

Factsheet on Undeclared Work – LITHUANIA

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

The notion of undeclared work is not defined in Lithuanian legislation (a definition is to appear in a new version of the Lithuanian Law on Employment, enforcement being foreseen from 1st of July 2017). The current Labour Code of the Republic of Lithuania (LC) only provides a definition of illegal work. According to the LC (Art. 98), illegal work is defined as work, which is performed in favour of an employer and under an employer's management or supervision, where in performance of his/her job functions the employee shall obey the established work organisation procedure, and which satisfies at least one of the characteristics below: (1) work is performed without the conclusion of an employment contract in writing although the characteristics of an employment contract are present; (2) the employer has not informed the State Social Insurance Fund Board (SSIFB) on the commencement of work one day before the expected commencement; (3) work is performed by foreign citizens, third-country nationals (TCN) or stateless persons employed without complying with the procedure of their employment established by regulatory acts; (4) work is performed by TCN employed in breach of the statutory requirements. Organisations with an interest in UDW in Lithuania are following the same definition.

1.1.2 Characteristics of undeclared work

According to the data¹ provided by the State Labour Inspectorate (SLI) and the State Tax Inspectorate (STI), the following types of infringements of labour relations appear to be the most common in Lithuania:

- Infringements relating to the recording and organisation of work (non-recording of all hours worked, non-recording or improper recording of overtime, night work and/or work on holidays; non-compliance with the requirements on the organisation of work and rest time; etc.). Infringements of this type accounted for 74% of a total of 1,208 infringements of labour relations registered by the SLI in Lithuania in 2016.
- Infringements relating to remuneration for work (envelope wages, inappropriate wording of employment contracts resulting in incorrect remuneration for work and non-payment of taxes to the state, etc.). The latter infringements made up 15% of all infringements of labour laws detected by the SLI in Lithuania in 2016.
- Infringements relating to the signing, performance and termination of employment contracts (work is performed without a contract of employment; civil contracts with individuals engaged in bogus activities under individual business certificates/licences are substituted for employment contracts; transacting individual business without registration; recruitment of TCN without complying with the statutory procedure (without employment contracts, residence/work permits); etc.). Infringements of this type accounted for 14% of all infringements of labour laws identified by the SLI in Lithuania in 2016.

The recent trend in Lithuania is that the share of infringements relating to the signing, performance and termination of employment contracts has been going down (from 37% in 2009 to 11 % in 2016 in the total number of detected infringements of labour laws), while the share of infringements relating to work and rest time has been growing (from 32% in 2009 up to 73% in 2016).

¹ Shadow economy: Inspection results and trends in 2009-2014. State Labour Inspectorate, State Tax Inspectorate, 2015 Available on Internet at: http://www.vdi.lt/PdfUploads/ND_SeselineEkonomika.pdf

The construction sector has been the most risky for a number of years: according to the SLI, construction sector accounted for 50.9% of the total number of undeclared (illegal) workers detected in Lithuania in 2016. Other sectors where undeclared work is found include other community, social and personal service activities (9.7%), wholesale/retail trade (9.3%), agriculture, forestry and fisheries (8.5%) and accommodation and catering services (6.4%).

According to STI's figures, in 2016, the biggest number of infringements relating to paying envelope wages was detected in such sectors as wholesale and retail trade and repair of motor vehicles (29% of the total detected infringements), manufacturing industry (13%) and construction (26%).

Although there is no official data, SLI experts note that small enterprises (with 10-50 employees) and micro enterprises (up to 10 employees) account for the majority of detected cases of UDW in Lithuania.

Based on research findings (Pocius², 2015; Patapas and Gudonis³, 2014), one of the main motivators for UDW in Lithuania is the high tax burden and low wages: in the conditions of the overall low level of income and high tax wedge, people are more inclined to increase their income through UDW. Other identified motivators for UDW in Lithuania include a high administrative burden (in case of labour relations), in order to continue receiving support from the state (e.g. unemployment or social benefits) after entering employment, and avoidance of financial obligations (e.g. payment of child support, debts, etc.).

1.1.3 Estimated scale of undeclared work

Based on SLI's data, institutions for control and prevention of undeclared work identified a total of 2,171 undeclared (illegal) workers in 2016 (as compared to 2,393 in 2015). During 2009-2016, the total number of detected undeclared (illegal) workers increased by 47.2%: from 1,474 to 2,171. According to the SLI, 1,208 infringements of labour laws were detected in 2016 (as compared to 1,013 in 2015). In 2016, the STI detected a total of 45 cases involving payment of wages not reflected in accounting records. The amount of paid down unaccounted wages exceeded EUR 534,000.

1.2 Institutional Framework

1.2.1 Responsibilities for addressing undeclared work

In Lithuania, UDW control functions are delivered by five state institutions, namely: STI, SLI, SSIFB, the Financial Crime Investigation Service (FCIS) and the Police Department (PD). Most of inspections are carried out and most infringements are identified by the SLI and STI (52% and 44%, respectively, of total infringements in 2016).

The SLI is assigned the function to carry out control of UDW, as well as to coordinate activities of institutions carrying out control of UDW in accordance with the procedure established by the Government of the Republic of Lithuania (GRL). By controlling the compliance with laws regulating labour relations, the SLI inspects compliance with the provisions of the LC, including those related to employment contracts, work pay, organisation of work and rest, as well as the enforcement of respective legislation.

² Pocius, A. Evaluation of shadow economy and informal employment in Lithuania. Lithuanian Journal of Statistics. 2015. Vol. 54, No.1, p. 18–32. Available on Internet at: <http://www.statisticsjournal.lt/index.php/statisticsjournal/article/viewFile/138/pdf>

³ Patapas, A.; Gudonis, N. The problem of undeclared work control efficiency in Lithuania. Public Policy and Administration 2014, Vol. 13, No. 4, p. 659–670. Available on Internet at: <https://www.mruni.eu/upload/iblock/d96/VPA-14-13-4-09.pdf>

The STI carries out control of undeclared (illegal) work, payment of envelope wages, infringements of the procedure of wage accounting and payment, as well as other functions delegated to it in the STI Regulations and other legislation.

The PD is responsible for carrying out control and prevention of undeclared (illegal) work and human trafficking for forced labour.

The SSIFB receives employer notifications of signed employment contracts and collects such information in the information system of the SSIFB. SLI inspectors check employment-related information in the course of their control operations.

According to Law No IX-816 on the FCIS, it detects and investigates the acts related to fraudulent or negligent keeping of accounts of taxpayers, submission of knowingly false data on taxes, state (municipal) fees and charges and other payments to responsible institutions and agencies, evasion of taxes, state (municipal) fees and charges, state social insurance contributions and other payments, etc.; implements preventive measures against evasion of taxes, state (municipal) fees and charges and other payments.

1.2.2 Characteristics of the responsible organisations

The SLI performs prevention of violations of legislation regulating OHS, labour relations, as well as the prevention of accidents at work and occupational diseases in enterprises, by controlling the compliance with this legislation and by providing consultations to employees, their representatives, trade unions, employers, OHS services and committees in enterprises, as well as carrying out a public educational role within the framework of the SLI competence. In total, approximately 300 employees (including administration officers) were working at the SLI in 2016.

The STI is a central tax administrator subordinate to the Minister for Finance. The key tasks of the STI are to assist taxpayers and tax withholding agents; to implement tax laws; to ensure the payment of taxes to the budget; to ensure efficient work of local STI offices. In 2016, the STI had a total of 10 service offices with approximately 1,300 staff members (including administration officers).

The SSIFB is an agency established at the Ministry of Social Security and Labour (MSSL) to organise state social insurance (SSI) and handle and account for SSIFB's funds in an expeditious manner. While organising SSI, the SSIFB performs the following functions: ensures the implementation of the goals and objectives of social insurance policy set by the MSSL and of the tasks assigned by the GRL; ensures the implementation of legislation regulating SSI; presents offers to the MSSL on the improvement of SSI legislation and performs other functions. The SSIFB's structure consists of the Board, two specialised units and 10 local (territorial) units with 63 customer contact points. In 2016, about 3,400 staff members were employed within the Board and units in total.

The FCIS is a state law enforcement agency accountable to the Ministry of the Interior (MI). It is a public legal entity with the purpose of detection and investigation of crimes, other violations of law against the financial system and related crimes, other violations of law. In total, approximately 160 employees were working at the FCIS in 2016.

The PD is a central agency of the interior for the organisation and control of the functioning of the police system in order to ensure public order and the safety of individuals and the general public. The PD is headed by the Police Commissioner General. In 2016, the PD had approximately 200 employees.

1.2.3 Cooperation and collaboration between authorities and cross-border authorities

In accordance with GRL Resolution No 1407 of 26 November 2001 On Coordination of Control Measures over Illegal Employment, the SLI was commissioned to coordinate UDW control measures implemented by the SSIFB, STI, FCIS and PD. This Resolution also defined the functions of the institutions and the scheme of cooperation for UDW control. In compliance with the Resolution:

- The SLI drafts methodologies and recommendations for controlling UDW, organises seminars, sets the procedure for joint UDW inspections; drafts forms for recording UDW, analyses the inspection results and submits conclusions; organises educational activities and meetings of all institutions and agencies involved in controlling UDW;
- The FCIS carries out operational activities at a request of institutions controlling UDW and implements prosecution activities when the constituent elements of financial crimes are identified; and
- The PD, within the limits of its competence, provides assistance to public authorities and agencies carrying out prevention of UDW.

The aforementioned institutions regularly exchange relevant information, organise joint UDW inspections and large-scale check-ups of risky ventures. In addition, every year Lithuania approves UDW control and prevention measures aimed at combating UDW. On 17 March 2016, the *Commission for the Coordination of Cooperation among the State Institutions of Economic and Financial Control and Law Enforcement Institutions* approved the Measures for Combating the Shadow Economy in 2016–2017. One chapter of this paper, “Transacting unregistered economic activities and/or avoidance of income recognition and illegal work” is dedicated to UDW. It provides for UDW control measures and institutions responsible for the implementation thereof. These institutions report on a semi-annual basis the progress of the implementation of assigned tasks and measures to the Chancellery of the GRL (CGRL).

Cooperation between authorities is effective as the authorities not only regularly exchange relevant information, but also work together and implement joint operations. For example, in 2015-2016 target inspections were carried out by the SLI together with the STI and the PD in the construction sector, public catering enterprises, and sports and entertainment clubs. In 2016-2017, the SLI, STI and SSIFB conducted joint check-ups in undertakings paying MW or lower wages to the majority of their employees. In addition, interdepartmental groups are set up to deal with specific issues. On a regional level, there are coordination councils and UDW coordination groups composed of representatives from all institutions involved in the control and prevention of UDW.

The SLI has signed two bilateral collaboration agreements with Poland and Norway, and a trilateral agreement with Latvia and Estonia. The mentioned agreements are aimed at promoting institutional cooperation and exchanging relevant information between the countries. There are annual conferences held with Latvia and Estonia to discuss UDW control-related problems and exchange good practices.

1.3 Policy Focus and Measures

1.3.1 Policy approach

In order to reduce the scale of UDW, Lithuania applies both deterrence and enabling compliance policy approaches. From 2012 onwards, there is an increasing emphasis on the enabling compliance policy approach in Lithuania, whereas until 2012, more emphasis was put on the methods of detecting and punishing non-compliances in tackling undeclared work. With regard to the enabling compliance approach, the method of fostering commitment is probably most frequently applied in Lithuania, based on awareness-raising and information campaigns for different social groups to inform them of the costs and risks related to undeclared work. It is also important to note that Lithuania has recently made big progress in strengthening collaboration with various education establishments and NGOs in order to change population’s attitudes towards UDW and, consequently, to reduce the incidence of UDW in Lithuania.

1.3.2 Measures to tackle UDW

In order to ensure compliance with tax obligations related to labour relations, the following deterrence measures have been in place in Lithuania since 2010:

- Inspections carried out by national authorities (both individual and combined efforts). When choosing companies to be inspected, particular attention is paid to companies most prone to UDW (construction, woodworking, other) and those hiring the majority of employees on a part-time basis and/or paying wages close to MW. In 2016, the controlling bodies identified a total of 2 171 of undeclared workers in Lithuania;
- Systemic model of preventive control measures “Warned to Choose”. In accordance with this model, the managers of companies qualified as risky taxpayers are sent warning letters or invited to the STI to give explanations on low wages or other risk indicators. Failing to explain the existing situation or rectify it within a certain time, the companies are subject to strict control procedures by the STI. In 2016, STI and SSIFB officers sent more than 40 000 warning letters of this type to companies’ managers;
- Administrative penalties. In compliance with Article 41³ of the Code of Administrative Violations of Law of the Republic of Lithuania (ATPK), for undeclared (illegal) work the employers or their representatives shall be subject to a penalty ranging from EUR 868 to EUR 2,896 for each undeclared (illegal) worker. According to UDW protocols issued by SLI inspectors, penalties imposed on employers by courts exceeded EUR 293,000 in 2016; an average penalty was EUR 817.5 per undeclared (illegal) worker.

As mentioned above, the SLI and other authorities not only carry out strict control of UDW, but also pay attention to measures to prevent UDW/promote transparent business, such as:

- Holding awareness-raising campaigns in schools and other vocational education and training establishments, local (territorial) units of the Lithuanian Labour Exchange (LLE) and youth centres to highlight the rights and obligations of persons in the area of labour relations, the importance of the legality of labour relations and the negative effects of UDW. In 2016, the SLI held 47 seminars in local LLEs, 79 seminars in LLE’s youth centres, and 64 educational events for students;
- Organising consultancy seminars for small- and medium-sized enterprises, start-ups, municipal institutions and other economic entities. In 2016, 167 seminars were organised for companies and 5 consultancy events on UDW prevention were held for municipal institutions;
- Posting press releases on the prevention of UDW. In 2016, there were 33 press releases posted in relation to UDW prevention and labour law;
- Preventive comic films highlighting the importance of bringing employment relationships within the law (conclusion of employment contracts, recording of overtime, etc.). These films were posted on the SLI’s website and social networks, displayed next to cash registers in shopping centres, large stores and public transport.
- The SLI’s displays a helpline number on its website urging to report UDW cases.

The aforementioned action plan for UDW measures, as approved in February 2017, provides for the following key performance indicators used to assess the effectiveness of measures in Lithuania:

- *The number of violations of labour laws* – a total of 1,208 violations of labour laws were recorded in 2016, i.e. approximately by 19.2% more than in 2015;
- *The amount of imposed penalties* – according to the protocols of administrative violations of law issued by SLI inspectors, penalties imposed on employers by courts exceeded EUR 293,000 in 2016;
- *The number of identified undeclared (illegal) workers* – in 2016, institutions for the control and prevention of UDW detected a total of 2,171 undeclared (illegal) workers in Lithuania, including 1,338 persons transacting unregistered business activities and 833 undeclared (illegal) workers. The total number of undeclared

(illegal) workers detected in 2009-2016 increased by 47.3%, from 1,474 in 2009 to 2,171 in 2016;

- *A decrease in the share of employees paid less than MW* – according to the STI, the share of employees earning minimum wage or near-minimum wage decreased by 2.66 percentage points from 21.34% in January 2016 to 18.68% in December 2016. In companies where the “Warned to Choose” model was applied, a decrease in the percentage of employees paid minimum or lower wage was around 7%.

Moreover, there are a number of other indicators used to assess the effectiveness of individual measures to combat UDW (e.g. the calculated amount of additional taxes payable to the budget; the number of initiated pre-trial investigations, etc.).

1.3.3 Good practice

To reduce risks relating to non-recording of all hours worked by employees and payment of a part of wage/salary in envelopes, the STI, in cooperation with the SLI and the SSIFB, has for several years now applied a complex model of sanctions, known as the “Warned to Choose” model. Risky taxpayers, selected by a decision of the interdepartmental working group, have been sent more than 40,000 warning letters. According to the STI, this measure has proved to be effective: in companies where the aforementioned model was applied, average wages increased by approx. 24% in Q4 of 2016 comparing to Q4 of 2015.

1.3.4 Challenges and barriers

One of the challenges is that the number of undeclared (illegal) alien workers is growing in Lithuania: in 2009, 15 undeclared (illegal) alien workers were identified compared to 58 identified in 2016. One more recent trend is TCN, especially Ukrainians, who obtain visas in Polish travel agencies and arrive to work in Lithuania. Not aware of their rights and not knowing the Lithuanian language, they often live and work in subhuman conditions and are not adequately paid for work.

Several pre-trial investigations have been launched concerning likely human trafficking for forced labour, abuse of aliens and smuggling of aliens across the Lithuanian borders. There are responsible institutions to monitor the situation; legislation is being improved; etc. Due mention should be given to the Recommendations for identification of victims of trafficking in human beings, pre-trial investigation and interdepartmental cooperation, as approved by Order No. I-327/1V-1015/A1-758 of 17 December 2015 of the Prosecutor General of the Republic of Lithuania, the Minister for the Interior of the Republic of Lithuania and the Minister for Social Security and Labour of the Republic of Lithuania, which are currently followed by officers from various institutions/authorities and NGO professionals dealing with human trafficking for forced labour in Lithuania.

- It is not always easy for authorities to identify infringements relating to labour relations (e.g. signing of civil contracts instead of employment contracts) due to the relatively low number of inspectors against the number of (possibly – bogus) self-employed people;
- Tax administrators lack the specialised knowledge of law, for example, to separate royalties from salaries. According to a Report⁴ of the National Audit Office of Lithuania, it is difficult to prove that royalties paid to persons actually constitute salaries/wages.

⁴ Summary information. National Audit Report on Taxation of Personal Income No. VA-P-60-16-16. September 23, 2008. National Audit Office of Lithuania. Available on Internet at: https://www.vkontrole.lt/failas_senas.aspx?id=2744