

ETUC Resolution on Undeclared work

Adopted at the ETUC Executive Committee on 11-12 March 2014

Undeclared work is a serious form of social dumping and it is high time that concrete action is taken at EU level in order to prevent undeclared work and to protect undeclared workers.

The EU needs better enforcement of existing labour laws and standards as well as a stronger role in promoting more, and better, cooperation and coordination between the different national administrations.

To fight undeclared work the right balance of prevention, controls and sanctions is essential. This can be done through a consistent approach with awareness-raising activities by governments and social partners, transnational cooperation between Member States, more resources for inspections and persuasive sanction mechanisms.

Undeclared work – a very diverse picture

Undeclared work is a common problem in EU Member States, although the scale and character vary across the EU 28. Because of the crisis workers in some countries are forced to leave their homes and try to take up whatever work they can find abroad and this also increases the cross-border dimension of undeclared work.

The use of undeclared work is particularly widespread in labour-intensive sectors such as agriculture, construction, tourism, domestic households, care, textile and retail.

There are many different forms of undeclared work, such as under-declared work (formal jobs where declared workers receive two wages from their employer, one declared and one undeclared 'envelope wage') and work done through false employment status (bogus self-employment, bogus posting, etc.). It can involve nationals, regular or irregular migrants.

Working undeclared is not the choice of the worker but may be the only way to earn an income. Undeclared workers are usually paid less and they work in precarious conditions, since they are often not recognised, registered, regulated or protected under labour and social protection legislation, and therefore not able to enjoy, exercise or defend their fundamental rights. They are mostly not organised and they have little or no collective representation in relation to employers or the public authorities.

Trade unions have a crucial role to play in the fight against undeclared work and in trying to protect undeclared workers, regardless of their residence status, as trade unions are usually the first ones to be made aware of problematic, fraudulent, abusive or illegal situations. In some national systems social partners have a defined role to perform alongside the public authorities in preventing and controlling undeclared work. The main role of trade unions is to negotiate at all appropriate levels to curb the incidence of undeclared work, raise awareness of its negative consequences, as well as of the benefits of declared work, provide (legal) advice for undeclared workers and become involved in policy work and tripartite bodies and research agencies, including within the new EU platform, with a view to supporting an integrated response to undeclared work.

Undeclared work not only has serious consequences for the workers but also for EU societies as a whole:

- Lost revenue for national tax authorities.

- National social security schemes not receiving due payments, which undermines the funding and distribution of social welfare.
- Fair competition among firms being distorted, in turn paving the way for social dumping.
- Workers with no welfare, sickness or accident insurance and therefore being exposed to significant risks and financial losses.
- Industrial relations which might be jeopardised by the existence of undeclared work.

Research shows clearly that higher levels of undeclared work are associated with low GDP, greater public sector corruption, low state intervention in the labour market, low social protection, less effective redistribution via social transfers, higher poverty levels and greater inequalities.

Undeclared work has increased further in those Member States where austerity programmes have been introduced in response to the economic crisis. This, coupled with a reduction in labour inspections, sometimes as a result of the cutting of state budgets, has been a further negative driver of undeclared work. A recent study by Eurofound on undeclared work corroborates this and found that: “there is a strong correlation between the wider austerity measures pursued and the size and growth of the undeclared economy. (...), this report reveals that neo-liberal measures are strongly correlated with larger undeclared economies and social democratic measures with smaller undeclared economies.”¹

Fighting undeclared work and protecting the undeclared worker

Reducing the level of undeclared work in the EU needs to be part of a broader strategy to increase structured job creation, improve job quality and access to employment support, fight the segmentation of the workforce, and secure fiscal and social contributions.

In order to ensure that undeclared work is dealt with consistently in the EU, and to build an effective response to undeclared work it should be defined at the European level along with the ILO notion of the informal economy, meaning “all economic activities by workers and economic units that are – in law or in practice – not covered, or insufficiently covered, by formal arrangements.”

The EU must guarantee the rights enshrined in the Charter of Fundamental Rights in Article 5 (Prohibition of Slavery and Forced Labour), Article 15 (Freedom to Choose an Occupation and the Right to Engage in Work) and Article 31 (Fair and Just Working Conditions), as well as No. 81 of the ILO Convention (Labour Inspection) and No. 189 (Domestic Work) and the principles in ILO Recommendation No. 198 (Employment Relationship). The International Labour Conference 2014 is preparing a normative instrument on the transition from the informal to the formal economy, covering as well the debate on undeclared work. It is important that ETUC and affiliates engage in these negotiations.

In order to discourage undeclared work the main focus of action at EU level should be on:

- preventing undeclared work from taking on a cross-border dimension;
- strengthening European and national tools to improve cross-border prevention, control, inspection, and the enforcement of sanctions;

¹ *Tackling undeclared work in 27 EU Member States and Norway: Approaches and measures since 2008*, <http://www.eurofound.europa.eu/pubdocs/2013/243/en/1/EF13243EN.pdf>

- strengthening national action and enhancing national mechanisms through cooperation and the sharing of best practices;
- ensuring that legislative differences between Member States do not lead to social dumping and deregulation of general protection.

It is essential that all authorities responsible for fighting undeclared work at the national level (such as tax, social security and labour inspection) cooperate actively at European level, as bilateral cooperation can never be as effective. In many cases, undeclared work can be detected by cross checking the information already owned by the national authorities. The ETUC welcomes the Commission's initiative to create a European Platform aiming at the enhancement of the cooperation between enforcement authorities at EU level, but stresses that this is not sufficient in order to prevent undeclared work.

The protection of the undeclared worker, nearly always in an extremely precarious situation, is essential. Social dialogue is key in this respect, so that the social partners can set the necessary framework to prevent and reduce undeclared work and protect the undeclared worker.

Furthermore trade unions need to have access to workplaces and to relevant documents to be able to protect the undeclared workers and to alert the relevant public authorities. Trade unions should have the possibility to take cases to court on behalf of workers.

An effective and independent labour inspectorate is one precondition for the proper application of labour legislation. The cuts in national budgets for labour inspection, and with it the reduction in the number of labour inspectors, makes inspection less effective. Governments need to ensure the financial measures for the controlling authorities and increase resources.

It is important that the blame for undeclared work, if identified by a controlling authority, does not fall on the worker. The legal consequence must be that the undeclared worker is considered a worker with all rights following from this status. An undeclared worker should be able to claim due wages from his employer, as well as pay slips, etc. At least a minimum level of social protection must be guaranteed to the worker, even where the employer did not pay the social contributions. In this way real protection for workers in the EU can be achieved, as at the moment the legal framework at EU level continues to be based on the standard employment relationship.

For the ETUC it is essential to introduce a directive that sets minimum standards on labour inspection to be implemented in the Member States on the basis of ILO Convention No. 81 ensuring compliance with labour and social legislation. This directive should lay down the functioning of the system of labour inspection and cross-border training of labour inspectors and their powers and obligations, such as entry to workplaces, examinations, interrogations with workers and employers, access to documents and material and the possibility of inspection without prior notice. Where such systems are in force, the Member States should be allowed to entrust the social partners with the control and enforcement of wages and other working conditions.

Employers found guilty of using undeclared work should face serious consequences that can work as a deterrent. Exclusion from public contracts is one example. The key point is that sanctions are dissuasive. Only when they are severe enough, so that using undeclared labour is not beneficial for the employer, can they achieve their aim of dissuasion.

In the event an employer is found responsible for using undeclared work it is crucial that workers have preferential rights. They should have a favoured position in the order of

financial claims in the case of insolvency or have their claims for remunerations due ensured by another mechanism.

Undeclared workers being undocumented migrants are particularly vulnerable, because they do not enjoy even basic rights. Governments should protect these workers by making sure that they do not face repression or even being automatically sent back if they look for help from labour inspection or other public authorities or try to claim their rights. They should instead be provided with routes towards regularisation.

Bogus self-employed workers are also vulnerable due to their unlawful exclusion from the application of labour legislation and from collective bargaining. Measures are therefore needed based on ILO Recommendation No.198 to close this loophole, which serves to circumvent labour and social legislation.

Undeclared work is also frequent in the context of the posting of workers, for example, incomplete or non-declaration, fake posting, front companies (employment through subsidiary companies established in another EU Member State, although the contract in reality is executed in the host country). In order to help prevent abuses the ETUC wants the EU to introduce an obligatory system of joint and several liability along the chain and to legislate to prevent letterbox companies.