.

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Central Statistical Office, the Social Insurance Institution register and the General Electronic System of Citizen Identification.

However, in some cases, legislative amendments are still needed to overcome legal hurdles such as data protection rules before access to registries of the different administration bodies can be granted. The issue of data confidentiality, even between government agencies, remains a matter of debate in many countries (e.g. Belgium). Ireland is actually in the process of enacting laws which set the legal basis for data sharing between different agencies.

With a similar focus in Sweden, the ID06 project in the construction sector 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 Finland, Italy and Norway. In Italy, identity cards have been used on construction sites since 2006, although employers with fewer than 10 employees are released from the obligation of issuing these cards by keeping a daily register. However, this possibility should be endorsed by the provincial labour directorate, recording the details of the workers employed on site. Similarly since February 2006, Section 52a of the Finnish Occupational Safety and Health Act obliges the parties directing or supervising a construction site to ensure that each person working on the site wears visible photo identification.

In January 2007, the Swedish government also implemented a law on obligatory staff registration for those working in restaurants and hair salons. The law allows the National Tax Agency to conduct unannounced inspections at workplaces to determine if employers are registering their staff in the correct manner. The National Tax Agency estimates that about 4,200 previously undeclared instances of employment have been regularized through the implementation of staff registers. Plans are underway to extend the application of this law to other sectors.

As the number of labour inspectors is limited, innovative integrated approaches to the detection of undeclared work have to be found, making use of information which is also gained from other sources and from different administrative bodies, which, at first sight, do not have a link with labour. For this purpose, some countries develop indicators comparing and cross-checking information gathered from several databases, but also from other information resources. Spain, for example, uses a creative technique to disclose temporary undeclared work during harvest seasons on orange plantations and vineyards. In effect, Spanish labour inspectors compare the size of plantations with the number of working hours spent during harvest of the previous year and the number of workers registered in the database of the social security institution per month. This is done by consulting land registries, along with information on the suggested number of days for the harvest, the size of the harvest from the previous year, and the number of workers registered in the social security data base.

Initially, if there is a discrepancy between the data sets, employers might be requested to submit further documents including employment contracts. If this still does not resolve the discrepancy, an inspection visit might then be carried out or the employer might be called in for a meeting at the labour inspectorate. Information on property lines are double checked using Google maps, as plantations might be difficult to be access and scattered at great distance one from the next. As a result of this approach, the registration of workers in social security data bases increased by about 217 percent in 2009 compared with 2007, and the number of work permit applications increased by fifty percent.

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 bids, this could be an indication that the employer does not pay social security

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benefits or other contributions, thereby allowing an employer to offer its services at below market value. This approach is used, for example, in Estonia.

New integrated ways of thinking are required to address the challenge of detecting undeclared work, notably in a world of changing work patterns and the outsourcing of production. Thought should be given to a variety of integrated approaches for addressing undeclared work, especially in countries with a twofold labour inspection system: one dealing with occupational safety and health and another with general labour conditions. An enterprise that does not comply with basic regulations in the field of occupational safety and health, might be more likely to disregard general labour legislation requirements. Therefore, collaboration in the field of undeclared work is also important as between inspectorates entrusted with OSH matters and those entrusted with inspecting general labour conditions. For instance, the OSH inspection branch could share with the general labour inspectorate the names of companies that are in serious violation of OSH regulations. This could be a trigger for initiating an inspection on compliance with general employment provisions.

## Domestic workers

One challenge facing inspectors in detecting undeclared work relates to the fact that undeclared workers often are employed in private households as domestic helpers or caregivers. In many cases, inspectors require exceptional authorization, even judicial approval, before entering a private residence to perform an inspection owing to an occupant's right to privacy. In this context, many countries have adopted special measures to help improve the identification of undeclared domestic workers and to provide incentives to employers to register domestic workers.

Procedures were introduced for example in 1998 in Luxembourg that apply to all domestic workers to help reduce the administrative burden on employers and encourage them to employ domestic help legally. New legislation effective from January 2009 subsequently created the single status of 'white-collar employee' for all private sector workers. Under this system, employers must cover the first 13 weeks of a worker's sick leave. This entails a substantial cost for employers of private domestic workers. However, should their staff become ill, an exception has been made whereby the simplified procedures for declaring domestic is maintained in order to prevent a proliferation of undeclared work in the sector. A similar system was introduced in Switzerland for domestic workers.

Belgium, in particular, has supported the widespread use of service vouchers which are used to pay for everyday personal services. Each voucher pays for an hour of work by unemployed people hired by certified companies. At first, unemployed workers can be hired by the company on a part-time and temporary basis. After six months, the company has to offer them a permanent employment contract for at least half-time employment if the person is registered as unemployed. In France, the Universal Service Employment Cheque scheme (*Chèque Emploi Service Universel*, CESU) was introduced to simplify the process of hiring and paying domestic workers. A worker's salary is paid using a system of cheques, which can be purchased at the local bank. Customers benefit by being able to claim an income tax reduction that amounts to 50 per cent of the sum spent on purchasing the cheques. By 2002, 53 per cent of all formal employers of domestic workers used the CES scheme. Moreover, an estimated 20 per cent of those previously working on an undeclared basis are now officially employed.

In Finland, in the late 1990s, only 24,000 households used a similar service voucher scheme, primarily because the subsidy failed to make formal domestic services cheaper than the services of undeclared workers. Concerns have also arisen about whether service vouchers do indeed enable the regularization of undeclared work in the household services sector. In Austria, for example, there were concerns that the 2005 Household Service

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Cheque Act (*Dienstleistungsscheckgesetz*, DLSG) did not affect domestic workers who are undocumented foreign nationals. It is believed that these workers, albeit with no evidence, constitute the bulk of domestic workers.

### **2.2.3 The inspection visit: from detection to action and control**

One measure that aims to curb the trend towards undeclared work and other forms of illegal economic activity involves the inspection of companies.

Inspections should be programmed on the basis of a strategy and/or a policy addressing undeclared work. For instance, in France a national plan against illegal work was adopted for 2008-09. In Bulgaria, undeclared work was integrated into the Strategic Plan of Action of the general labour inspectorate for the period 2008-2012. In other countries, undeclared work is increasingly integrated into annual inspection plans and activity programmes.<sup>23</sup> In Belgium, quantitative inspection targets are set for each inspector, which also reflect the priority of undeclared work, and a national strategy to fight social and fiscal fraud is elaborated.

Along with the decision to address undeclared work, it has been recognized that this objective also might require an appropriate organizational structure or the creation of specialized entities entrusted with the coordination, development, implementation and evaluation of a policy addressing undeclared work.

For instance, in Poland the Legality of Employment Department was created within the Chief Labour Inspectorate that reports directly to the Parliament. In addition, related units were created in each of the nineteen District Labour Inspectorates. There are ten staff members at headquarters and about ten staff members per district who are responsible for investigating cases of undeclared work. This structure has been operational since 1 July 2007. Formerly, the issue of undeclared work was dealt with by a separate network of services responsible for ensuring the legality of employment, but which was not attached to the labour inspectorate. Today, due to its integration into the labour inspection system, undeclared work has become part of the annual labour inspection programming process. Since then, inspection results on undeclared work have been recorded in a systematic manner in a registry that is shared by the entire labour inspectorate. Activities of the labour inspectorate are assessed by the tripartite Labour Protection Council, in which social partners are represented. This ensures support and back up by social partners.

In Lithuania, a Central Coordination Group was created. It is headed by the Chief State Labour Inspector, as the labour inspectorate has a leading role in the coordination of strategies in the field of undeclared work. This group sets the annual priorities for all bodies involved in the control of undeclared work. It assesses and analyses conditions of undeclared work, forecasts and approves measures aimed at the reduction of undeclared work. Moreover, it analyses the situation of undeclared work in the country. The structure at national level extends to the regional level, in the form of regional coordination groups. In Lithuania, the reduction of undeclared work is considered as the main target for labour inspection activities. In 2008 alone, 4,554 inspections on undeclared work were carried out.

In 2004, a strategic plan was devised to improve Spain's Labour and Social Security Inspectorate. One of the main objectives of the plan was to increase the number of inspectors, and improve information systems and equipment. The reorganization of information systems led to considerable changes in the inspectorate's procedures, its

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<sup>23</sup> Portugal, Poland, Spain, Lithuania, Hungary, France.

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coordination with other government agencies and its relationship with Spanish citizens. These improvements have, in turn, enabled the inspectorate to make significant progress regarding the regularization of informal workers.

To better respond to its national priority to address undeclared work in the context of social and fiscal fraud, the Federal Government of Belgium has created in recent years several administrative bodies and consultation structures dealing with social fraud and undeclared work, in which representatives from different administrative structures affected by social fraud come together. It has set up the Social Information and Investigation Service (Service d'inspection et de recherches sociales/Sociale Inlichtingen- en Opsporingsdienst, SIRS/SIOD) to intensify and streamline the fight against social welfare benefit fraud. This new organism is specifically designed to improve coordination between the various parties involved in fraud prevention. Moreover, it coordinates the actions of all bodies with responsibility for addressing undeclared work. As part of this initiative, the competencies of social welfare inspectors have also been extended. In 2007, Belgium also created the Federal Orientation Office (Bureau fédéral d'orientation), which is steered by an executive board comprising representatives of social inspectorates, the employment agency, and diverse social security institutions. It elaborates strategic plans in the field of social fraud, which, once approved by the Ministers' Council, serve in the design of action programmes. Their implementation is monitored by the Office. It also drafts annual reports on social fraud and on the results of inspections in the field of human trafficking and guides particular training initiatives on the same topic. The Office consults the General Partner Assembly – which includes representatives from diverse social security institutions, social inspectorates and social partners – on the strategic plan and submits the annual plans for approval.

The Inter-administrative unit for combating undeclared work in Luxembourg was set up in 2000. It is able to mobilise over 200 officials from up to eight government institutions if so required and has carried out a number of unannounced inspections at construction sites nationwide. The membership of inspection teams varies with the Labour and Mines Inspectorate as the driving force and coordinator of this informal unit.

To facilitate greater cooperation across government departments in the United Kingdom, the 'Grabiner Steering Group' established Joint Shadow Economy Teams (JoSETs) in April 2001. These locally-based teams bring together officers from the Department for Work and Pensions (DWP), Her Majesty's Revenue and Customs (HMRC) and the Employment Agency Job Centre Plus to tackle undeclared work in four priority areas of economic activity: construction and building services; taxis and couriers; catering; hotels and guest houses.

Since 1995, the Netherlands has introduced a large number of coordination measures (led by the Public Prosecution Department of the Ministry of Justice) including policy guidelines to clarify the joint interventions and cooperation. This initiative was also complemented by a 1996 agreement concluded with tax and social agencies on information sharing. Moreover, in 2003, a special antifraud unit was created within the labour inspectorate to combat undeclared work. The number of inspectors has been growing exponentially since then.

In France the Inter-ministerial Directorate against Illegal Labour was established with representatives from a number of government departments responsible for: Justice, Labour, Agriculture, Transport, Interior, Finance, Public Affairs, Economics, and Defense. The Directorate's responsibilities are to:

- define a policy for monitoring undeclared work and conditions of compliance;
- coordinate the relevant public services charged responsible for monitoring;

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- organise joint training for officials in a given region or department; and
  - give judicial and methodological support for networks of officials.

A similar coordinating scheme was established in Italy in 2004 (Decree No. 124) allowing labour inspectors to intervene systematically in actions undertaken by any administrative authorities in relation to combating undeclared work.

In addition to reengineering and reshaping the administrative structure there is a growing consensus that administrative tools, procedures and arrangements have to be made available to control bodies in order to facilitate policy implementation in the field of undeclared work.

In more and more cases, specific data on undeclared work are collected through the inspection process, which are then recorded in the common labour inspection registry. For instance, the labour inspectorates in Poland and Lithuania collect information as to the type of undeclared work discovered, the sanction imposed, follow up measures taken and persons identified as undeclared workers. In Bulgaria, precise information on the type of labour legislation violation is recorded, such as the recruitment of a worker without a written contract or the failure to register an employment contract with the National Revenue Agency. Belgium has recently developed a common platform for all four labour inspectorates called GENESIS. It contains the results of inspection visits, reasons for the visits and a classification of enterprises. This registry is updated daily. As noted above, Belgium also operates a registry called LIMOSA which centralises all information on foreign workers (independent workers, students and posted workers). Belgium also has a data hub, which leads to different databases held by different authorities in the field of labour, social security and social fraud. The Hungarian labour inspectorate likewise maintains a register on undeclared work.

At the same time, work processes within labour inspectorates are increasingly being adapted to address the phenomenon of undeclared work. Inspectors compare data and information from different sources in order to uncover potential situations of undeclared work. Discrepancies in the data might trigger a decision to request more information from the employer or to conduct an inspection visit. However, information could also be based on workers' complaints, sometimes channelled through the social partners, or notifications submitted by other authorities. Collaboration agreements or partnership agreements concluded with other authorities or social partners might also oblige labour inspectorates to follow up on notified cases of undeclared work (see below, sub 2.3.1.). For instance, in Poland- in 2008- 662 inspections were conducted based on requests from a cooperating body. Requests were filed most frequently by county employment offices (180), the police (99), province employment offices (87) and tax authorities (76). In some cases labour inspectors might cooperate even with non-governmental organizations, as it is the case in Ireland and Latvia.

The targeting and scheduling of inspections might also be motivated by a programming process, for example on a sectoral basis, instead of gathering evidence for particular cases. In Latvia, inspection activities are focussed on enterprises which typically have a high incidence of undeclared work, such as the construction sector, forestry, manufacturing, wholesale and retail sales, and health care. Moreover, inspectors target enterprises that have not submitted a monthly report on social security payments or income tax to the State Revenue Service. As already noted, specific sectors, such as agriculture in Spain, might be targeted during an inspection campaign. Likewise, the National Employment Rights Authority (NERA) in Ireland follows a sector-based inspection approach, focussing on specific sectors with a higher risk for undeclared work, especially in the construction and the catering sectors. In this context, it should also be noted that the new European Directive 2009/52/EC imposes on member States a risk assessment

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procedure that identify the sectors of activities in which the employment of illegally third-country nationals is concentrated in their territory.<sup>24</sup>

When the decision is taken to carry out an inspection visit, it often needs to be carefully prepared, as the situation in which cases of undeclared work are detected can be quite particular. In Poland for example, information is gathered with respect to the targeted enterprise. Investigations are carried out on the location of the targeted enterprise, its activities, number of workers, working time, the possibility of access for third persons and the location of entrances. If it turns out that a large number of people might be present on the premises, and if there is a risk of potential aggression, the inspection visit is carried out by several labour inspectors with the assistance of the Police or Border Guards. In any case, not less than two labour inspectors conduct any given inspection. Likewise, in Portugal, before conducting an inspection visit, other administrative authorities might be contacted to analyse possibilities of joint action, and preliminary briefings can be scheduled.

In Poland, during the inspection visit, the inspector determines the number, identity and reasons for the presence of persons on the premises. Inspectors might ask for work documents, conduct interviews, ask for written and oral information or take photographs. Inspections might also be conducted jointly with agents from other administrative bodies other than police or Boarder Guards. In some cases, particular guidelines or methodologies are developed, reflecting the particularity and different setting of inspections in the field of undeclared work. For instance, in Lithuania, there are investigation rules for undeclared work. The State Labour Inspectorate in Latvia also elaborated an internal procedure methodology for officials on how to conduct inspection visits in order to reduce undeclared employment. Likewise, in Portugal, there are specific methods and instruments for conducting inspections on undeclared work such as checklists.

In a group of special inspection methods and campaigns are applied in order to disclose undeclared work. In a country like Portugal, inspection campaigns take place in the form of “lightening visits”. This is where a large number of labour inspectors converge on construction sites or certain workplaces where there is thought to be a high incidence of undeclared workers. Brief enquiries are conducted with all persons who are present, and personal identification documents are requested. Workers’ representatives are contacted to provide information. Documents are also consulted and seized for consultation. Management representatives are called upon and requested to meet with the coordinating inspector where the immediate results from the inspection are presented and the enterprise is invited to remedy the defects with a certain period of time. Moreover, coordinated visits might take place, in which at least one third of labour inspectors are involved and which are carried out in all local services at the same time. Visits are prepared with the help of specific methodological guides and are subsequently evaluated. After the results are obtained, the media are informed in order to publicize the findings. In addition, a list of offending enterprises is published on the website of the Portuguese labour inspectorate.

Undertaking inspections on undeclared work requires training on the phenomenon of undeclared work in general, and on the specific sectors where undeclared work mostly occurs in each country. This requirement is becoming more and more accepted by European countries.

Induction training for labour inspectors is provided in countries such as France, Italy, Portugal and Hungary. In France, internships are organized for inspectors in bodies dealing with undeclared work to provide insight into the possible complementary approaches taken by different administration bodies involved in combating undeclared work (for instance claiming unpaid contributions by social security institutions). Extensive training is also

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<sup>24</sup> Art. 13, Directive 2009/52/EC.

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given in Poland on inspection methodology for undeclared work including modules on the legal regime of foreign workers, registration of employees for social insurance schemes, flexible forms of employment etc. In Italy, the main form of training is on legal issues as well as on security measures at workplace. The labour inspectorate of the Former Yugoslav Republic of Macedonia conducts training on how to detect persons without employment contracts. Continuous vocational training is also offered to labour inspectors on undeclared work.<sup>25</sup> In Belgium, sector specific training is provided, in addition to general training, which also contains modules on undeclared work. In Spain, training is offered on how to carry out inspections in the field of undeclared work and in Portugal there is a special behavioural training.

The European *acquis communautaire* has led to an increasing mobility of workers, both undeclared and declared, speaking different languages. This also highlights the need to adapt recruitment criteria of labour inspectorates to be able to respond to this ethnic diversity and to conduct inspections effectively. For instance, the Irish NERA has started to recruit staff with foreign language skills. It also has information available on its website about the provision of administrative services and on basic employment rights in several languages.

#### **2.2.4 Deterrence: effective sanctions and regularization policies**

When cases of undeclared work are detected, fines are most often imposed as a way to deter this practice. Sanctions could either be administrative or criminal in nature.

In order to ensure an increased deterrence effect, several reforms have been enacted in a number of countries. In France, successive revisions of the Labour Code have added a set of penalties,<sup>26</sup> which can be applied cumulatively, for violating provisions on undeclared work. The penalties are as follows: up to three years imprisonment (five years if minors under 18 are involved); up to 45,000 EUR in fines; or as much as a five year prohibition from operating as an employer in the same sector. Decisions in these cases can also be published.

Apart from these sanctions, a claim of undeclared work can also result in prosecution under French criminal law<sup>27</sup> for subjecting a person to inhumane working or housing conditions, by preying on a worker's vulnerability or situation of dependence, or for obtaining services from such a person for no payment, or for a wage which is disproportionate to the value of the work performed. Penalties in these criminal cases can be up to five years imprisonment and up to 800,000 EUR in fines. The legislative parallel to cases of forced labour is clear and can be seen in other European criminal statutes as well.

However, the imposition of penalties against employers who use undeclared work is controversial. In light of European experience, sanctions appear to be of limited effectiveness. In some cases, the size of the fine is not large enough to discourage employers. In fact, some entrepreneurs will risk employing undeclared workers so long as the expected cost of being penalized is lower than the difference between the labour costs of undeclared and declared workers. On the other hand, if the sanction imposed is too high, it might have a counterproductive effect, as it could lead to an employer's insolvency, especially when applied to a micro or small enterprise. As a result, undeclared workers would be out of a job, which serves neither the workers nor the enterprise itself. Therefore,

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<sup>25</sup> E.g. Portugal.

<sup>26</sup> Articles L.324 of the French Labour Code.

<sup>27</sup> Articles 225-13, 14 and 15 of the Penal Code.

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it is crucial that sanctions be applied in a proportionate way with a mind to the long term viability and success of an enterprise and its workers. This would require that legislative frameworks allow for some flexibility in this regard.

A sanction might also have limited effectiveness as a result of delayed judicial action or enforcement by prosecuting bodies. For instance, labour inspectors in the Former Yugoslav Republic of Macedonia had to lodge a request to initiate a misdemeanour procedure with the court in order to impose fines. These efforts were often frustrated as their requests were not processed timely and the fines pronounced by the court were too low. In order to overcome these obstacles, the legislation was amended in 2008 entitling labour inspectors to impose immediate administrative including the power to shut down an undertaking in certain circumstances. The size of the fines was increased and the misdemeanour procedure reshaped, creating a special body responsible for imposing fines outside the judicial system. These changes were complemented by education measures on the new sanction system by labour inspectorates including information materials that were distributed to all registered enterprises.

In some countries, labour inspectors are still not responsible for checking the validity of documents presented by workers. This was the case for instance in Estonia only a short time ago. As a result, workers who were controlled often claimed that they were just visiting. Even if they do check, inspectors can generally only penalize in cases where the documents are not valid but not in cases where workers do not have any documentation at all.

Given the high costs involved in detection, some countries have decided to impose higher penalties on employers who use undeclared workers. In Austria, for instance, the maximum fine for failing to register employees was increased in 2007 from 3,630 EUR to 5,000 EUR for each case of unregistered employment, and up to two years in prison for those who took part in the organised recruitment, placement and hiring out of undeclared workers. In Slovakia, the penalty for failing to register an employee was also raised in January 2004 from the previous maximum of 100 SKK (about 3.30 EUR) for each employee per day, to a fine up to 500,000 SKK (16,600 EUR) for those breaching the obligation to register. Sanctions have been strengthened in many other countries including the Czech Republic, Denmark, France, Italy, the Netherlands and the UK. Despite the relatively widespread implementation of higher penalties to deter participation, the evidence is by no means clear-cut that it is an effective way to reduce undeclared work. Thus, increasing penalties does not always have the intended impact. Furthermore, courts have made virtually no use of these higher penalties or the possibility of imprisonment.

In most countries, criminal sanctions are applicable including imprisonment for employers and the forced departure of undeclared migrant workers. For example in Germany and France undeclared workers can also face one to three years in prison or fines for unauthorized entry into the country. Moreover, in Switzerland and Norway imprisonment can be as much as six months. Other countries such as Portugal provide the possibility of banning undeclared workers from re-entering the country.

A more promising approach appears to be the adoption of deterrence measures imposing administrative sanctions that target a company's vital economic interests. This includes for instance stripping a business' eligibility to compete for public procurement contracts and public tenders<sup>28</sup> the withdrawal of public subsidies and aid, or the temporary or final closure of an establishment.<sup>29</sup> Another way of sanctioning includes publicizing (naming and shaming) companies that commit gross violations of labour legislation. For instance, in Portugal labour inspectors may publish sanctions on their website. Also, in

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<sup>28</sup> E.g. Hungary, Portugal

<sup>29</sup> E.g. Portugal, Former Yugoslav Republic of Macedonia, France.

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France such sanctions can be made public, including in cases where employers hire workers without a work permit.

As noted above, new and more integrated approaches to sanctions have resulted from the adoption of the new EC Directive 2009/52/EC, which provides for different sanction options (criminal and administrative), and enforcement mechanisms.

Several measures have been undertaken to promote legalization programs instead of sanctioning. In France (1981-82), Italy, Spain (1996) and Portugal, several regularization programs have been carried out. But the results are mixed. For instance, in Spain out of a total of 11,000 foreigners who benefitted from a 1991 amnesty measure, only 8,200 held valid permits by 1994, and information on the 3,000 beneficiaries who disappeared from the labour market was not available. Moreover, most of beneficiaries of the subsequent amnesty program in 1996 were immigrants who had also participated in earlier amnesties. This begs the question whether administrative procedures granting short-term work permits to migrants with amnesty in fact contribute to an increase in undeclared migrants, and if legalization programmes are a viable alternative to intensified deterrence approaches.

In Italy, the *Documento Unico di Regolarità Contributiva* (DURC) is a document to certify the payment of social security contributions made by construction companies. With the DURC, employers need only make a single certification to show the company's compliance with its obligations to pay social security, welfare and insurance contributions.

There is growing acceptance that deterrence alone might not be enough, and that a good mix between prevention and deterrence should be found. In addition to sanctions and initiatives to regularize undeclared workers, countries have introduced press campaigns, information brochures, partnership agreements and other incentives as a way to try to encourage the employment of registered workers. This preventative approach is applied in order to change community attitudes towards undeclared work which often underlies the phenomenon. For instance, the Polish labour inspectorate issues press material such as leaflets concerning the prevention of illegal employment. It is also engaged in awareness raising activities on the consequences of illegal work through the mass media. Moreover, training has become an important part of the country's preventative strategy. The Polish labour inspectorate provides training on undeclared work to social partners and other public authorities entrusted with the supervision of working conditions, the labour market and undeclared work. In Belgium, a mix between prevention and sanctioning is applied. For example, a "solidarity contribution" can be imposed on an employer, which can later be deducted from the employer's taxes once workers are registered with the social security authorities.

However, even though much effort is being undertaken, sanctioning still remains a challenge, in particular with regard to enforcement. For example, enforcement can become problematic when dealing with subcontracting chains, where it is difficult to define the responsible entity or person. Some enterprises might engage in subcontracting for the very purpose of avoiding compliance. This has been the case in Belgium, for instance, where subcontracting prevents actions for the recovery of unpaid social security contributions since there is no joint liability scheme. Another challenge is when the enterprise "ceases" to exist between the time the inspection is conducted and the sanction imposed.

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## 2.2.5 Posted workers and cross-border collaboration

The posted workers Directive 96/71/EC,<sup>30</sup> which came into force in December 1999, seeks to prevent the free movement of services and labour within the EU from causing distortions to competition and "social dumping". The basic principle of the Directive is that the basic legal level of working conditions and pay in effect in a Member State should be applicable to workers from that State, as well as workers posted there from other EU countries. Posted workers might be on the one hand EU citizens, or on the other hand third country citizens holding a work and/or residence permit from an EU member State.

Unfortunately, the posting of workers has been abused, for instance in order to circumvent the obligation to pay social security contributions in the host country. Letter box companies, for example, are sometimes created for the purpose of "posting" workers and offering lower wages and social benefits compared to those that would apply if workers were employed as opposed to posted. These arrangements are not considered legal since entities such as letter box companies do not take part in the domestic market where they are registered. In the context of posting, different forms of undeclared work might occur which likewise constitute forms of social fraud. For instance, the declaration certifying a worker's enrolment in a social security scheme which is applicable to the posting company might be falsified. It might also happen that a worker, while working within a posting arrangement, is still registered as unemployed in his or her country of origin.

The current situation of posted workers, in terms of protection by law and collective agreements in the areas covered by the Directive, varies greatly from one country to the next. The concerns of countries that are net "senders" of posted workers tend to differ from those that "receive" them. For example, attention in Portugal focuses more on the posting of national workers to other countries than on posted workers in Portugal. Furthermore, the approach taken by "recipient" countries to which workers are posted is very different: some have no specific provisions on posted workers (Ireland, Italy, Spain and the UK), whereas others specifically include posted workers within some or all provisions covering their own nationals (Denmark, Finland, Luxembourg, the Netherlands and Sweden). Still others have specific legislation for posted workers (Austria, Belgium, France and Germany).

Figures compiled by the EC-sponsored *Citizens First* project indicated that in the early to mid-1990s, very broadly speaking, there were around half a million posted workers or temporary migrants dispatched abroad by their employer, but still covered by the social insurance schemes of their home Member State.<sup>31</sup>

When one looks at the sectors involved, the indications are that posted workers are most commonly found in construction, public works and engineering/metalworking.

More recently, a number of countries have adopted legal measures aimed at preventing abuses arising from the posting of workers through temporary work agencies. In Germany, for example, the law on temporary work forbids the posting of foreign temporary workers in the construction sector, unless a German collective agreement for the sector applies to them. The European Commission has recently brought a case against the German government to the ECJ, claiming that the requirements of the German law on temporary work are discriminatory and in violation of the right of establishment and freedom to provide services.

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<sup>30</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 018, 21/01/1997 P. 0001 – 0006.

<sup>31</sup> <http://citizens.eu.int>

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In another country like Belgium, the current national legislation bans all temporary agency work in the construction sector. Elsewhere, the use of posted temporary agency workers is restricted in Austria, France and Portugal. For example, the posting of workers to Austria is permitted only when the hiring of skilled personnel is necessary because such workers are available by no other means. It may also be justified for economic reasons so long as their employment does not jeopardise wages and working conditions of Austrian workers.

However, the European Commission made it clear that legal provisions which might create or uphold unjustified or disproportionate restrictions on European fundamental liberties such as the free provision of services would in the future be subject to more severe controls by the European Commission.

Likewise, the European Commission has announced a more restrictive attitude towards legislation enacted to allow for better control in the application of the Directive.<sup>32</sup> For instance, some member States have introduced measures such as the obligation for the posting company to keep and make available upon request social documents on the territory and in the language of the host country, or the submission of a prior declaration accompanied with a set of documents such as a copy of work contracts or work permits of the posted worker. In this context, the European Commission has successfully brought a case against Luxembourg to the European Court.<sup>33</sup> Luxembourg had created a duty under law requiring posting companies to have an agent residing in the country along with a set of documents to allow the identification of all posted workers (IDs, their work permits if necessary and/or a copy of their work contract).

With a view to facilitating the enforcement of working conditions and the identification of valid labour contracts between posted workers and their undertakings the above-mentioned Directive provides for an obligation of information sharing and cooperation between the authorities entrusted with enforcement. According to the Directive, liaison offices have to be determined by the Member States. Liaising is usually carried out by labour inspectorates or other specialized control bodies. For instance, the Polish National Labour Inspectorate serves as a liaison office. This includes cooperation with other Member States such as providing information on the terms of employment of workers posted to another EU country and reporting on infringements of labour rights of workers posted to Poland. According to standards set by the European Commission, a reply has to be provided within four weeks. The request for information coming from another EU Member State is usually channelled through the Chief Labour Inspectorate to the district labour inspectorates. However, the European Commission has noted in a Communication<sup>34</sup> that cross-border administrative cooperation still needed substantial improvement and that the communication of information between the liaison offices was not as prompt as it should be.

In this sense, some efforts have been made to achieve cross-national cooperation on data sharing (e.g. the ownership of foreign bank accounts), and on other matters. Notably during the last years bilateral cooperation agreements have been increasingly concluded in the context of EU Directive 96/71/EC on the posting of workers between, among others, Belgium, France and Germany. Other examples are the cooperation agreements concluded between the Inspectorate of Poland and the Labour Inspectorate of the Baltic States. The substance of these cooperation agreements includes: information exchange on terms of

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<sup>32</sup> Communication from the Commission: Guidance on the posting of workers in the framework of provision of services, COM (2006) 159 final.

<sup>33</sup> ECJ, judgement of 19 June 2008, Case C-319/06, available online on <http://curia.europa.eu>.

<sup>34</sup> Communication from the Commission of 13 June 2006 - Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers. [COM (2007) 304 final].

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employment; irregularities discovered and infringements identified during inspections; coordination of proceedings in case of work accidents; joint coordination of investigations to monitor compliance with the laws of both countries concerned; annual meetings; and an exchange of information on national inspection systems.

Belgium for example, agreed with France on a far reaching administrative cooperation arrangement in 2003, which explicitly targets undeclared work, notably in the border zones. Information is exchanged between the labour inspection systems with the help of standardized forms. In 2008 alone, 94 forms were exchanged. A secretariat within the Belgian inspectorate for social law collects the forms in order to follow up and assess the impact of the agreement. Within this arrangement, joint inspections are performed and there is also a cross border working group. Education sessions and training on respective national labour legislation are organized on the territory of either country. Good practices on labour inspection and inspection methodologies are exchanged, such as on inspections carried out in the construction sector. Inspection reports are drawn up in Belgium and in France on the basis of mutual information. In the Belgium collaboration agreement with Poland, which was concluded in 2007, similar features are foreseen such as information exchanges via SPOCs (single points of contact) according to the model proposed by the EC Directive, mutual training sessions and joint controls. A delay of four weeks was fixed for a reply. The results and impact of the agreement are evaluated every year.

Spain has also concluded bilateral agreements, which provide for the organisation of visits by joint inspection teams, and which are carried out in each other's country. The agreements also provide for mutual information exchange and training. There is for instance joint training with inspectors from the Portuguese labour inspectorate as well as a compendium of terminology to assist Spanish and Portuguese inspectors to better understand one another's systems.

Recently, a European Network on Undeclared Work has been set up between the governments of five Member States – Belgium, France, Germany, Italy and Romania. The network is coordinated by the Italian Ministry of Labour, and seeks to promote the exchange of expertise on a wider policy agenda dealing with undeclared work. Such cooperation could be extended to a more comprehensive range of countries and also across the full range of strategic and operational issues, particularly data sharing.

Under the leadership of the Spanish Inspectorate for Labour and Social Security and along with EC funding, a network was created between European inspectorates called the CIBELES project. Participating countries include Austria, Belgium, France, Germany, Hungary, Italy and Portugal. The aim is to build channels for easy information exchange, to collect knowledge in order to build a basis for cross-border enforcement and mutual assistance and finally, to provide guidance to the European Commission.

Another network which is a forum for improved collaboration, experience and information exchange is the Regional Alliance of the Labour Inspectorates in South-eastern Europe, Azerbaijan and Ukraine (RALI).

A particular challenge identified by the European Commission is the enforcement of administrative fines issued by the labour inspectorate in a cross-border context since the enterprise to be fined is hosted by another member State. Procedures leading to a mutual recognition of fines in application of Council Framework Decision 2005/ 214/JHA<sup>35</sup> are often too time consuming, and administrative procedures do not always allow for civil action against companies established in other Member States. Moreover, the European Commission, with a view to guaranteeing the highest possible freedom of provision of

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<sup>35</sup> Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ L 76/16 ff.

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services, maintains a restrictive position with respect to national legislation which would facilitate stricter control of posted workers. For instance, the EC considers having a representative of the posting company in the host country as non-compliant with European fundamental freedoms. To respond to this particular challenge, but also to enhance the collaboration within the framework of the Directive, the European Commission has created an Expert Committee on the Posting of Workers. This Committee met for the first time in March 2009 and is intended to focus on particular problems in the field of posting of workers such as cross-border enforcement, to look into an IT application for the support of administrative cooperation, offer a platform for information exchange, and monitor progress achieved in administrative cooperation.<sup>36</sup>

### **2.3 Collaboration of labour inspectorates with other bodies**

During the past few years, notably in the context of EU enlargement, the fight against undeclared work has regained importance. This is reflected at the policy level through the design of strategies targeting undeclared work, including through the creation of special institutions as discussed above. This trend can be seen in France, where specific biennial national action plans addressing undeclared work in specific sectors are designed. One can also see it in Germany, where special action programmes under the leadership of the Federal Ministry of Finance have been developed with a view to addressing undeclared work in specific sectors which are by nature prone to undeclared work (e.g. the construction sector).

At the level of implementation, one of the cornerstones of these policies is increased cooperation and coordination among different national administration bodies dealing with such an issue. This sometimes requires a legal framework and/or agreements concluded at ministerial level to link control bodies in the field of undeclared work. Such agreements are often a prerequisite for increased cooperation, since, for instance, data protection rules prohibit labour inspectorates to voluntarily share findings with any other administrative body. Similar agreements were concluded between the German Federal Ministry of Finance and the Ministries of Economy in the States (“Länder”) heading the different inspection bodies, including the labour inspectorates, which sets out specific guidelines on compulsory inter-administrative information sharing mechanisms between labour inspectorates of the States and the Federal FSK.

In its National Action Plan on addressing undeclared work (2004-05), France provided for increased information exchange between the health insurance bodies URSAFF, UNEDIC and the labour inspectorate to help combat undeclared work in the culture and entertainment sector. In addition, the plan prepared the ground for collaboration between the labour department heading the labour inspectorates and the regional directorates of culture when issuing administrative sanctions. For example, the regional directorate of culture may withdraw financial subsidies for entertainment and cultural events or licences if it is informed of cases of undeclared work by the labour departments.

In many cases, the detection of undeclared work by labour inspections gives rise to a communication of findings to a country’s social security bodies<sup>37</sup>. For instance, the Labour Code of France obliges all control bodies in the field of undeclared work (including labour inspectors) to communicate inspection reports showing an infringement to the competent social security bodies so that they may in turn claim unpaid social security contributions

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<sup>36</sup> Commission Recommendation of 31 March 2008 on enhanced cooperation in the context of the posting of workers in the framework of provision of services, OJ C 85/1 ff.

<sup>37</sup> E.g. Poland, France, Spain, Portugal.

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from the offending employer.<sup>38</sup> Likewise, Belgian social law inspectors are required to communicate their findings to the National Office for Social Security.

The exchange and communication of inspection findings also serves to better understand the characteristics of undeclared work, which could then be used to target specific and problematic sectors and to design or readjust policies and action plans at the national or regional levels. For instance, in France, labour inspectors communicate infringement reports to the inter-ministerial delegation for combating undeclared work, which leads to an assessment of the impact of the National Action Plan.<sup>39</sup> Moreover, once a problematic sector is identified, this can also lead to the design of sector-specific training programmes for labour inspectors and the setting of sectoral inspection targets to improve the effectiveness of their interventions.

The increase in coordination, collaboration and information exchange is also reflected in the composition of the coordination bodies at regional and national levels, which were set up for to combat undeclared work. These might include representatives from the Ministries and other relevant control bodies. In many cases, social partners are also represented in these bodies. This is, for instance, the case in France where the National Commission for Combating Illegal Work includes workers' and employers' representatives.

Moreover, there is often collaboration between labour inspectorates within employment agencies, State revenue agencies,<sup>40</sup> tax authorities,<sup>41</sup> and the police. For instance, the Bulgarian General Labour Inspectorate has concluded agreements with the Employment Agency, the National Revenue Agency and the police. These agreements provide for information exchange between the different institutions and the carrying out of annual joint inspections. They also enable mutual access to registries and databases managed by the other agency. Information is communicated by the General Labour Inspectorate on a regular basis and, upon request, findings and irregularities detected in the course of an inspection visit are reported. There are also joint bodies established by these agreements, such as coordination and working groups, in which the General Labour Inspectorate is represented and where different aspects of undeclared work are discussed and joint activities planned such as ad hoc campaigns and targeted inspection activities. Collaboration with other agencies can be quite fruitful. In Bulgaria, for example, a cooperation agreement with the National Social Security Institute and the National Revenue Agency coincided with a considerable drop in the unemployment rate. This suggests that there were fewer "disguised" workers in undeclared jobs – one of the main forms of undeclared work in eastern European countries.

In Poland, inspections that uncover infringements of tax provisions are communicated to the Tax Authority.

In addition, there might be collaboration with border guards and local governments. In Poland, the Border Guard is informed by the labour inspectorate of cases of undeclared work carried out by foreigners. The head of the local administration of the province is also informed by the district labour inspector about cases of undeclared or under-declared work.

Collaboration can also consist in the programming and carrying out of joint inspections, notably with police forces. For instance, the Latvian labour inspectorate conducts joint inspections with the State Revenue Service and the State Border Guard. In

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<sup>38</sup> Article L 8271-8-1, Labour Code.

<sup>39</sup> See for instance analysis of the notifications of dissimulated work in 2006, DILTI, August 2007, on: [www.travail-solidarite.gouv.fr](http://www.travail-solidarite.gouv.fr).

<sup>40</sup> E.g. Bulgaria, Latvia, Former Yugoslav Republic of Macedonia.

<sup>41</sup> E.g. Portugal, Hungary, Estonia.

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Portugal, joint inspections with other governmental bodies are conducted. Joint evaluations are also carried out afterwards, and solutions are discussed namely as regards irregular immigrants and their possible integration into the labour market. Joint labour inspections are also performed in Poland. For instance, in 2008, Polish labour inspectors conducted 156 joint inspections with the Polish Border Guard and 108 with the Police.

Likewise, the Bulgarian General Inspectorate conducts joint inspections with other public authorities such as the National Revenue Agency, Employment Agency, the National Social Security Institute, the National Police Service and Migration authorities. Between 2007 and 2009, between 3000 and 4000 joint inspections were conducted. Among those, 18 per cent were conducted with the National Police Service and Migration Authorities and 23 per cent with the National Revenue Agency. After joint inspections are carried out, delayed wages and social security contributions are paid in many enterprises.

On a regular basis, in the context of the sanction procedure, the public prosecution is notified if infringements are susceptible to criminal persecution.<sup>42</sup>

It is not clear up to now to what extent labour inspectorates are required to collaborate with immigration authorities. In the countries where the control of undeclared work is undertaken by a specialized control body, information on workers found without work permits is passed on to the immigration authorities, which would then undertake appropriate action. Moreover, after inspection visits, there might be an information exchange with immigration authorities to double check that the declarations made were genuine (this is the case in Germany). However, as explained above, this practice is contrary to ILO Convention No. 81 since it conflicts with a labour inspector's duty to safeguard working conditions, including for migrant workers.

Collaboration in the field of undeclared work might more easily reveal gaps in legislation. Such collaboration has led the Bulgarian government to consider an amendment to its labour law to combat cases of "envelope" wages.

### **2.3.1 The role of the social partners**

Governments recognize that social partners should be actively involved in policies addressing undeclared work since they play a fundamental role in this regard. Therefore, in increasingly more countries, governments have concluded tripartite or bipartite declarations or pacts with the social partners at the national level addressing undeclared work. These agreements usually follow an integrated approach, combining sector specific inspection targets with an increased mutual information exchange before and after inspections. In most cases, these agreements between governments and social partners also include awareness raising activities.

During the past few years, partnership agreements have been concluded for specific sectors where undeclared work has been prevalent (e.g. Belgium, Estonia, Germany, France and Ireland). These agreements have been concluded for sectors including construction, food and beverage, temporary work agencies, agriculture, cleaning, transportation and logistics.

In Germany, the Federal Ministry of Finance concluded a national action pact against undeclared work in the transport sector with the social partners. In this pact, the parties agreed to raise awareness among their membership and public at large. They further agreed on an information exchange between the inspectorates entrusted with monitoring undeclared work and the social partners. They also arranged to establish a joint tripartite

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<sup>42</sup> E.g. Poland, France, Ireland.

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working group at the national level on the subject. For its part, the inspectorate pledged to increase controls in this sector. Similar pacts were also concluded for the construction and the food and beverage sector. Based on these national-level action pacts, social partners in the construction sector negotiated collective agreements at the regional level, committing themselves to better collaboration and disclosure to the competent inspectorate when they encountered possible cases of undeclared work. To facilitate this work, the social partners agreed to draft a form that would allow their members to more easily notify cases of undeclared work. These forms would be channelled through the representative organisation to the competent inspectorate while keeping secret the originator of the notification.

In Belgium, tripartite (or sometimes bipartite) partnership agreements addressing undeclared work were concluded for the construction sector, cleaning, transportation and gardening sector. They involve tripartite collaboration between labour inspection services, employers' and workers' organisations. The agreed objectives are simple and the texts are drafted in a pragmatic way. They include among other things an information exchange on potential cases of undeclared work. In addition, periodic activities are agreed upon and special cases jointly examined. Tripartite Working Groups are set up on the basis of the agreement to elaborate methods of information exchange and special control measures adapted to specific sectors. These working groups also decide on concrete and regular actions, and the impact of the partnership agreement is regularly evaluated by the group. The groups' activities are also supported by an information and sensitization campaign. Employers' organisations might even be requested to take measures against members that commit social fraud. The partnership agreement for the construction sector obliges the government to conduct a specific number of inspections within a twelve month period. Once these inspections are conducted, they are followed up by an analysis to be used in preparing a publicity campaign and to assess the impact of the partnership agreement. The campaign is carried out by the employers' organisation for the construction sector. Once completed, it is evaluated by the labour inspectorate. Moreover, the agreement provides for the creation of a working group with representatives from both social partners. The partnership agreement is subject to an evaluation process, which also includes information on the follow up made by judiciary and administrative bodies on labour violations detected by the labour inspectorate in application of the agreement. Moreover, between the four federal labour inspectorates and social partners two partnership agreements were concluded in Belgium dealing with the construction sector. There are plans to prepare more partnership agreements in Belgium. A special body, the Partnership Commission, was created for this purpose. The Commission is in fact designing a model partnership agreement, integrating the pillars of prevention, detection and targeted deterrence of undeclared work.

In addition to the mentioned partnership agreements, labour inspectors take part in representative committee meetings on an annual basis in order to explain the situation on social fraud. Their participation in these meetings also allow labour inspectorates to develop plans accordingly. A more in-depth collaboration with labour inspectors is planned for 2010 and it appears that this practice will be extended to other economic sectors as well.

In France, under the National Action Plan to combat undeclared work, a national bipartite partnership agreement was concluded between the Ministry of Agriculture, the Ministry of Migration, Integration and National Development, the Ministry of Labour, Social Affairs and Solidarity with representative trade unions in the agriculture sector. The agreement foresees the sharing of information on measures taken in the sector to fight undeclared work as well as information on the prevalence of undeclared work. It further allows trade unions the possibility to report on cases of undeclared work for follow up by the inspection service in addition to information campaigns. Moreover, the partnership

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agreement lays the groundwork for the creation of a bipartite committee, including representatives of the parties to the agreement, which follows up on the situation of undeclared work in the agricultural sector. Similar partnership agreements addressing undeclared work were concluded for sectors such as transport, temporary work agencies, and security services.

In 2005, a cooperation agreement targeting the non-declaration of wages was signed in Estonia between the social partners and several government agencies including the labour inspectorate, the Labour Market Board, and several social security funds. The agreement includes the creation of an inter-organisation information system and several awareness raising activities and campaigns.

Collaboration with the social partners is not, however, restricted to these formal agreements. The social partners might be called upon by the government or might take their own initiative to take part joint information and awareness raising campaigns on undeclared work. This is the case in Denmark and Portugal, where a campaign against undeclared work was conducted in the beverage and restaurant sector.

Social partners might also be involved in the design of programmes and activities on undeclared work as well as in the formulation of inspection plans. In Spain, the social partners are consulted when inspection plans are drawn up by the National Labour Inspection Council. In Lithuania, social partners at the national level are involved in the planning of measures against undeclared work through consultations in the Tripartite Council. In Belgium, as already noted, social partners are represented in the General Partner Assembly, which approves the annual report on results achieved in the field of social fraud and undeclared work and which is consulted on the strategic plans on undeclared work elaborated by the Federal Orientation Office.

In Ireland there is a tripartite advisory board which plays a major role approving and developing strategic plans and programmes addressing undeclared work submitted by NERA. A similar approach is taken in France, where cooperation with social partners is mostly sector based. In Poland, the tripartite Labour Protection Council comments on the programme and activities of the National Labour Inspectorate. Within this exercise, the social partners are invited to make detailed suggestions on to how to focus the actions of the National Labour Inspectorate. In Portugal, social partners are consulted when national, regional or local activities are prepared.

In many countries, collaboration between labour inspectorates and social partners takes the form of mutual information on a daily basis. In Poland, labour inspectorates inform social partners about inspection activities and the results and decisions of these inspections. Social partners also play an important signalling function. In Latvia and Spain for instance, the social partners provide information on cases of illegal employment. Notably in times of economic crisis, employers' organisations increasingly notify possible cases of undeclared work to the labour inspectorates as employers fear unfair competition caused by those entrepreneurs who do not abide by the law.

### **2.3.2 *Ad hoc campaigns***

Most European countries recognize that any successful campaign against undeclared work has to be accompanied by a change in attitude among employers and at-risk workers. Government bodies, in collaboration with social partners, often undertake special campaigns coupled with targeted inspection activities.

For instance, the Estonian Tax and Customs Board sent out wage notification letters to employers in sectors where the non-declaration of wages was common. These letters informed the employer about the low wage levels within their firms and gave them an

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opportunity to remedy the situation on their own before any inspection was carried out. At the same time, employees are informed about the risk of the under-declaration of wages, such as of the potential of losing social security benefits. If a letter were not returned, an inspection would be carried out. As a result of this two-pronged approach, officials observed an improvement in tax reporting in 56 % of the targeted enterprises.

In Bulgaria, two employers' organizations and media representatives launched a campaign called "Into the Light", supported by the trade unions. For this campaign, a special website was set up to allow the reporting of cases of undeclared work and related labour law violations. The site also includes detailed information on undeclared work. This information is then passed along to the Bulgarian labour inspectorate for the necessary follow up.

In Germany, within the pact on combating undeclared work in the construction sector, an information campaign was agreed upon, which included the setting up of temporary inspection control centres on a number of large construction sites. Special monitoring campaigns were also conducted in the transport sector.

Taking into account the increasing mobility and circulation of workers and services across European borders, a number of ad hoc campaigns covering joint inspection activities are being carried out in a cross-border manner, most notably in border zones. For instance, on a regular basis, labour inspectorates of Luxembourg invite German control bodies (labour inspectorate and FKS) to perform joint cross-border inspections of construction sites where workers are posted. Similar cross-border inspection campaigns are conducted between France and Belgium. These initiatives are being introduced in other countries as well.

### **3. Migration, trafficking and labour inspection**

#### **3.1 Labour migration issues**

The ILO estimates that 95 to 100 million of the total 200 million people living outside their countries of birth or citizenship are economically active and engaged in the world of work. In a good number of European countries, the foreign born proportion of the work force is ten percent or more.

In an opinion survey undertaken in the EU, people were found to associate migrant workers very closely with the phenomenon of undeclared work. Migrants are often perceived as exploitable and expendable, a source of cheap, docile and flexible labour, apt for the 3-D -- dirty, dangerous and degrading-- jobs nationals are unavailable for and/or unwilling to take. The lack of adequate legal protection and/or inadequate enforcement makes migrant workers attractive in certain employment circumstances because they can be underpaid, provided with little or no workplace safety and health protections, hired and dismissed on a moment's notice, and union organizing can be impossible. The current global crisis appears to accentuate risks for foreign workers. Migrants are more susceptible to being paid less than prevailing wages and to be placed in situations where basic safety and health protections are ignored.

As noted above, estimates suggest that in Europe, migrants in irregular situations number between 2.8 and 6 million, representing between 11 per cent and 23 per cent of

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total migrants.<sup>43</sup> However, the presence of migrants in irregular situations appears to have been tolerated by authorities in some cases. An absence of legal recognition may be correlated with heightened exploitability and lowered cost of migrant labour, a situation perceived to allow some only marginally competitive economic activity to remain in business.

The legal and economic vulnerability of foreign workers makes them susceptible to serving as vectors to undermine respect for and enforcement of *decent work* conditions and standards in national labour markets. National laws do not necessarily guarantee equality of treatment and non-discrimination for non-citizens in the work force.

Increasing labour mobility and the visibly increased presence of foreign workers in work forces (both internal and third country migrants) in Europe have served to make much more central the challenges for labour inspection to address the distinct specificities enforcement of labour standards for migrant workers.

Upholding labour standards for migrant workers presents distinct challenges that require particular attention and specific approaches. Both the types of jobs and the treatment of migrant workers are often distinct from that for national workers. Several main concerns can be identified.

Firstly, the perceived vulnerability and lack of familiarity of migrant workers – particularly those in irregular status in host countries—is often associated with their employment in substandard conditions and in activity, locations or workplaces where standards and-or their enforcement are weak or non-existent.

Secondly, precisely because of foreign, immigrant and sometimes ethnic minority status, migrants often have lesser or little knowledge of legal standards, do not adequately understand the host country language(s), and may have little formal training or education. As well, migrant workers are often poorly or not at all organized into representative trade union organizations that would provide collective support for their protection and defend them in cases of abuse.

Thirdly, a predominance of informal, irregular and/or undocumented employment agreements leaves many migrant workers with little or no basis for upholding claims to wages or payment. This is often compounded by significant differences in conditions and pay rates promised at recruitment and those imposed upon arrival at employment sites in destination countries. Sometimes bogus employment contracts are issued at the stage of recruitment and then substituted for contracts with less favourable conditions at the final employment stage. Related issues include unpaid overtime, excessive working time, lack of breaks and/or rest days, and others.

Fourthly, inspectors themselves report about difficulties to ensure compliance along sub-contracting chains. In economic sectors in which sub-contracting is common, such as construction or cleaning, small enterprises close down frequently only to open up elsewhere. As noted above, some European countries have enacted laws on joint liability but these need to be enforced effectively.

Fifthly, inspectors need clear guidelines to assess the extent of abuse within an employment relationship with a view to initiating appropriate action. A not uncommon abuse is outright non-payment of earnings. Migrants in irregular status are particularly

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<sup>43</sup> Clandestino Undocumented Migration: Counting the Uncountable. Date and Trends Across Europe. Research project funded by the European Commission, DG RTD, FP6, 2007-2009. For more information, visit <http://clandestino.eliamep.gr> (country reports and research briefs), and <http://irregular-migration.hwwi.net> (database)

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vulnerable. Reports are not infrequent of unscrupulous employers hiring migrants and then discretely denouncing their own workers to immigration enforcement authorities just before payday to prompt arrest and deportation before workers can collect their earnings. In a number of cases, non-payment of wages or illegal wage deductions are combined with other coercive measures, such as threats of violence, psychological abuse, restriction of the freedom of movement or retention of identity documents. Migrants, in particular irregular migrants, can thus end up in a situation of forced labour from which they find it difficult to escape. Labour inspectors have a key role to play to facilitate access to assistance for those workers and to collaborate with criminal justice authorities to adequately enforce sanctions.

A rising challenge to effective labour inspection is an increasingly widespread imposition of measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace inspection agenda. This presents a particular challenge to effective enforcement of labour standards as it inevitably has the effect of intimidating migrant workers – especially those most vulnerable to abuse precisely because of their precarious legal status – from exposing or resisting abusive conditions. This practice collapses necessary distinctions between universal enforcement of labour standards and targeted policing functions for non-labour law matters. As mentioned earlier, it is not consistent with the general principles of ILO Convention 81 on labour inspection. This practice also imposes law enforcement responsibilities for which labour inspectors are neither competent nor trained, and it ultimately drives an important portion of immigrant labour further into non-regulated and clandestine employment situations.

### 3.2 Trafficking issues

Until recently, the spotlight throughout Europe has been on forced labour involving undocumented workers or those who have not migrated through regular channels. However, trafficking for labour exploitation, including forced labour, is now moving up the agenda of policy-makers as more evidence of its existence comes to light. It is the predominant form of trafficking in Russia, and possibly in some European countries.<sup>44</sup>

While most victims identified by authorities are women trafficked for sexual exploitation, the number of identified cases involving men trafficked for labour exploitation is growing. For example, in 2004 Ukraine's identified cases of trafficking for sexual exploitation were more than double those for labour exploitation. In 2007 the gap between the two categories had almost disappeared and in the first six months of 2008, the number of labour exploitation cases exceeded those of sexual exploitation.<sup>45</sup>

The principle means of coercion linked to this kind of labour exploitation include withholding of salaries, the obligation to perform tasks against a worker's will, threats of violence or denunciation to the authorities and confiscation of travel or personal identity documents. These latter tactics suggest that undocumented migrants are even more vulnerable to exploitation given their potentially double irregularity with regard to labour and immigration law.

In a recent decision out of the OSCE, the Ministerial Council underlined that “measures to address trafficking for labour exploitation should be formulated with and encourage greater participation of labour actors, including workers and employers

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<sup>44</sup> ILO. Forced labour: Facts and figures. The cost of coercion: Regional Perspectives. May 2009, [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_106245.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_106245.pdf).

<sup>45</sup> Ibid.

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organizations, labour administrators and inspectors”.<sup>46</sup> The Council further urged countries to provide training to labour inspectors on the issue and ensure that adequate resources are made available to carry out their work.

Most countries have focussed on confronting forced labour and trafficking through the criminal law with a tendency to overlook the valuable and complementary role of labour inspectors. Yet, a country’s labour law can provide a useful entry point to combat such practices. Enforcement of labour law through inspections as well as the labour courts can be an additional strategy that allows for outcomes and approaches to these problems as an alternative to penal sanctions. Labour inspectors in particular are well placed to provide early warnings before instances of forced labour and trafficking become entrenched practices of abuse. Inspectors also enjoy easier access to workplaces than police and prosecutors while still performing an important monitoring function for possible judicial action. Inspectors further benefit from having a role as conciliator, which allows them to carry out a range of “soft” measures from prevention and advisory services to broader awareness raising campaigns.<sup>47</sup>

#### **4. Concluding remarks**

Undeclared work is a complex phenomenon and each European country has taken different approaches to prevent and eliminate unforeseen practises.

There is not global solution that fits all the situations. In this sense, one could argue that there is a need to take national and international action in line with the different approaches mentioned above. This approach has brought the group of experts meeting in Budapest to elaborate a set of national guidelines that should be considered when establishing national plans and programs on the role of labour inspection and undeclared work. The following are the guidelines:

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<sup>46</sup> Decision No. 8/07, [http://www.osce.org/documents/mcs/2007/12/28630\\_en.pdf](http://www.osce.org/documents/mcs/2007/12/28630_en.pdf).

<sup>47</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_097835.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf).

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## Guidelines for improving the ability of labour inspectorates to address undeclared work in Europe

### Introduction

These guidelines are intended to complement the paper discussed the group of experts in Budapest. They closely follow the thematic agenda of the workshop and are not so much an exhaustive list of recommendations as key elements for labour inspectorates to consider when approaching the topic of undeclared work. Nor are these guidelines a final list. Instead they are an attempt to reformulate many of the issues raised during the workshop in a more practical and action-oriented manner. They remain open for feedback and refinement.

#### 1. A common definition on undeclared work. Is it necessary?

- Not every country has a legal definition of undeclared work and it is not clear that such a definition necessarily improves a labour inspectorate's efforts in deterring this practice. The risk of a common definition is that it may be reductionist (i.e. limited to illegal work and social fraud) obscuring the significant differences between categories of undeclared workers from one country to the next. Such a definition might also be linked too closely with the concept of illegality, which is a broader concept than that of undeclared work. However, it is important from an operational point of view to have clarity on the meaning of undeclared work (whether in law or at an internal administrative level). This clarity will assist labour inspectors in detecting undeclared work, especially in situations of ambiguity, which is a significant obstacle to monitoring this phenomenon.
- There is a great diversity of situations related to undeclared work. To take all of these different factors into account when carrying out an inspection, inspectors need to have clear targets, coherent standards for legal interpretation, and well-defined instructions depending on the type of undeclared work encountered. Situations of human trafficking, for example, do not entail the same inspection approach as those related to undeclared but documented workers.
- Issues relating to migrant labour should be integrated in any definition or consideration of undeclared work. Undocumented migrant workers are a particularly vulnerable category of workers who often end up in undeclared situations. Labour inspectors should consult with migration authorities to guarantee the legitimate protection of migrant workers' rights – even in situations of illegal work.
- The central inspection authority has a lead role to play in defining undeclared work. This is key for producing guidance on how inspectors should target and detect undeclared work as well as setting standards for legal interpretation in the course of an inspection visit.

*While a definition of undeclared work is not indispensable, technical guidance for inspectors at the national level is needed (through the central authority) to identify and address instances of undeclared work. Strategic planning and programming by labour inspectorates on the needs and objectives for tackling undeclared work should be done on a periodic basis in consultation with other relevant authorities and with the social partners.*

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## 2. Effective responses by national labour inspectorates to undeclared work

- In general, labour inspection activities should focus on obtaining results and achieving practical changes in the world of work. A main tool of inspectorates is to have a clear strategy in the programming, planning and evaluation of their activities. Undeclared work has been identified as an issue of special concern in Europe. Therefore, inspectorates need to develop overall strategies to address it. Special campaigns or targeted activities can contribute to the general effort against this phenomenon, and the use of pilot projects or campaigns can help test innovative approaches or new ideas. But since undeclared work is a longstanding and deeply entrenched challenge, such activities should be undertaken in the context of an overall strategy or program on undeclared work. In this respect, it is highly recommended that any strategy use a combination of approaches to undeclared work that includes information and awareness raising, prevention and deterrence (sanctions).
- To increase the effectiveness and impact of an inspection plan on undeclared work, methodologies for measuring and evaluating results should be developed (e.g. score boards). This approach will ensure that the actions undertaken deliver on the results planned. It will also improve transparency and establish milestones as a basis for future planning.
- As a starting point, consideration should be given to setting up registries and systems of data collection at national and international levels. Special care should be given to ensure that the levels of confidentiality assigned to this data does not impede the sharing of information between relevant government agencies. Neither should it prevent the legitimate publication of the identity of enterprises who abuse undeclared work. Such publicity can have a valuable function in discouraging such practices and alerting workers. New ways of using collected data and the media should be explored.
- Moreover, improving the sharing of data on undeclared work with other relevant Ministries and public authorities should be a priority for labour inspectorates. Exchanging information improves efficiency and encourages collaboration, giving various government institutions a better overall picture of undeclared work in the country and an improved ability to tailor their responses. Even more than sharing information, carrying out joint inspection visits strengthens coordination and knowledge sharing between the different inspection bodies and can be an important component of a national strategy on undeclared work.
- There is a general lack of training for labour inspectors on the issue of undeclared work, which should be incorporated into inspectorate training programs.
- Inspection visits should consider all aspects related to undeclared work and not solely the undeclared status of the worker. For example, when a situation of undeclared work is detected, inspectors should make sure that the worker's benefits (and any outstanding remuneration) are paid. Inspectors should also control the safety and health conditions of the workplace and impose fines in cases of non-compliance. Moreover, when different inspectorates are responsible for technical and social inspections, they should coordinate their visits to ensure that all aspects of labour inspection are covered. In cases of undeclared work, inspectors should be concerned with monitoring overall conditions of work and not only problems with the employment relationship.

*At the national level, the central inspection authority should study and plan specific activities in sectors where there is a known or suspected prevalence of undeclared*

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*work. Inspection visits and other actions related to undeclared work should be carried out in cooperation with relevant Ministries and government authorities. Beyond joint inspections, this may include establishing programmes for mutual training on undeclared work, information exchange and sanction coordination. Some score board method should be established to monitor and measure the impact of yearly inspection plans on combating undeclared work.*

*With regard to the professional development of labour inspectors, national training plans should include specific modules dealing with undeclared work and related topics such as migration and human trafficking. These courses should also include sensitization training to prepare inspectors to deal with undeclared workers who may be in abusive employment situations and who lack the language skills, knowledge or representation to effectively defend their own interests.*

### **3. Cooperation between labour inspectorates and workers' and employers' organizations**

- Inspection plans and programs dealing with undeclared work should be crafted at the national level, and if possible at the branch level, in close consultation with the social partners. Agreement on the appropriate methods, campaigns, complaints mechanisms and other actions for tackling undeclared should be agreed in advance.
- Workers' and employers' organizations should engage regularly with labour inspection authorities as part of their own activities on undeclared work towards discouraging social dumping and protecting workers' rights regardless of their legal status in the country. Cooperation between governments, workers and employers on the issue of undeclared work should be encouraged across all levels of a country's industrial relations system.
- Efforts should also be made to encourage collaboration between undeclared workers themselves and inspection authorities (e.g. a guaranteed period of residence for undocumented migrant workers who report situations of undocumented work to inspectors).

*Workers, employers and their organisations should be consulted in the preparation and implementation of a labour inspectorate's periodic plan on undeclared work. Moreover, such consultations should consider establishing protective measures for undeclared workers (particularly migrant or trafficked workers) in coordination with other government authorities concerned.*

### **4. Sanctioning for deterrence**

- Even where there are preventive measures in place, inspectorates should still have recourse to effective and dissuasive sanctions to deter undeclared work. In this respect, fines should be proportional to the infraction and there should be summary procedures to enforce the fines without unnecessary delays.
- Innovative approaches to sanctioning such as the 'solidarity contribution' in Belgium or the requirement that offending employers attend sensitization training on undeclared work could also be considered as complementary to traditional sanctions.
- Education and advisory programs for the social partners and public at large should also be considered as part of the labour inspectorates' overall response to undeclared work and as a component of awareness raising and prevention activities.

*Sanctions should be reinforced in two ways: (1) establishing new types of fines that encourage and improve compliance and that are integrated with other strategies for*

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*combating undeclared work (e.g. training or awareness raising in cases of non-compliance); and (2) increasing the amount and dissuasiveness of fines while improving the speed of enforcement, especially in grave cases of undeclared work.*

## **5. Common approaches to undeclared work: cross-border and EU-level action**

- National action against undeclared work is on its own not enough, especially given its often cross-border nature (e.g. migrant labour, posted workers). Complementary action should be taken at the international level starting with knowledge sharing through shared databases, common registries and in some cases joint cross-border inspections between national inspectorates, particularly near the borders zones.
- Together, countries should make an effort to synchronize information systems and to foster understanding on the different national inspection systems and regulations on undeclared work. Joint training, activities and secondments should be considered as a way to build professional networks among inspectors and improve understanding between the national inspectorates.
- Consideration should be given to developing a coordinated sanction system at the regional level, particularly with respect to cross-border enforcement. To this end, a study should be undertaken on the challenges in effectively executing sanctions across national boundaries as a starting point to formulating international guidelines.

*Beyond bilateral labour inspection agreements, a comprehensive regional strategy should be proposed and implemented at the EU level to improve coordination between labour inspectorates on undeclared work. Data collection, training and sanctions should all be considered as part of an overall strategy to strengthen national action and to achieve the objectives of the European Commission in tackling undeclared work.*

## **6. ILO action**

The ILO is working with inspection authorities from European countries and with the European Commission to facilitate the design of national and international policies on undeclared work in accordance with ILO standards and drawing on these guidelines.

## Annex 1

### Prevalence of undeclared work and annual earnings in the EU

Country	% engaged in undeclared work in last 12 months	Average total number of hours of undeclared work in last 12 months	Average annual undeclared income per person (€)	Average annual undeclared income per undeclared worker (€)
<b>Continental Europe</b>				
AT	7%	113	19	1,875
BE	6%	158	140	3,496
DE	3%	95	28	1,381
FR	6%	167	111	3,685
IE	4%	253	60	2,013
LU	5%	187	210	6,998
NL	13%	100	85	1,210
UK	2%	81	138	2,308
<b>East-Central Europe</b>				
BG	5%	649	240	4,802
CZ	7%	157	88	1,252
EE	11%	182	305	2,772
HU	7%	296	87	1,244
LT	7%	347	369	5,275
LV	15%	390	602	4,015
PL	5%	359	84	1,686
RO	4%	266	449	11,234
SI	5%	97	45	752
SK	6%	198	112	2,245
<b>Nordic countries</b>				
DK	18%	68	254	1,410
FI	4%	51	48	1,211
SE	10%	78	105	1,055
<b>Southern Europe</b>				
CY	1%	218	226	3,764
EL	4%	376	34	1,140
ES	3%	276	37	1,827
IT	3%	550	97	2,427
MT	2%	363	121	2,437
PT	3%	320	329	2,530
<b>EU27</b>	<b>5%</b>	<b>199</b>	<b>164</b>	<b>3,294</b>

Source: Eurobarometer survey on undeclared work in the EU, 2007

## Annex 2

### Type of undeclared work in the EU, by country and country group

Country	Percentage of undeclared work that comprises:			
	Waged jobs for companies or businesses	Self-employment for friends, family and neighbours	Self-employment for other private persons or households	Other/do not know/refusal
<b>Continental Europe</b>				
AT	14	58	16	12
BE	24	57	17	2
DE	21	59	13	7
FR	13	70	12	5
IE	15	48	23	14
LU	7	72	16	5
NL	18	62	15	5
UK	28	56	11	5
<b>East-Central Europe</b>				
BG	50	22	28	-
CZ	23	66	3	8
EE	20	41	35	4
HU	33	39	24	4
LT	15	43	42	-
LV	18	41	32	9
PL	26	32	31	11
RO	12	57	19	12
SI	15	66	13	6
SK	16	53	28	3
<b>Nordic countries</b>				
DK	16	68	13	3
FI	9	89	2	-
SE	14	68	16	2
<b>Southern Europe</b>				
CY	-	55	45	-
EL	27	41	32	-
ES	29	41	30	-
IT	13	41	44	2
MT	77	0	9	14
PT	35	33	26	6
<b>EU27</b>	<b>20</b>	<b>55</b>	<b>20</b>	<b>5</b>

Source: Eurobarometer survey, 'Undeclared work in the EU', 2007

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## Annex 3

### Incidence of undeclared work in EU 27, by sector and country group (in %)

% of undeclared work in:	Continental Europe	East-Central Europe	Nordic countries	Southern Europe	EU27
Household services	23	7	11	30	19
Construction	16	19	27	3	16
Personal services	11	7	4	10	9
Hotels and restaurants	9	2	4	17	8
Repair services	7	5	4	9	7
Industry	1	5	7	13	5
Agriculture	2	9	2	3	4
Transport	2	4	11	2	3
Retail	2	6	1	1	3
Other	17	15	20	7	15
Refusal/don't know	9	22	9	7	12
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Eurobarometer survey on undeclared work in the EU, 2007

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## Annex 4

### Questionnaire: Labour inspection and Undeclared work

1. LEGAL DEFINITION: Does your national legislation define the concept of undeclared work? If so, how is it defined?
2. APPLICABLE LEGISLATION. Please indicate the main legal that apply in relation to undeclared
3. Please provide some basic data on undeclared work in your country
4. MEASURES TO DETER UNDECLARED WORK: Please provide some examples of how undeclared work is prevented and/or sanctioned within your labour administration system.
5. LABOUR INSPECTION AND UNDECLARED WORK
  - 5.1 Figures<sup>48</sup>
    - 5.1.1 Overall, how many labour inspection visits and actions (sanctions etc.) are carried out each year?
    - 5.1.2 Of these, how many visits and actions specifically targeting undeclared work are carried out each year?
    - 5.1.3 In the last three years, has there been an increase of undeclared work in your country? If so, please provide data showing this progression.
  - 5.2 Is there an official labour administration/labour inspection policy related to undeclared work in your country? If yes, please describe its main characteristics and objectives.
  - 5.3 Does your country's labour inspectorate have available registries or other collected information on undeclared work? What information is included? How is it used by labour inspectors, in particular for preparing visits?
  - 5.4 How is the issue of undeclared work incorporated into the labour inspectorate's plan or program? Are there any consultations with the social partners in this process? If so, at what level?
  - 5.5 Is there a specialized inspection body/unit/section dealing with undeclared work? If so, please describe its function and number of staff.
  - 5.6 Are there any specific training programs for inspectors on undeclared work? For civil servants in general? Please briefly describe
  - 5.7 Integrating the issue of undeclared work in inspection visits.

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<sup>48</sup> Where possible, please provide data segregated by gender. Also, distinguish between legal residents with residency permit (EU or national) and non-regularized residents. Please also provide forced labour/trafficking figures where such statistics exist.

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- 5.7.1 Are there any special inspection methods for investigating undeclared work?
  - 5.7.2 Is there any collaboration with other authorities or agencies?
  - 5.7.3 Labour inspection sanctions for undeclared work
  - 5.7.4 Is there any special sanctions procedure to deal with undeclared work?
  - 5.7.5 Are there any special sanctions for undeclared work (including different penalty amounts)?
  - 5.7.6 Does the law provide any special procedures in criminal or civil law to deal with undeclared work?
- 5.8 Is there any evaluation method of the measures in place for inspecting undeclared work? If so please describe.
- 5.9 Have inspectors raised any problems in relation to monitoring and sanctioning undeclared work? If so, what are they, and what measures have been taken in response?
6. ADMINISTRATIVE MEASURES
- 6.1 Do you have any experience in collaborating or following up with other administrative bodies (such as migration authorities, employment agencies, tax authorities etc.) after instances of undeclared work are discovered during inspection visits? Please describe.
  - 6.2 Are there cross-border cooperation agreements/collaboration between labour inspectorates/inspection bodies in different countries in the field of undeclared work? If so, please elaborate on the content/subjects covered.
  - 6.3 Are there experiences of collaboration with the social partners on the subject of undeclared work? Please describe.
7. CRISIS AND UNDECLARED WORK
- 7.1 Is there any evidence that the impact of the current economic downturn, namely increased unemployment in the formal sector, has led to an increase in undeclared work?
  - 7.2 If yes, are there any new tendencies in the pattern of undeclared work? For example, registered self-employed persons doing a greater proportion of business "off the books", greater use of "envelope wages", or an increased use by registered enterprises of workers declared as unemployed and receiving unemployment benefits?
  - 7.3 Has your government recently adopted any measures addressing these new patterns of undeclared or "precarious" work?

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## Annex 5

### Budapest Meeting

**Thursday, 29 October 2009**

8.00 – 8.30	Registration and administrative arrangements
8.30 – 8.45	Welcome and introductory remarks: Mark Levin, Director, SRO Budapest Giuseppe Casale, Director, LAB/ADMIN
8.45 – 10.45	Session 1: The different forms of undeclared work in Europe and the role of labour inspection
	Chair and introductory remarks: René Robert, LAB/ADMIN  Country presentations Discussion
10.45 – 11.00	Coffee break
11.00 – 13.00	Session 2: Labour inspection strategies to detect forms of undeclared work: preventive and collaborative approaches
	Chair and introductory remarks: Maria-Luz Vega, LAB/ADMIN  Country presentations Discussion
13.00 – 14.30	Lunch break
14.30 – 16.00	Session 3: Actions to address undeclared work: Labour inspection approaches for promoting compliance – striking a balance between prevention and sanctions
	Chair and introductory remarks: Carmen Bueno, CTA, SRO Budapest  Country presentations Discussion
16.00 – 16.15	Coffee break
16.15 – 18.00	Session 4: Labour inspection and posted workers: challenges and solutions
	Chair and introductory remarks: Nadine Fischer, LAB/ADMIN  Country presentations Discussion

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Evening

Dinner

**Friday, 30 October 2009**

8.30 – 10.30

Session 5: Collaboration between labour inspectorates and other agencies (national and international) to address undeclared work: the extent and limits of collaboration

Introductory remarks and chair:  
Maria-Luz Vega, LAB/ADMIN

Country presentations  
Discussion

10.30 – 11.00

Coffee break

11.00 – 13.00

Session 6: Joint strategies to address undeclared work: possible synergies with the social partners

Country presentations  
Discussion

Introductory remarks and chairs:  
Patrick Taran (Migrant) and Beate Andree (Declaration)

Country presentations  
Discussion

13.00 – 14.30

Lunch break

14.30 – 15.30

Session 7: Wrap up and closing remarks  
Marc Levin, Director, SRO Budapest  
Giuseppe Casale, Director LAB/ADMIN

## Annex 6

### List of Experts

Country	Names	Titles
Belgium	VAN DAMME Karel	General Advisor at Inspection for Well-being at Work, Belgian Federal Public Service Employment Work and Social Dialogue
Belgium	PANKER Maria	Seconded National Expert, European Commission, DG Employment, Social Affairs and Equal Opportunities
Belgium	BECK Ludo	General Advisor, Federal Public Service Employment Work and Social Dialogue Labour Inspectorate Social Laws
Bulgaria	ATANASOVA Veselina	Head of Unit, International Project and Programmes Unit, General Labour Inspectorate Executive Agency
Bulgaria	DIMITROVA Irena	General Labour Inspectorate Executive Agency, Head of Unit
England	WILLIAMS Colin C.	Professor of Public Policy, School of Management, University of Sheffield
Estonia	LIND Annely	Chief Lawyer, Estonian Labour Inspectorate
France	BESSIÈRE Jean	Direction Générale du Travail - Adjoint au DGT, Chef du service de l'animation territoriale de la politique du travail, Ministère de l'emploi, de la Cohésion sociale et du logement
France	CRISTOFORETTI Jean Daniel	Directeur des Etudes, Institut National du Travail, de l'Emploi et de la Formation Professionnelle
Hungary	GÁDOR János	Special Adviser (International), Hungarian Labour Inspectorate (OMMF)
Hungary	DUDÁS Katalin	Special Adviser (International), Hungarian Labour Inspectorate (OMMF)
Ireland	DEERING, Gerard	Director, National Employment Rights Authority
Latvia	JONIKANE Inga	Deputy Head of the Legal Unit, State Labour Inspectorate
Lithuania	MACIULAITIS Vilius	Deputy Chief of State Labour Inspectorate
Macedonia	JOVANOVSKI Goran	Director, State Labour Inspectorate
Poland	JAWORSKI Robert	Chief Labour Inspectorate, National Labour Inspectorate
Poland	LESNIEWSKI Jaroslaw	Director of Legality of Employment Department
Portugal	PINTADO NUNES Joaquim	Head of Department for Inspection Activities Support, ACT - Autoridade Para as Condições do Trabalho
Spain	ALÍA RAMOS Manuel	Sub-Director general para la Inspección en materia de Seguridad Social, Economía Irregular e Inmigración Dirección General de la Inspección de Trabajo y Seguridad
Spain	ARAGÓN BOMBÍN Raimundo	Director General, Inspección de Trabajo y Seguridad Social
Spain	Marta Rodriguez-Tarduchy Diez	Consejera de Trabajo e Inmigración ante OIT Ministerio de Trabajo e Inmigración de España
SRO-BUDAPEST	LEVIN Mark	Director, SRO-Budapest
SRO-BUDAPEST	BUENO Carmen	CTA
SRO-BUDAPEST	KNOWLES Anne	Senior Specialist, ACT/EMP
SRO-BUDAPEST	SHEKERDJIEVA Svetla	Senior Specialist, ACTRAV

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ILO-GENEVA	CASALE Giuseppe	Director, LAB/ADMIN
ILO-GENEVA	VEGA Maria-Luz	LAB/ADMIN
ILO-GENEVA	FISCHER Nadine	LAB/ADMIN
ILO-GENEVA	ROBERT René	LAB/ADMIN
ILO-GENEVA	ANDREES Beate	DECLARATION
ILO-GENEVA	TARAN Patrick	MIGRANT