

Factsheet on Undeclared Work - PORTUGAL

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work in Portugal

The Labour Code (Law 7/2009 and its later revisions) does not contain a definition of undeclared work. The Law 107/2009 that approves the procedural regime regarding administrative infraction proceedings in the area of work relations and social security stipulates that the subject of these proceedings are violations of norms of the labour law or laws of the social security (Article 2-1). The law specifies in Article 2-2 that in the case of 'the provision of services in an apparently autonomous form that have [in fact] the characteristic conditions of a work contract [bogus self-employment] and that may cause losses for the worker or for the state', or in the case of non-declaration of a worker for social security purposes, then any of the two competent bodies (Authority for Working Conditions / ACT or Institute of Social Security / ISS) is allowed to initiate the infraction proceedings. The revision of the regime regarding administrative infraction proceedings by Law 63/2013 created a specific procedure for the prosecution of bogus self-employment (Articles 2-3 and 15-A).

The Report of the ACT for 2015¹ presents in its section regarding 'undeclared or irregular work' the following more specific **definition of undeclared work** and names its negative consequences: 'Work that is totally or partially not declared to the Labour and Social Security Administration by companies of the informal sector or belonging to the structured economy and phenomena like the dissimulation of a work contract using figures like bogus self-employment, paid false traineeships or simulated voluntary services ... contribute to social segmentation (by creating groups of workers separated from social security) and to financial insufficiencies of public revenue, being at the same time a grave factor for unfair competition harming companies that follow the rules'.

The definitions of undeclared work given in the above cited legislation and in the ACT-report can be seen as a **common denominator for all organisations with an interest in undeclared work**, but each one of them will focus its approach towards specific aspects related to its core business (Labour Inspection: violation of labour law; Social Security and tax authorities: fraud and evasion).

1.1.2 Characteristics of undeclared work in Portugal

The undeclared work in Portugal can be divided into two **major categories**: fully undeclared work and partly undeclared work (the latter subdivided into two categories: Substatement of remuneration and disguised employment).

The results of the ACT's inspecting activity (2016) demonstrate that in 2015 the most frequent forms of detected irregularities were two forms of undeclared work: the non-declaration of workers (86%) and the dissimulation of work relations (14%).

Dornelas et al.² conclude that undeclared work tends to affect in the first place those workers whose jobs are most distant from the 'typical protected employment'. According to the same authors, undeclared work is (also) a component of unpaid work in the formal economy (i.e. unpaid overtime). They point out that in Portugal, in contrast to most other EU-countries, hourly wages paid for undeclared work tend to be higher than wages

¹ ACT (2016) Atividade de inspeção do trabalho: relatório 2015 / Autoridade para as Condições do Trabalho; Lisboa: ACT, 2016; Internet: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio%20Atividade%20Inspetiva%202015.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio%20Atividade%20Inspetiva%202015.pdf)

² Dornelas, António (2010), "O trabalho não declarado é invisível?", in Dornelas, António, Luísa Oliveira, Luísa Veloso e Maria das Dores Guerreiro (orgs.), Portugal Invisível, Lisboa, Editora Mundos Sociais, pp. 95-107

for regular work, and that undeclared work occurs mostly in the context of work relations in the formal economy.

The ACT's National Campaign against undeclared work covered all **sectors of the economy**, with a clear priority for (1) construction, (2) hotel and restaurants, (3) retail trade and (4) agriculture and forestry³. In its inspecting activity with regard to vulnerable groups, the ACT focused its efforts on the same sectors and in addition on performing arts (p. 121).

In relation to **specific groups**, Dornelas et al⁴ identify the unemployed and illegal immigrants as the groups with the highest probability of doing undeclared work (57% and 50%, respectively), followed by self-employed workers (25%) and part-time workers (16%).

No data could be found in relation to the distribution of undeclared work by **employer size**.

Based on the data of the Eurobarometer 2007, Dornelas et al⁵ identify the following **motivations for undeclared** work with most mentions: (1) It is not worthwhile to declare a seasonal job (PT: 44%; EU: 23%); (2) Both parties have an advantage (PT: 31%; EU: 47%); (3) Could not get a declared job (PT: 18%; EU: 16%).

1.1.3 Estimated scale of undeclared work

At the launch of the ACT's 'National Campaign against undeclared work' in July 2014 the organisers presented the results of a study on the 'Non Registered Economy in Portugal' which is based on macro-economic calculations and which covers (1) the illegal economy, (2) the hidden economy, (3) the informal economy, (4) the production for one's own consumption and (5) production that is only partly hidden due to statistical deficiencies. The aggregate data presented by Gonçalves and Afonso (2014)⁶ show a steady growth of the size of the 'Non Registered Economy in Portugal' in relation to the 'official GDP' from 9.23 % in 1970 to 26.74 % in 2012. These data give an outline of the dimension of undeclared work as a factor in the economy and the losses of tax revenue and social security contributions resulting from it.

In the course of this investigation no credible estimates of the scale of undeclared work could be found.

1.2 Institutional Framework

1.2.1 Responsibilities for addressing undeclared work

The **government authorities with responsibilities for combating undeclared work** and the shadow economy are:

- The Authority for Working Conditions (*Autoridade para as Condições do Trabalho / ACT*)
- The Institute of Social Security (*Instituto de Segurança Social / ISS*)

³ ACT (2016), op. cit

⁴ Dornelas, António, et al. (2011) Emprego, Contratação Colectiva de Trabalho e Protecção da Mobilidade Profissional em Portugal, Lisboa / Gabinete de Estratégia e Planeamento (GEP), Ministério do Trabalho e da Solidariedade Social (MTSS); Internet: <http://www.gep.msess.gov.pt/edicoes/outras/ecctpmpp.pdf>

⁵ Ibid.

⁶ Nuno Gonçalves e Óscar Afonso (2014) Economia Não Registada em Portugal [Powerpoint Presentation at Launch Seminar of ACT's Campaign against UDW on 15.07.2014], Internet: http://www.act.gov.pt/%28pt-PT%29/Campanhas/Campanhasrealizadas/Trabalho%20N%C3%A3o%20Declarado/Documentos/Oscar%20Afonso_TND.pdf

- The Tax and Customs Authority (*Autoridade Tributária / AT*)
- Foreigners and Border Service (*Serviço de Estrangeiros e Fronteiras / SEF*)

The ACT's National Campaign against undeclared work involved three public entities (the High Commissioner for Migrations, the national PES and the Foreigners and Border Service) and the social partners' organisations with representation on the national body for tripartite concertation (four employers' confederations and two trade union confederations).

Due to its **focus on the enforcement of regulations regarding the labour market**, the **ACT** is the institution *par excellence* to deal with undeclared work in the narrow sense of the term. The other entities with responsibilities in the area have by nature different focuses. The ISS is particularly interested in combating 'contributive' evasion (and recovering lost contributions), the AT concentrates its efforts on combating tax evasion and on the recovery of lost tax revenue, and for the ACM the main objective is to assist migrants to integrate into society and labour market, etc.

1.2.2 Characteristics of the responsible organisations

The **Authority for Working Conditions (ACT)** has the responsibility to monitor and enforce the compliance with legal norms regarding labour relations and health and safety at the workplace and to promote the prevention of occupational risks⁷. The activity of the ACT covers all sectors of the economy, but for health and safety inspection activities in public administration ACT is now expecting for especial regulation of the Law of Work in Public Functions (Law 35/2014). The fight against undeclared work can be seen as a central part of the core business of the ACT.

The total number of staff of the ACT in 2015 was 804 (2014: 770). The number of labour inspectors has been constantly decreasing from 384 in 2010 to 307 in 2015⁸. The first national budget submitted by the new government elected in November 2015 (for the budget year 2016) stipulates that an additional number of 80 labour inspectors will be hired. According to the ACT's website (www.act.pt) the authority has its HQ in Lisbon and 33 local offices in all parts of mainland Portugal. It is part of the Ministry of Labour and Social Affairs (MTSSS) and covers the totality of mainland Portugal where approximately 95% of the population live. The autonomous regions of Azores and Madeira have their own services for labour inspection.

In 2015, the ACT carried out 39,306 inspections that covered 234,643 employees.

The **Institute of Social Security (ISS)** is responsible for the management of the contributions to, and of the benefits from, public social security (schemes regarding illness, parenthood, unemployment, families, social benefit, pensions, and others). This responsibility includes preventing and combating fraud with regard to the payments to the beneficiaries, and combating fraud and evasion regarding the payment of contributions to the social security. This latter type of action against fraud is directly related to undeclared work. The ISS' inspecting activity is directed against evasion of social contributions and against the falsification of contributive careers (in order to obtain higher pensions)⁹.

The total number of staff of the ISS was 8,285 in 2014 (2013: 9 172). The Institute is part of the Ministry of Labour and Social Affairs (MTSSS) and covers the territory of mainland Portugal. Its central services are complemented by regional centres in all 18

⁷ ACT (2016), op. cit

⁸ Ibid.

⁹ ISS (2015) Relatório de Atividades 2014, oline:http://www.seg-social.pt/documents/10152/14494812/RA2014_v1.0_Final/4c991822-994d-42f8-a15d-424338558672?version=1.0

district capitals on mainland Portugal. The ISS covers 4.2 million beneficiaries; 3.3 million of them are salaried workers (2014).

The **Tax and Customs Authority (AT)** is responsible for the collection of taxes and customs. (Ministerial Order 198-A/2012, <https://dre.tretas.org/dre/301915/>). Its total staff was 10,762 in 2014 (2013: 11 341). The AT is a Directorate-General of the Ministry of Finance, with Central Services in the capital Lisbon and decentralised services in the areas of taxes (21 centres and 343 local offices) and customs (15 centres and 24 local delegations). It covers all individual and collective persons who are subject to tax or customs in the total national territory (mainland and autonomous regions).

The **Foreigners and Borders Service** (briefly referred to as SEF), is a security service, organized hierarchically depending on the Minister of Internal Affairs, with administrative autonomy, that, in the context of internal security policy, has the mission to control the movement of persons across borders, the residence and activities of foreigners in the national territory, as well as to study, promote, coordinate and implement the measures and actions related to those activities and with migratory movements¹⁰.

1.2.3 Cooperation and collaboration between authorities and cross-border authorities

The **ACT's** 'Referential Framework for the Inspecting Activity'¹¹ states that the Inspector General of Labour 'proposes when necessary' to the head of the Authority requests for the support of other entities, namely experts for giving their opinion, police forces for protecting the inspectors and supporting the preservation of evidence, other public bodies with inspecting responsibilities (**namely the ISS, the AT, the SEF and others**), other public services for gathering essential information, the Institute of Insurances of Portugal for activities related to work accidents, and the Institute of Forensic Medicine. This support is requested on the basis of 'reciprocity'.

The **ACT notifies systematically** other entities about infringements revealed by its inspecting activities. In its report in 2015, the Authority registered a total of 851 notifications to other bodies (ISS, AT and others¹²). These notifications are regulated by law. Notifications with regard to unpaid contributions to the social security (info from ACT to ISS) are mandatory¹³. The ISS, on the other hand, informs the ACT about issues that are relevant for its activity (e.g. in relation to the posting of workers in other EU-MS, see ACT 2016¹⁴).

The **AT's** 'Strategic Plan for the Combat against Tax and Customs Evasion and Fraud 2015-2017' (further cited as "Strategic Plan 2015-2017") states that its inspecting activity shall continue to be based on a cooperation strategy with common 'preventive and prospective actions' with other entities, namely the police and other entities,

¹⁰ As stipulated in the paragraph 1 of article 1 of the organic law of the Foreigners and Borders Service, approved by Decree-Law No. 252/2000, of 16 October (however changed by Decree-Laws Nos. 290-A/2001, of 17 November, 121/2008, of 11 July, and 240/2012, of 6 November).

¹¹ ACT (2015) Referencial da atividade inspetiva / Autoridade para as Condições do Trabalho; Lisboa: ACT, 2015; Internet: <http://www.act.gov.pt/%28pt-PT%29/crc/PublicacoesElectronicas/Documents/Referencial%20da%20atividade%20inspetiva.pdf>

¹² ACT (2016) Atividade de inspeção do trabalho: relatório 2015 / Autoridade para as Condições do Trabalho; Lisboa: ACT, 2016; Internet: [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio%20Atividade%20Inspetiva%202015.pdf](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/RelatorioActividades/Documents/Relatorio%20Atividade%20Inspetiva%202015.pdf)

¹³ Ibid.

¹⁴ Ibid

amongst them the ACT, the ISS and the SEF¹⁵. The **AT** refers in its "Strategic Plan 2015-2017" that it had intensified during the years before its cooperation with the ACT, ISS and other entities¹⁶.

The ACT's systematic notifications to other bodies (in the first place the ISS and the AT; see above) can be qualified as an important element of **data exchange** in the area of undeclared work.

The AT's 'Strategic Plan for the Combat against Tax and Customs Evasion and Fraud 2015-2017' indicates that this Authority has made (at least since 2012) a systematic effort to improve the capacity of its internal and external exchange of data and information. One concrete measure amongst the Strategic Plan's priorities for 2015-2017 is the implementation and automatization of the detection of discrepancies between the amounts of money and numbers of workers given by employers to the Social Security and to the AT¹⁷.

The ACT's **notifications to the ISS, the AT and other entities** registered in its Report of Activity 2015 are the result of the Authority's systematic cooperation with other bodies. These notifications (851 to the ISS, AT and others; 141 to the prosecutor's office) represented 2% and 0.5% of the number of the total number of inspections, respectively.

There are also indicators of an active involvement of the ISS and AT in the exchange of information.

In its Report of Activities 2015 the ACT registers an **exchange of information with other EU-Member States** within the Internal Market Information System (IMI). In 2015, 143 requests from other MS were answered by the ACT, most of them from France (71) and Belgium (47). In the same year the ACT answered a further 140 information requests by foreign liaison services in Portugal.

The AT's Strategic Plan 2015-2017 includes the objective to intensify international cooperation (pp. 32 and 64) and stipulates that its software for data-export will be updated in order to guarantee its compatibility with the present model in the OECD.

1.3 Policy Focus and Measures

1.3.1 Policy approach

The Programme of the Government (2015-2019) names as one of its three top-priorities the aim to 'Promote employment, combat job insecurity'. In relation to the effort to reduce job insecurity the programme commits itself to combat 'abusive and illegal use of fixed-term contracts, bogus self-employment, temporary agency work, partly or totally undeclared work and abuses and illegal practices in the use of employment measures' (p. 24).

¹⁵ AT, Autoridade Tributária e Aduaneira 2014, Internet: http://info.portaldasfinancas.gov.pt/NR/rdonlyres/714DD895-8D4C-4EF3-9ED0-DB71CC4989E9/0/RA_AT_2014e.pdf

¹⁶ The AT's "Strategic Plan 2015-2017" states in the report of the results of the previous Plan (2012-2014) as one achieved goal: "Invigorate significantly common preventive and prospective actions in cooperation with other entities, namely" the criminal investigation department (PJ), the inspection of the regional centres of the ISS, the customs brigade of the GNR (BR-GNR), the Authority of Food and Economic Security (ASAE), the ACT, the SEF and the constabulary (PSP). The report does not present more specific information regarding this cooperation.

¹⁷ AT, Autoridade Tributária e Aduaneira 2014, Internet: http://info.portaldasfinancas.gov.pt/NR/rdonlyres/714DD895-8D4C-4EF3-9ED0-DB71CC4989E9/0/RA_AT_2014e.pdf

In addition to the inspecting activities of the three key players in the combat against undeclared work (ACT, ISS and AT), the ACT launched in 2014 a National Campaign against undeclared work that aimed at raising general awareness in society and of social partners about undeclared work. Numerous national, regional and local employer associations and trade unions were actively involved in the implementation of the enabling and preventive activities of the Campaign.

The chapter on the 'Prevention and combat against contributive fraud and evasion' in the ISS' Report on Activities 2014¹⁸ registers only the results of the Institute's inspecting activity. It does not include any reference to enabling or preventive action.

The AT's strategy, on the other hand, demonstrates a strong concern with the necessity for preventive action¹⁹.

Migrants are particularly vulnerable to undeclared work and are therefore a specific target for preventive and deterring action. The High Commissioner for Migrations (ACM) plays a central role in this relation. The ACM coordinates a broad network of local services for the insertion of migrants into the labour market which is an important contribution for the prevention of undeclared work amongst migrants. The prevention of and combat against undeclared work are important aims of the government's Strategic Plan for Migrations 2015-2010 (explicitly) and of the III National Plan of Prevention and Combat against Human Trafficking 2014-2017 (implicitly).

1.3.2 Measures to tackle undeclared work

Government measures in place to tackle undeclared work: Measures to promote and extend decent work to all:

- Measures to simplify and facilitate compliance with labour, fiscal and social security laws.
- Measures to reduce context costs, through simplification, reducing bureaucracy and dematerialization of the fulfillment of legal obligations and administrative formalities and simplification of access and exercise of economic activities.
- Measures to facilitate detection, sanction and dissuasion of undeclared work practices.

The Role of the Portuguese Labour Inspectorate (ACT) in tackling undeclared work

- The ACT is the major player in the fight against undeclared in Portugal. The ACT's approach is based on two strands: (1) Deterrence and (2) enabling compliance
- No data beyond the results of the ACT's and ISS' inspecting activities were available for use in this report.

1.3.3 Good practice in the MS:

- Systematic notification of other entities (ISS, AT, SEF and others) by ACT.
- ACT's National Campaign against undeclared work (2014-2015) with a strong preventive aspect and based on the active involvement of social partners and other public entities (ACM, SEF).
- ACM's support to migrants' insertion into the labour market.

1.3.4 Challenges and barriers

The main challenges in addressing undeclared work in Portugal include:

¹⁸ ISS (2015), op. cit.

¹⁹ AT, Autoridade Tributária e Aduaneira 2014, Internet: http://info.portaldasfinancas.gov.pt/NR/rdonlyres/714DD895-8D4C-4EF3-9ED0-DB71CC4989E9/0/RA_AT_2014e.pdf

- Lack of a strategic nationwide plan focused on combating the phenomenon of undeclared work.
- The absence of a system for the regular and systematic assessment of the phenomenon.
- Insufficient international cooperation in the fight against undeclared work.

In response to these challenges, the ACT's National Campaign 2014-2015 gave an important impulse to the involvement of social partners and to awareness raising with regard to undeclared work. This positive experience should be transformed into continuous practice. The new government is going to increase the number of labour inspectors, thus opening the way to an increased inspecting activity of the ACT.

The key remaining challenges to overcome in order to enhance the effectiveness of the efforts to combat undeclared work, include:

- Simplifying compliance and implementation, in conjunction with the social partners;
- Formulation of a national strategic plan against undeclared work, the creation of a structure of coordination (national and international) and the creation of a system of evaluation and monitoring; and
- Intensify international cooperation, notably through the European Platform to Tackle UDW.