

Factsheet on Undeclared Work – FRANCE (September 2017)

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

In the French legal context, undeclared work refers to illegal work defined in the labour code by the SME Law of 2 August 2005.

Illegal work involves a number of different types of major fraud, which contravene or abuse elementary rules linked to independent vocational activity, in the name of an enterprise, as well as rules linked to the hiring or employment of employees.

Those frauds are:

- Dissimulated [hidden] work (travail dissimulé);
- Bargaining;
- Illicit workforce loans;
- Employment of a foreigner without a work permit;
- Accumulation of irregular jobs; and
- Replacement income fraud.

The definition of dissimulated work refers to: "a person undertaking activity without having declared it as an enterprise, and an employer dissimulating part or all of its employees for part or all of their working hours". This definition has replaced the one formulated in the Law of 11 March 1997 relating to clandestine work, particularly to avoid confusion between undeclared work by employers and foreigners in an illegal position (without a residence permit). In other words, the legal definition of dissimulated work refers to two kinds of fraud: undeclared activity and undeclared employees.

If an enterprise is not registered in the Trade Register (Registre du commerce) and Professions Register (Registre des métiers) when this is compulsory, or if it does not declare its activity to social protection bodies or the tax administration, this is classed as dissimulated activity. If an employer does not make a declaration to the official bodies for the recruitment of its employees, does not present a pay slip for each employee, and/or does not give the correct number of working hours, this is classed as dissimulated employment.

The four main administrations or agencies in charge of fighting against illegal work – the Labour inspection, Police, social welfare agency (URSSAF) and other state departments like tax and customs, all follow the same definition.

In France, dissimulated work is penalised in the Labour Code with a maximum of three years imprisonment and a EUR 45,000 fine for individuals, EUR 225,000 for enterprises; by the Trade code with an additional penalty of interdiction of managing companies for five years; and by the Social Security Code requiring extra social contributions and penalties to be paid.

Tougher penal sanctions and special investigation techniques for UDW have been introduced (Dissimulated [hidden] work; Bargaining; Illicit workforce loan): with new aggravating circumstance punishable up to ten years' imprisonment and a fine of €100,000. This allows for investigative powers of judicial police officers (wiretaps, spinning) (art. 13 de la loi 2014-790 du 10 juillet 2014).

New penal sanctions have been created:

- Prohibition from collecting for a maximum period of 5 years "any public aid awarded by the State, local authorities, their establishments or groups, and any financial assistance paid by a private with public service mission (art. 12 de la loi 2014-790 du 10 juillet 2014, art. 131-39 du code pénal - Décret n° 2015-364 du 30 mars 2015).

- A new additional penal sanction in the case of conviction for illegal work: the dissemination of the decision on a dedicated Ministry of Labor website, with a sentence of up to a maximum of two years.

1.1.2 Characteristics of undeclared work

The fight against illegal labour has become more effective in recent years, with fewer controls but being better targeted and more efficient.

In 2014 – the last year with available data: 57,300 companies were inspected, including 38% in the construction sector, 25% in hotels and food/catering and 18% in agriculture sector. Some 15,300 offenses of illegal work were identified, of which 75% were for hidden work and 13% were for employing a foreigner without a work permit. In the priority sectors, one third of inspections are joints inspection between different control bodies.

There was also a sharp rise in social security adjustments within the priority sectors, rising to EUR 339 million in 2015 from EUR 253 million in 2014 and EUR 139 million in 2013. In agriculture this rose to EUR 10 million in 2014 from EUR 8.7 million in 2013.

Control services are professionalised and specialised, with an important education campaign and the creation of services dedicated to the national and regional level.

In 2016, 6,800 reported offenses for illegal work have been recorded, compared to 6,750 in 2015.

In practice, dissimulated work mainly concerns cases of the under-declaration of employees or under-declaration of working hours. In two thirds of cases, the offence concerns the deliberate failure to complete the official hiring declaration, while dissimulation of working hours represents 5% of offences (but under-estimated according to the inspection bodies). Failure to provide pay slips represents 14% of offences. Bogus status (bogus interns, bogus volunteers, bogus self-employed) represents only 3% of sanctions, a drop on the 2012 figure (7%). The French administration underlined a global increase in the number of sanctions linked to illicit workforce loans and bargaining (18% against 11% in 2012) while the number of sanctions linked to the use of foreign workers without a work permit is stable (11% in 2015). Moreover, over the past seven years, we can identify two main trends across administrative data: 1) the increasing number of sanctions due to dissimulated work (66% to 72%); and 2) the decreasing number of sanctions for using foreigners without a work permit (14% to 7%). By sector:

- The construction industry, the transportation sector and seasonal work in farming are the main sectors for all categories of illegal work;
- The hotel and catering services, the food retail sector and the services sector (and notably personal care services) are the main sectors for using bogus status or foreigners without a work permit; and
- The entertainment sector is the most affected by dissimulated work and bogus status.

According to agents from the French administration responsible for inspection, the economic crisis has been a factor leading to the acceleration of undeclared work. Increased competition has led some companies to try to preserve their profits through illegal methods (e.g. false subcontracting, false temporary agency working, under-declaration of the volume of working hours, etc).

The consequences of the crisis, namely levels of unemployment, increased poverty and higher taxation for companies, has reinforced the risk of undeclared work. According to some economists, an increase in the 'black' economy can be observed when respecting rules represents a disproportionate cost for companies. Furthermore, the specific situation of French overseas areas must be highlighted. These overseas areas have a high level of unemployment and poverty, strong clandestine immigration and, more

particularly in Guyana and Mayotte, a low level of education can partly explain a high degree of undeclared work.

More recently, some new trends are developing regarding undeclared work:

- More and more interns are employed by young start-ups into “co-working spaces” or incubators with a certain porosity between legal status and an informal status. So the digital economy could be a factor that stimulated undeclared work, according to a report by CESE¹.
- Frauds with posted workers: the Ministry of labour (Labor General Department of lab, DGT) has identified nine main countries including Portugal, Poland, Romania and Spain. In 2016, about 354,000 workers were officially registered as posted workers. Main frauds are with illegal work (under declaration of working hours; stable activities in France without establishment, etc).
- **Prevention of illegal work**

In the field of prevention, several conventions to combat illegal work involving the State and the professional branches were signed in 2016 concerning private employers (September 9, 2016), agriculture (May 2016) and construction (February 23, 2016).

1.1.3 Estimated scale of undeclared work

According to URSSAF², the French administration in charge of collecting social contributions, 7 in 100 enterprises are using dissimulated work practices. This data is confirmed by recent publications from the European Commission³ which estimated that, of the 2 million enterprises settled in France, 7.3% were involved in dissimulated work⁴. According to the A.T. Kearney Study on the shadow economy in Europe⁵, the shadow economy represents 10.8% of the GDP in France, while in Europe the scale can vary from 7 to 16%. France (like Germany and the United Kingdom) is identified in the group of European countries where the shadow economy is lower (other countries include Austria, the Netherlands, Ireland and Scandinavian countries).

1.2 Institutional Framework

1.2.1 Responsibilities for addressing Undeclared Work

Preventing and controlling undeclared work is carried out by three national authorities/organisations who are responsible for identifying, tackling and/or preventing UDW:

- Labour inspectors - civil servants belonging to the Labour Administration: these focus on illegal work.
- Social Security Agencies (“URSSAF” et “Caisse de Mutualité Sociale Agricole”) - in charge of collecting the social taxes which finance the social security system, and

¹ Source: Social, financial and economic impacts of undeclared economy, June 2014, Environmental, Social and Economic Council Advices - Bertrand Farriol.

² CESE Advise on posted workers, September 2015

³ “The shadow economy comprises legal business activities that are performed outside the reach of government authorities. These activities typically fall into two categories that remain common across Europe. The first is undeclared work which (...) includes wages that workers and businesses do not declare to the government to avoid taxes and documentation (...). The other (...) comes from underreporting (...) to avoid some of the tax burden.” The Shadow economy in Europe, 2013 – A.T. Kearney, Visa, Friedrich Schneider, 2013.

⁴ Social, financial and economic impacts of undeclared economy, June 2014, Environmental, Social and Economic Council Advices - Bertrand Farriol.

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focused on controlling employer declarations based on the calculation of social contributions to be paid, and recovering the tax adjustment in case of violation.

- The agents of the Central agency for the fight against illegal work - OCLTI - which intervene under the responsibility of the Gendarmerie and Police.

Also, civil servants within the tax and customs administration can participate in the fight against illegal work and immigration. Coordination is ensured by the national unit in charge of fighting against fraud, which intervenes under the responsibility of the Ministry of economy and, at local level, by the CODAF.

1.2.2 Characteristics of the responsible organisations

The role of labour inspectors is to control employers at the workplace. The role of URSSAF Agents is to control employer's social contribution declarations and make adjustments in cases of violation. Agents are also able to intervene, at the other organisations' requests, to control and make the tax adjustments when fraud is identified. They are also in charge of recovering the amounts taxed in case of violations. The role of OCLTI agents - police and gendarmerie members - is to intervene in the fight against illegal work in collaboration with the central office on illegal immigration.

In 2012, the French Labour Inspectorate underwent important reforms to improve its efficiency and to strengthen its intervention capacity. In relation to undeclared work, the reforms aimed to improve the detection of new types of fraud, including the most complex ones.

One of the most important measures was the establishment of specialised regional units which were set up specifically to support and monitor the fight against UDW. They act to support the local control units to fight UDW.

The Labour Inspectorate was seen as too generalist and local, which made it difficult for the services to identify complex fraud and intervene when needed. The reform aimed at strengthening the coordination and communication between the different levels of the Labour Inspectorate (local, regional, national), and to better adapt to the evolving context which included, amongst other things, the emergence of more complex types of fraud.

The reform was initiated in 2012 and progressively implemented in 2014. Other aspects are still in the process of being implemented.

The reform of the Labour Inspectorate created local control units which are competent to act on the ground in their delimited area. While the units have a general remit, the fight against undeclared work is one of their main tasks.

These local units are supported by the new regional units. These specialised units act to support the local units which do not always have time and resources to invest in the fight against undeclared work (140 labour inspectors). Also, due to their wide regional dimension, they cover a large part of the territory and can more easily identify cases of undeclared work that would not only concern a single workplace but are organised across several regions and involve several operators based in different regions.

In addition, the reform introduced a national group for monitoring, support and control which supports local services on subjects of national importance (GNVAC). While the group is not dedicated to UDW it has nevertheless been its main focus since its creation. This national group is seen as a very useful central monitoring point to identify new complex fraud and also to respond to requests from other services. The French Liaison Office established by Directive 96/71 / EC of 16 December 1996 on the posting of workers is a component of the GNVAC. In 2016, it was the subject of 734 requests.

1.2.3 Cooperation and collaboration between national and cross-border authorities

Created in April 2008 by order of the French Prime Minister and the French Minister for Finance, Public Funds and State Reform, the national anti-fraud Unit (DNLF) is the main

organisation in charge of steering and coordinating the different organisations in charge of fighting against fraud. Its fields of responsibility go beyond illegal work and involve all kinds of fraud (e.g. tax fraud). Nevertheless, two thirds of its work is focused on illegal work. To this end, the DNLF works alongside the major State-run administrations and social welfare organisations, and the Police, Gendarmerie and Customs also assist in furthering its objectives. Its missions are to: improve the knowledge on fraud; ensure effectiveness and coordination of actions implemented to fight against fraud; contribute to the recovery of tax and social contributions in case of sanctions; coordinate all action at international levels; and pilot activities of the 'anti-fraud' operational committee at local level, CODAF⁶.

This organisation, which has a transversal character, is composed of 12 high level executives with an 'anti-fraud' profile. Missions are implemented in partnership with the following different administrations:

- The Treasury and Home Office;
- For tax Issues : Public Revenue Office (DGFIP), Public Customs and Tax Office (DGDDI);
- For Social Welfare Issues: the social Security Agencies composed of the Family Benefits Agency (CNAF), Central Social Security Office (ACOSS and the regional representation with URSSAF), Health Benefits Agency for Employees (CNAMTS), Welfare for the Elderly Agency (CNAV), Independent Social Regimes Agency (CNRSI) and Agricultural Insurance Agency (CCMSA);
- Social Welfare Agencies: Job Centre (Pôle Emploi), Unemployment Benefits Agency (UNEDIC) and Employee Insurance Agency (AGS); and
- The Labour Ministry (general department of work, DGT).

Professional training programmes are a key tool in the promotion of an anti-fraud culture. The DNLF⁷ organises specific training regimes which totalled over 7,700 hours in 2009, 18,000 in 2010 and more than 35,000 in 2012. These regimes provide officers, in particular those responsible for performing checks or in front-facing roles, with dozens of specific training programmes on the use of investigative tools, detection of social fraud and illegal labour, and inter-agency cooperation.

2016: A new national organisation for monitoring and operational coordination

A new national monitoring organisation, meeting twice annually between DGT, DSS and DNLF, has been introduced to better manage the implementation and monitoring of the national plan to tackle illegal work between the main administrations/bodies involved in this field. The organisation is responsible for:

- Coordinating the monitoring function on illegal labour practices to analyse their evolution and progress in their detection and targeting;
- Defining a small number of operational axes on which several services are mobilized in a coordinated manner throughout the year;
- Acting on the tools and measures to be mobilized to increase the effectiveness of control: interinstitutional training, sharing of experience, meetings of the Regional services, coordination on sanctions, shared use of information systems and communication of information between administrations, etc; and
- Monitoring the implementation of national and European legislation and jurisprudence to combat illegal work for better proposing amendments.

As a national group for operational coordination between all enforcement bodies, the organisation coordinates these services on significant illegal work cases to exchange information on their activities and to agree on their modalities of intervention. It can also be a place for exchanges on feedback and good practices. The group meets every

⁶ Comité opérationnel départemental anti-fraud

⁷ All information accessible on <http://www.economie.gouv.fr/dnlf>

two or three months. The expert body brings together experts from the administrations and control bodies on the legal side and methodological aspects.

The national unit is also piloting the CODAF at the regional level, which was officially implemented in 2010 after two years of experimentation. It comprises State representatives (police, tax and customs administrations, labour administration, social welfare issues, social welfare agencies) and is presided over locally by the Prefet (representative of the State at local level). The goal is to improve mutual understanding between administrations and agencies and to organise combined operations, mutual learning and share experience to improve the fight against fraud. In recent years, the CODAF has detected more than 25% of dissimulated work violations, next to the operations managed by each organisation. The national unit is piloting the CODAF by giving technical and legal support to the committees, by suggesting actions and by dedicating three officers (one magistrate, two police chiefs) to run the CODAF and answer the questions raised by participants. With the implementation of the national Unit and the CODAF, the volume of detected violations has strongly increased over the past years.

Finally, at the international level, the national anti-fraud unit intervenes in specific types of international fraud such as active businesses non-declared in a tax or social capacity, fraudulent or improper relocation of French businesses, and direct sale to individual clients via trade fair, advertising or home sale.

Administrative cooperation between Member States in the field of posting workers takes place through the liaison office. On the one hand, France has a national liaison office, integrated within the national control unit in Labour DG, and on the other hand, decentralised liaison offices within regional labour inspectorate services, in charge of exchanges with border countries. All services and control bodies responsible for fighting illegal work can ask for the liaison office.

France also wishes to strengthen transnational co-operation in the fight against undeclared work in three areas:

- The development of bilateral cooperation against UDW;
- Active participation in the activities of the European UDW; and
- France is also engaged in the Eurodétachement project

1.3 Policy Focus and Measures

1.3.1 Policy approach

Over the past years, the policy framework was defined under the National Action Plan against illegal work 2016-2018, elaborated by an internal state dialogue. The plan is based on the following main goals:

- Strengthening the fight against unfair social competition at the European level.
- Fighting against posting fraud (targeting complex fraud situations in risk areas, fraud at the establishment, fraudulent use of temporary work, misappropriation of the intra-group).
- Combating the most serious forms of illegal employment: abusive use of certain statutes (such as bogus self-employment); emerging frauds related to the digital transformation of the economy; conditions unfit for accommodation and work, especially those involving vulnerable persons and trafficking in human beings; the struggle against the employment of foreigners without work titles and especially in the organized sectors; and an axis specific to the transport sector.
- More effective controls to implement the levers of action offered by the changes for strengthening the legal arsenal, by strengthening coordination between actors, and training by mobilizing the whole range of fines and penal offenses.
- Prevention and awareness.

1.3.2 Measures to tackle UDW

In this context, the legal framework has been strongly reinforced in recent years with the reform of labour inspections implemented at the beginning of 2015, the Act on the fight against unfair competition of 11 July 2014, the act for growth, activity and equal economic opportunities of 6 August 2015 (known as the Macron Act), and finally the 8 August 2016 Act.

The recent reform of the Labour Inspection system attempted to give a stronger response to increasingly complex frauds with the creation of specific units under the work inspection organisation: implemented at the beginning of 2015, there is now one unit per region. A national group of inspectors oversees the coordination of actions and works on sensitive cases.

The 2014 Act introduced the opportunity for the court to establish a 'black list of companies', accessible on the website of the Ministry of labour for the public including clients and prospects. The decree was published at the end of 2015. Registration under this sanction will strongly impact on the company's brand and their attractiveness.

The 2015 Act introduced some new measures looking at posting workers: a strong increase of financial sanctions from EUR 10,000 to EUR 500,000, the opportunity for the Prefet to more easily stop a building project, a compulsory activity ID card for each employee in the building industry (which has been progressively implemented since 22nd March 2017), and the opportunity to immediately stop any governmental aid if evidence of UDW is found.

It is noteworthy that when presenting the draft Macron Act, the Prime Minister announced a systematic inspection of 500 main construction areas with the aim of detecting illegal practices. These inspections must be implemented within a year under the responsibility of the CODAF, managed by the Prefet.

The law of 8 August 2016 supplemented provisions aimed at combating fraud in posting workers, and especially:

- Facilitation of controls (identity card for building sites);
- Administrative fines and enhanced sanctions to halt a situation immediately (e.g. suspending the provision of services in the absence of a prior declaration of posting workers);
- To reinforce the liability of main contractor and user undertakings for all the subcontracting chain (e.g. the main contractor is responsible for declaring work accidents to the labour inspectorate); and
- Access for all control bodies and services involved in tackling illegal work to prior posting workers declaration data, and extending communication rights between them.

1.3.3 Good practice

Examples of good practices include:

- A national group for operational coordination between all enforcement bodies - coordinating services on significant illegal work files to exchange information on activities and agree on modalities of intervention. Providing a place for exchanging feedback and good practices, the group meets every two or three months.
- Rapid and strong ownership of new administrative fines - between July 2015 and December 2016, 1,077 fines (including 917 in 2016) were imposed for an amount of EUR 5.7 million. The strong increase in administrative fines, introduced by law of 10 July 2014, is continuing, and imposes penalties for failing to comply with the reporting formalities related to the posting of workers in France; sending a prior posting statement to the labour inspectorate and appointing a representative in France. The construction sector accounts for 75% of the fines imposed.
- A significant increase in the number of prefectural decisions of temporary closures of establishments (307 against 233 in 2015) and cases under examination at 31

December 2016 (116 cases compared with 68 cases in 2015). 18 notifications of institutional closures relate to shortcomings in the context of international services. Better organisation is now in place to fight illegal work both at the national level with dedicated units, and at the local level with the involvement of different agents.

- More combined teams (with different backgrounds) for implementing inspections and using and crossing data from different bodies (tax administration, labour inspection, central office for fighting against illegal work) with local coordination.
- The better targeting inspections on some sectors and types of enterprises.

1.3.4 Challenges and barriers

In recent years, the fight against illegal work and fraud at posting workers has benefited from a considerable strengthening of its legal arsenal by several successive laws, the creation of new levers for sanctioning and empowering fraudsters and main contractors.

It has also transformed the organisation of the labour inspectorate (establishment of the national control group, specialized regional units on the fight against illegal work, etc.) and set up the conditions for the coordination of the inspectorate, and the administrations and services in charge of combating illegal work.

These measures are already producing significant positive effects. If adjustments are sometimes necessary, the challenge is now more in the implementation of this framework and sanctions than in developing a new legislative arsenal.

The effectiveness of the fight against illegal work implies, however, intensifying and operationalising cooperation between European countries against unfair social competition, in order to better analyse, detect and take joint action to prevent and address the various forms of undeclared work, by:

- Ensuring that the requested information is communicated to the liaison office irrespective of the national administrative organisation;
- Allowing the reporting of fraud with a proven transnational dimension to all Member States concerned; and
- Allowing the transmission and exploitation of data from the V.I.E.S. database (established pursuant to Regulation 2010/904 of 7 October 2010) for the purpose of illegal work.

However certain dimensions of the holistic approach need to be strengthened, including information, awareness raising, training of stakeholders and strengthening the role of the social partners. Moreover, there are still significant gaps in control: on the one hand, the investigative powers of the labour inspectorate have not undergone any significant reinforcement to deal with increasingly complex fraud (including in the digital economy), and the compartmentalisation of access to information systems and databases by supervisory authorities in the fight against illegal work and fraud with working workers.