

Factsheet on Undeclared Work – AUSTRIA

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

Legal definitions in Austria can be found in the Criminal Code (Strafgesetzbuch - StGB), where § 153e defines “organised undeclared work” as “professional recruitment or placement of people in independent or dependent employment without the required registration for social insurance or without the required business license”. The law combating social security fraud (Sozialbetrugsbekämpfungsgesetz – SBBG) addresses and specifies several forms of social fraud, namely partial / no payment of social security contributions in the form of undeclared work (envelope wages, bogus part-time work, falsely declared employment), organised undeclared work or bogus registration to the social security system to obtain benefits or to avoid obligations. The Law against wage and social dumping (Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG in force since 1.1.2017; former LSDB-G), aims to ensure equal pay conditions for everyone employed in Austria and to ensure fair competition between Austrian and foreign companies. Penalties to companies are imposed if wages and salaries (as provided for in the collective agreements) fall short. The previously mentioned laws are the essential common framework for several institutions involved in combating undeclared work.

1.1.2 Characteristics of undeclared work

In Austria, several types of undeclared work exist. Any ranking of the importance of different types suffers from a lack of data and limited comparability. Furthermore data reporting is irregular or undertaken in a compromised form, so that further distinctions cannot be provided.

- **Undeclared work** (e.g. (partly) envelope wages, bogus part-time work, underpayment – where wages and salaries are less than what is provided for in the collective agreements).

Underpayment is controlled under the LSD-BG including all forms of wages and salaries that fall short of collective agreements. Between 2011 (start of the implementation of the LSDB-G) and end of November 2016, nearly 1,950 reports relating to underpayment are documented (affecting 7,308 workers). More than 1,100 final decisions relating to underpayment exist which affect around 2,300 workers, of whom nearly 64% are from abroad.

Information on other types of activity, especially quantitative information, are highly limited (for results based on qualitative methods see footnote¹). For the gastronomy sector, the Chamber of Labour² analysed the situation of part-time workers, finding more than half (58%) of the analysed cases reported to the social security authorities as being part-time or marginal employed workers had actually worked longer hours.

- **Bogus self-employment** (incl. undocumented (illegal immigrant) work)

Despite bogus self-employment being continually discussed as a problem, quantitative data are also limited. The union estimates that up to two-thirds of people working on the basis of a service contract (one-person-enterprises and ‘new self-employed’) or free service contract (Freie Dienstnehmer) are not employed correctly (cf. www.watchlist-prekaer.at).

Some information on bogus self-employment exists for the construction sector. Inspections of the Construction Workers Leave and Severance Pay Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse - BUAK) in 2012, which controls the correct declaration

¹ Schmatz, Susanne / Wetzler, Petra, ‘*Developments in the field of wage dumping*’ (‘Entwicklungen im Bereich Lohndumping’), on behalf of the Chamber of Labour, Vienna, 2014.

² Chamber of Labour, ‘*Evaluation of 371 questionnaires in the gastronomy*’ (‘Auswertung von 371 Fragebögen Gastgewerbe’), unpublished report, Vienna, 2012.

of employment status, show indications of possible falsely declared self-employment in 69% of analysed cases.³

A specific contextual issue is the posting of workers. Austria is one of the main receiving Member States of posted workers. In 2014 Austria received more than 100,000 PDs A1 (portable documents A1), which is a 70 % increase compared to 2010.⁴ It can be assumed that despite several improvements in recent years not all postings are reported to the authorities. Other important issue in this context is the bogus posting of workers and the prevention of forgery and falsification of PD A1. Inspection results repeatedly show cases of violations of the reporting requirements as well as several forms of incorrect payments.⁵

The number of illegally employed persons detected quantified by the Financial Policy was 11,961 in 2015,⁶ corresponding to 20.6% of all controlled employed by the Financial Policy.

While undeclared work occurs in several economic sectors, it seems to be particularly widespread in the construction sector. Based on the LSDB-G statistics, previous experience shows that more than half of the final decisions relating to underpayment affect the construction sector (cf. calculations of Schneider (2016) for the shadow economy⁷). Other frequently mentioned sectors include agriculture, transportation, accommodation and food service activities or cleaning activities.

Undeclared work is more likely to be found in SMEs than in larger enterprises, where the possibility of work councils is higher. A report from 2012, based on expert interviews, showed that experts see works councils as an important control body to combat undeclared work.⁸

Main motivators for undeclared work include the possibility to earn more or some 'extra' money, or to find a paid job opportunity, which could be true for the unemployed as well as migrants with no or very restricted labour market access. Results from the Eurobarometer survey for 2013⁹ show that problems in finding work is clearly less significant in Austria than the EU 27-average (12% vs. 21%). For Austrians, who had undertaken undeclared paid activities in the past year, the main reason was that "both parties benefited from it" (80% vs. 50% EU-27). Another factor mentioned that places Austria above the EU-average concerns the explanation that "working undeclared is common practice in the region or sector of activity so there is no real alternative" (23% vs. 14%).¹⁰

³ Riesenfelder, Andreas/Wetzel, Petra, 'New forms of working at the interface between independence / dependence. Analysis of the situation in the construction industry' (,Neue Arbeitsformen im Grenzbereich Selbständigkeit/Unselbständigkeit. Analyse der Situation in der Bauwirtschaft'), Study on behalf of the Chamber of Labour, Vienna, 2013.

⁴ Pacolet, Jozef / Wispelaere De, Frederic, 'Posting of workers. Report on A1 portable documents issued in 2014', report prepared in the framework of Contract No VC/2013/0301 'Network of Experts on intra-EU mobility – social security coordination and free movement of workers / Lot 2: Statistics and compilation of national data', on behalf of the European Commission, 2015.

⁵ Schmatz, Susanne / Wetzel, Petra, 'Developments in the field of wage dumping' ('Entwicklungen im Bereich Lohndumping'), on behalf of the Chamber of Labour, Vienna, 2014 and, Riesenfelder, Andreas/ Schelepa, Susanne/ Wetzel, Petra, 'Monitoring of the opening of the labour market - Effects on forms of employment and wage dumping' (,Monitoring der Arbeitsmarktöffnung - Auswirkungen auf Beschäftigungsformen und auf Lohndumping'), Study on behalf of the Chamber of Labour, Vienna, 2012.

⁶ Federal Ministry of Finance (BMF), 'The Austrian tax and customs administration, Annual Report 2015' (,Die österreichische Steuer- und Zollverwaltung, Geschäftsbericht 2015'), Vienna, 2016

⁷ Schneider, Friedrich, 'Despite opposing tendencies (increase in unemployment and refugees) a reduction in the shadow economy in Austria in 2016' ('Trotz gegenläufiger Tendenzen (Anstieg der Arbeitslosigkeit und Flüchtlinge) ein Rückgang der Schattenwirtschaft (des Pfusch) in Österreich in 2016'), Linz, 2016.

⁸ Riesenfelder, Schelepa, Wetzel, 2012.

⁹ European Commission, 'Undeclared work in the European Union', Special Eurobarometer 402, 2014.

¹⁰ Other reasons are more or less in line with the EU average. In total, 5 % of Austrian respondents said, that they had undertaken undeclared work in the last year. The most

In representative surveys carried out several times since the mid-1990s almost two thirds (62 %) of people interviewed (January/February 2015) see the hiring of an illegal worker as a mere peccadillo.¹¹ Key reasons cited for hiring illegal workers included not being able to afford regular workers (70%) and taxes being too high (65%). The time dimension in the data shows that over the past number of years there has been no relevant change concerning the reasons for undeclared work.

1.1.3 Estimated scale of undeclared work¹²

For 2015 the shadow economy is estimated at around EUR 21.4 billion which corresponds to 8% of GDP¹³, a slight increase compared to the period 2011-2014. The comparably high unemployment rate and the high tax burden are seen as the main factors contributing to the increase. For 2016 a reduction is expected because of the tax reform which has come into effect in 2016 and reducing the tax burden on labour.

Tax (and social security contribution) losses due to the shadow economy, in 2013 amount to 2% of GDP. Another report for the construction sector calculated tax and social security losses due to bogus companies amounting to EUR 508 million annually.¹⁴

The development of the shadow economy in Austria from 1990 to 2015

	EUR billion	% of official GDP
1990	6.1	5.5
1995	12.3	7.3
2000	19.7	10.1
2005	22.0	10.3
2010	20.3	8.1
2015*	21.4	8.1

Source: Schneider 2016; *estimated

important activities are 'repairs or renovations' (34 % vs. 19 % EU-27) and helping moving house' (30 % vs. 7 % EU-27) (cf. European Commission 2014).

¹¹ Schneider, Friedrich 'A renewed increase of the shadow economy in Austria in 2015 and the adjustment of the Austrians' ('Ein erneuter Anstieg der Schattenwirtschaft (Pfusch) in Österreich in 2015 sowie die Einstellung der ÖsterreicherInnen dazu') Linz, 2015.

¹² In Austria two main methods are used. Schneider calculates the size of UDW on the basis of a combination of the MIMIC method and the currency demand method and is using parallel direct methods. (cf. also COM(2014) 221 final} {SWD (2014) 137 final). The second approach is used by Statistics Austria, based on the discrepancy method. The main purpose of the adaptation of National Accounts is not the estimation of certain aspects of UDW, but to receive a sound revision of nation accounts according to the EU regulations. According to press reports, the estimate for the value of the black economy and illegal production in 2013 was around EUR 11.4 billion (of which "illegal production": 460 million), which means an extra amount of 3.7 % of GDP (cf. e.g. www.finanzen.at/nachrichten/aktien/Stichwort-Das-Bruttoinlandsprodukt-inklusive-Schattenwirtschaft-1000298232).

While results of the National Accounts are not published regularly, results calculated by Schneider are available annually.

¹³ Schneider, 2016.

¹⁴ Hye, Raphaela et. al., 'Social fraud by bogus companies in the construction sector. An assessment of the economic damage' (Sozialbetrug durch Scheinfirmen im Bauwesen. Eine Einschätzung des volkswirtschaftlichen Schadens'), Report of the Institute for Advanced Studies on behalf of the Federal Ministry of Labour, Social Affairs and Consumer Protection, Vienna, 2015.

Further information, like a breakdown along different types of UDW, is not available.

1.2 Institutional Framework

1.2.1 Responsibilities for addressing undeclared work & Characteristics of the responsible organisations

Several ministries and institutions are involved. The most central ones are: the **Financial Police**, which is the national anti-fraud unit in the **Federal Ministry of Finance** (BMF) and, aside from ensuring tax supervision, is responsible for several regulatory policy measures, in particular labour market tasks (e.g. illegal employment of foreign workers) as well as controls under the Social Welfare Fraud Act and LSD-BG (cf. for more details: <https://english.bmf.gv.at/combating-fraud/Financial-Police.html>). The number of controls and the number of staff number in the Financial Police is repeatedly discussed in the political debate. Several actors request an extension of the staff in order to carry out more inspections. Currently, the Financial Police employs around 500 persons.¹⁵

The **Federal Ministry of Labour, Social Affairs and Consumer Protection** (BMASK) is responsible for labour market immigration issues, the general social insurance law (ASVG) and the LSD-BG, where the Centre of excellence (LSDB) at the **Vienna Regional Health Insurance Fund** was established as a main authority in the context of controlling underpayments. It cooperates closely with the Financial Police (in the case of foreign cases) and the other regional Health Insurance Funds (in the case of domestic cases). Furthermore cooperation exists with the **Construction Workers Leave and Severance Pay Fund (BUAK)**, which is mainly responsible for identifying and preventing UDW in the construction sector.

The **Austrian Health Insurance Institutions** are responsible for collecting contributions for all branches of Austrian social security as well as a wide array of other wage-dependent levies. In this respect, the health insurance institutions not only act as a "payment hub" by forwarding the respective contributions or levies to the corresponding institutions; they also legally represent those other institutions in all collection-related matters, e.g. recovery or liability-proceedings, bankruptcy proceedings or even criminal proceedings. In order to ensure compliance with contribution obligations they audit employers together with the fiscal authorities in the framework of a joint audit of wage-dependent levies (GPLA – Gemeinsame Prüfung lohnabhängiger Abgaben) and have the power to initiate inspections on an ad-hoc basis, where they are frequently confronted with different types of undeclared work.

The **Public Employment Service (PES)**, responsible for inspections under the AuslBG in the context of issuing employment permits, checks to ensure that the employer complies with the given payment and working conditions including social security rules (Act Governing the Employment of Foreign Nationals - AuslBG §4 (1) Z 2) and similarly, that they comply with the given rules in the context of issuing posting permits (cf. <https://english.bmf.gv.at/combating-fraud/Cross-border-posting-of-workers-in-the-EU.html>).

Social partners play an important role in the legislative process as well as in providing counselling for employees and employers, like in the help-desk 'UNDOK' recently set up for un(der)documented workers, founded by trade unions.

1.2.2 Cooperation and collaboration between authorities and cross-border authorities

As mentioned before, several institutions are involved and the issue of cooperation and collaboration is repeatedly discussed with the aim of strengthening the interfaces and establishing enhanced information flows. Under the law of combating social security fraud (Sozialbetrugsbekämpfungsgesetz – SBBG; taking effect by 2016) cooperation between the relevant institutions will be intensified, especially through the establishment of a 'social fraud

¹⁵ Cf. several press information's, e.g.

<http://diepresse.com/home/politik/innenpolitik/4927258/Mehr-Personal-gegen-Finanzbetrug-aber-nicht-bei-Finanzpolizei>

database' for the purpose of detecting and easier identification of fraud cases under §§ 153ff of the Criminal Code.

Collaboration between the finance administration and the social security institutions has been happening since 2003 in the joint audit of all wage-dependent levies (GPLA). This process also includes the inspection of underpayment in the case of national employers according to the LSD-BG.

Other forms of cooperation are for example the establishment of a construction-site database. In 2012, BUAK in cooperation with the Labour Inspection and the Labour Inspectorate for Transport started a web application for the announcement of construction-sites which, among others things, facilitates targeted inspection activities.

In support of un(der)documented workers the counselling centre "undok" was established in 2014 by several trade unions, the Chamber of Labour and several NGOs (see, www.undok.at).

Besides the cooperation of national authorities, the cooperation between the Member States of the European Union is frequently discussed as problematic. One problem is for example that a company with a legal violation detected in Austria or bogus companies can still operate in other EU countries. In general cooperation between Member States is described by experts as not guaranteed and is extremely resource-intensive (concerning time and costs) (cf. for example in the context of LSDB-G: Schmatz/Wetzel 2014).

1.3 Policy Focus and Measures

1.3.1 Policy approach

In Austria, several measures exist to tackle UDW and discussions about further improvements and reforms are ongoing. These existing measures are varying in their scope, beside regulations addressing all economic sectors also sector-specific measures (in particular for construction sector, which is comparable highly affected by UDW) exist. It is a mix of measures aiming to deter and to enable compliance.

1.3.2 Measures to tackle UDW

The table below provides a summary overview of measure to tackle UDW in Austria.

Overview of measures to tackle UDW

Deterrence approaches	Law against wage und social dumping (Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG)
	Law combating social security fraud (Sozialbetrugsbekämpfungsgesetz – SBBG)
	Customer Liability Act
	Reporting obligations (e.g. BUAK: reporting of the extent and the location of the working time of part-time workers)
	Prohibition of envelope wages in the construction sector
	Mandatory cash register rule
Enabling approaches	Reform of the Federal Procurement Act 2015
	Tax Reform 2015 - Easing the income tax burden
	Funding of craftsmen service provision
	Construction site Database

	Service Voucher
	Counselling for workers concerned – UNDOK

The **Law against wage und social dumping** (LSD-BG) introduced penalties, particularly if the employer does not pay the employee's remuneration as stipulated in collective bargaining agreements. Penalties are also imposed if relevant employment contracts do not exist. With the new LSD-BG customer liability rules were tightened, e.g. by establishing a contractor liability for the building sector to hedge wage claims of cross-border posted or temporary workers. If foreign construction workers are underpaid by their company, they can make their claims to the Austrian contractor. Customer liability rules are also defined in the **law combating social security fraud** (SBBG). Contracting companies are liable as a guarantor and payer from the date of the final determination that a company is a bogus company. The liability rules apply to all claims paid for services of employees. This was an important extension, as so far liability rules (**Customer Liability Act**, AuftraggeberInnen-Haftungsgesetz¹⁶) had focussed on the construction sector only. In general, the law aims to reduce social fraud by several measures, like new and intensified cooperation structures between relevant institutions (cf. above), easier mechanisms to identify bogus companies and by reducing misuse of e-cards, mainly through increased monitoring. To combat bogus self-employment legal certainty concerning the delimitation of self-employed persons and employees was created with the **Social Insurance Allocation Act** (Sozialversicherungs-Zuordnungsgesetz, SV-ZG: partly in force since 1st of July 2017). In the future, the type of employment, i.e. "new self-employed persons" and certain groups of operators of a free trade, will be determined with binding effect by the Social Security Institutions in advance.

Reporting obligations exist in different ways. One measure addressing a specific form of UDW - bogus part-time work – was introduced in the construction sector. The BUAK observed a rising number of part-time workers.¹⁷ Since 2014 the extent and the location of the working time of part-time workers, including any changes, has to be reported to the BUAK. Also in the construction sector, a **prohibition** of envelope wages, **wages paid cash-in-hand**, was introduced within the framework of the tax reform by 2016 to reduce the possibility of paying fictitious wages and undeclared wages.

Furthermore the tax reform 2015 brought the introduction of a **mandatory cash register** as of 2016. All businesses must record their cash sales electronically when they exceed the threshold of EUR 15 000 revenues and EUR 7 000 cash revenues per year. For such cases, electronic cash register systems must be in use and should reduce the possibility of undeclared money transactions.

Enabling approaches also exist. **Easing the tax burden on labour** in the framework of the tax reform 2015 can be seen as a preventive measure in the context (cf. EEPO Annual Policy Update, September 2015).

The reform of the **Federal Procurement Act** 2015 brought some relevant changes with the aim to combat more effectively wage and social dumping in public procurement. The use of subcontractors gets more regulated and controlled. For certain services (e.g. construction contracts from a value of EUR 1 million) the award must be given to the bid which is most economically advantageous instead of the bid with the lowest price.

In 2014 and 2015 **funding of craftsmen service provision** existed. The costs for refurbishment and modernisation of flats and houses of private persons were subsidised, if the

¹⁶ Bartos, Beatrix, 'The new contractor liability in the fight against social fraud' (,Die neue Auftraggeberhaftung im Kampf gegen Sozialbetrug'), Internet; www.hauptverband.at/mediaDB/MMDB136509_Bartos_Autraggeberhaftung1.pdf, Vienna.

¹⁷ In the 2nd quarter of 2011 (start of high season in the construction sector) the part-time quota for 'Building and related trades workers, excluding electricians' stood at around 3 % and climbed to over 6 % in 2014. In 2015 a reduction to 5 % was observed.

work was carried out by licensed craftsmen. Only labour costs were eligible but no costs for materials. The subsidy amounted to 20% of the labour costs up to a maximum of EUR 600. Currently a re-introduction of the provision is being discussed. The measure showed a high take-up rate, but also according to an evaluation, deadweight-effects. At the same time another study indicated it led to rising tax revenues.¹⁸

In 2012 a **construction site database** was implemented (as already stated above). Beside the BUAK and Labour Inspection, also the finance police and the health insurance providers have access to the data, so that in sum targeted and planned checks and controls can be more easily carried out.

Service Vouchers introduced in 2006 aim to legalise work in private households. Private employers can purchase service cheques at post offices and tobacconist shops and use them to remunerate housekeepers, who are so-called marginal part-time employees. Employees remunerated via the service voucher are covered by work accident insurance and have the opportunity to opt-in to health and pension insurance. However service cheques are being used to a much lesser extent than expected, even if the number of purchased vouchers is rising year by year. In 2014 nearly 250,000 cheques were issued, compared to 98,000 cheques in 2006. The number of employees using a voucher in 2014 was 7,650 and therefore increased by more than three times compared to 2006 (2,067 users)¹⁹.

As already mentioned, UNDOK, is a relatively new initiative to support un(der)documented workers in Austria. Within the first year of activity nearly 150 persons used the offer.²⁰

1.3.3 Good practice

Austria has established a distinct regime of control with regard to wages, connected tax and social security contributions. The cornerstone is the **LSDB-G**, which is seen by experts of different sectors as an essential foundation against dumping practices and UDW, with preventive and universally beneficial effects.²¹ Ongoing analysis and improvements are essential to ensure effectiveness. Since the law came into force (2011), thousands of reports relating to underpayment have been documented, affecting more than 7,000 workers²². Final decisions relating to underpayment affect around 2,300 workers, the sum of penalties amounts to EUR 7,318,190. Additional EUR 6,049,698 was imposed due to non-cooperation with control authorities or missing employment documents.

In 2013 the Main Association of Austrian Social Security Institutions (Hauptverband der österreichischen Sozialversicherungsträger) established a monitoring system called **DBENTS**, to offer institutions more effective assistance in relation to conducting checks and combating abuse concerning the posting of workers. Key features are the fully electronic recording of all incoming PD A1 and storage and archiving in a central database, which can be accessed only by authorised individuals and a search function for the competent Austrian social security institutions.

1.3.4 Challenges and barriers

Several challenges to tackling UDW exist. Amongst other reasons, it is often argued that a too high tax burden on labour leads to UDW, and it is too early to say whether the tax reforms will

¹⁸ Reports are not published. Internet: <http://derstandard.at/2000029006842/Kraeftiges-Lobbying-fuer-einen-Handwerkerbonus-neu>.

¹⁹ BMASK, 'Active labour market policy in Austria, 1994-2013' ('Aktive Arbeitsmarktpolitik in Österreich 1994-2013, Vienna, 2013, and BMASK, 'Active labour market policy in Austria' ('Aktive Arbeitsmarktpolitik in Österreich 2015, Documentation, Vienna, 2015.

²⁰ UNDOK, 'Summary - 1 year UNDOK' ('BILANZ - 1 JAHR UNDOK-ANLAUFSTELLE'), Vienna, 2015. Internet: <http://undok.at/wp-content/uploads/2014/06/Bilanz-1-Jahr-UNDOK-Anlaufstelle.pdf>

²¹ Riesenfelder/Schelepa/Wetzel 2013, Schmatz/Wetzel 2014

²² Latest available data for the period: 01.05.2011 - 30.11.2016

lead to a reduction of UDW. Schneider estimates for 2016 a reduction of UDW by around EUR 2 billion.²³

Other main challenges are:

- Effective enforcement through better cooperation between authorities.
- Cross-border cooperation, especially for inspection services, allowing them to establish the authenticity of a particular PD A1 but also concerning, for example, joint activities.
- Improved cooperation and collaboration between MS in detecting undeclared work and enforcing workers' rights.
- On the employee-side, a lack of knowledge about their rights, the fear of losing their jobs (e.g. an underpaid job in Austria will be better than having no job in the home country), or even the knowledge of their unlawful employment situation can discourage workers from demanding their right. Low-threshold (multilingual) information and counselling offers e.g. 'UNDOK' help desk, are important in this context.

²³ Schneider, 2016