

Factsheet on Undeclared Work – ROMANIA

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

The definition used by the National Institute for Statistics does not refer specifically to undeclared work but to the non-observed economy. It states that this is the total of activities that are in principal falling within the boundaries of production of the national accounts system but that are not directly classified as such (i.e. non-observed). The Labour Force Survey (LFS) or AMIGO data as published on the National Institute of Statistics website includes the number of salaried employees (RO: *salariatii*), which also includes persons working in the informal sector as well as persons working on the black market although no definition of those is given specifically. It is presumed therefore that internationally applied definitions are in use. The definition used by the Labour Inspectorate, which is the main state body entrusted with combating undeclared work, is work that is undertaken without observing the provisions of the labour legislation, in most cases without a labour contract, permit or license as the case may be. If such work is undertaken by a larger number of persons it may constitute criminal offence (i.e. more than five). Provisions regarding this are included in the Labour Code¹ (Law. No.53/2003 with subsequent amendments,,), title XI (Legal responsibility) chapters IV/ and V (as of the latest version of the Labour Code,-2015).

As said above, the legal definition is used by the Labour Inspectorate - the state body with the explicit legal mandate for the prevention and combating of undeclared work, as well as by other bodies of the state (e.g. the National Agency for Fiscal Administration - ANAF) when working to combat the phenomenon. Social partners and enterprises also make use of the legal definition as used also by the Labour Inspectorate which is subordinated to the Romanian Ministry of Labour. The National Institute for Statistics makes use of the definition generally accepted at European level. Several other definitions, are used by various academics.

1.1.2 Characteristics of undeclared work

A variety of types of undeclared work co-exist at the moment. 'Envelope wages' is considered to be the most frequent with employers opting for the payment of the statutory minimum salary while giving the rest as envelope payments, mainly to avoid social insurance contribution payments. As the minimum salary has been increased successively, even twice a year since 2012 this practice has become ever more expensive. However it is to be noted that some employers are resorting now to artificial reductions of working hours so as to pay practically the sums as formal payments while leaving the rest in the form of envelope wages. Another form that is widespread in the health services are 'informal payments' made by patients to doctors nurses and other medical personnel. Work without a contract is less and less present due to better and more targeted controls of the labour inspectorates but it is still the case in construction, restaurants, retail commerce and agriculture².

In regard to the main broad sectors where undeclared work is found, most cases of undeclared work occur in industrial type activities, followed by activities of warehousing, transportation and commerce as well as hotels and restaurants. Construction has somehow reduced its size as a result of the crisis on the one side but also as a result of

¹ The labour Code (Law no.53/2003 with subsequent amendments) does not include per se a definition of UDW. However, articles contained in the chapter imply a definition of it.

² According to a recent study performed by the National Scientific Research Institute in the field of Labour and Social Protection and published at „editura UNIVERSITARA”, Bucharest 2015, under the title: Assessments of Undeclared Work Dimension; Micro and macro economic approaches' (RO: *Evaluari ale dimensiunii muncii nedecarate; abrodari micri si macroeconomice*), Ed.Universitara, Bucharest-RO, 2015 (Larisa Stanila-coordinator, Maria Denisa Vasiliescu, Amalia Christescu, Madallina Ecaterina Pppescu, driana AnaMaria Davidescu and Catalin Ghinararu;

more and targeted control, Undeclared work in agriculture has also been brought somehow under control after the adoption in 2011 of the daily labourer's law (Legea Zilierilor, Law no.52/2011).. Linked to construction are the small home repairs and other such services. As said above, informal payments, as a peculiar form of undeclared work, are present on a wide basis in health provision and public education. More recently and with the development and diversification of activities of the national economy, undeclared work has penetrated also in enterprises providing services other than the retail, and involving work on short-term contracts where the turnover of staff is high. In most cases these temporary, or determined duration, contract workers are subjected to various forms of undeclared work.

In most cases undeclared work is prevalent in small and medium sized enterprises. There are forms of undeclared work present also in large enterprises but this is less frequent as these generally have collective labour agreements (mandatory according to the Romanian Labour Code for enterprises hiring more than 21 workers) and forms of unionisation or other types of employee representation.

The main motivation for undeclared work is the avoidance of taxation and especially of social contributions which are deemed as still too high by most employers. Another motivation, especially for 'informal payments' in public health and education are low salaries which make personnel in these sector prone to engaging in such practices. Cultural motivations and deeply rooted lack of trust in the state and its institutions also motivate such practices. A lower price for services, especially for home repairs and small construction services is yet another powerful determinant which maybe also linked to the lack of jobs, low salaries and generally low level of incomes.

1.1.3 Estimated scale of undeclared work

It is generally considered that, overall, the 'shadow' or 'informal economy' would make for around 29 %³ of the GDP according to various methodologies used for its quantification. According to various estimates around 1.3 to 1.4 million individuals engage in such activities. Figures for 2010-11, based on the comparison between the results of the Labour Force Survey (AMIGO) and the labour cost survey, both run by the National Institute of Statistics show a certain drop to figures of below 1 million for 2010-11. The highest concentration seem to be industry or industrial activities with around 385 000 persons for 2011, followed by commerce, transport, hotels and warehousing with around 355 000. As a result of the crisis the construction sector looks now smaller in this respect with only between 110 000 and 120 000 workers. A new concentration pole appeared in IT industries and communications recently.

1.2 Institutional Framework

1.2.1 Responsibilities for addressing undeclared work

The main national authority entrusted with the prevention and combating of undeclared work is the Labour Inspectorate, as of 2015 the Labour and Social Inspectorate, subordinated to the Ministry of Labour. The Labour Inspectorate has the full and explicit legal mandate for the enforcement of both employment and labour legislation in general ('labour relations' matters) as well as of health and safety at work legislation. The Labour Inspectorate is organised in accordance with Law no.108/1999 (republished last as of 2012, Romanian Official Journal/*Monitorul Oficial al Romaniei* no.290/03.05.2012). Its attributes on undeclared work are stated in article 6, section 'A', letter 'e' of the previously mentioned act of law. On aspects of tax evasion, the main responsibility rests with the National Fiscal Administration Agency (ANAF) subordinated to the Ministry of Public Finances. The Labour Inspectorate is also the main source of regular administrative data and reporting on undeclared work, its prevention and combat.

³ Fr.Schneider, (2012), The Shadow Economy and Work in the shadow; What do we (not) know?, IZA, Discussion paper no.6423

The Labour Inspectorate specifically tackles cases of undeclared work under their various forms. For cases where tax evasion is implied the National Agency for Fiscal Administration is also involved. For cases where the recourse to undeclared work is accompanied by fraud with regard to social benefits, the Social Inspection is also involved (together with the Labour Inspectorate these are two organisations subordinated to the Ministry of Labour and which as of 2015 work jointly). The National Agency for Employment may also be involved where undeclared work is accompanied by fraud with regard to the unemployment benefit or the improper use of the various subsidies provided to employers as active employment measures. The support of National Police or the National inspectorate of the Gendarmerie are involved when and where deemed necessary. Where cases of undeclared work are linked to illegal immigration or the trafficking of persons the support of the Romanian General Inspectorate for Immigration as well as that of the Frontier Police may be also provided.

1.2.2 Characteristics of the responsible organisations

All of the organisations described above are national.

The Labour Inspectorate is a national organisation subordinated to the Ministry of Labour and which has 42 county branches (RO: judet), including in this number the branch for the Municipality of the capital city of Bucharest. The wider remit of the Labour Inspectorate covers the whole field of application of the labour legislation as well as of the health and safety at work regulations.

The National Fiscal Administration has a territorial organization, with regional divisions. It is subordinated to the Ministry of Public Finances. Within its broader remit fall not only the collection of all state budget taxes and social contributions, but also combating fiscal and contribution fraud.

Police and Gendarmerie operate under the authority of the Ministry of Interior as does the Frontier Police and the Romanian Office for Immigration.

The Labour Inspectorate also carries out controls and inspection with the Consumer Protection Office, which also classifies as national government and which has a national network of branch offices.

The National Agency for Employment is the Romanian PES. It has 42 county offices.

The General Inspectorate for Immigration is also a national organization subordinated to the Ministry of Interior.

1.2.3 Cooperation and collaboration between authorities and cross-border authorities

The Labour Inspectorate as the main organisation responsible for the prevention and combating of the undeclared work has concluded several 'cooperation protocols' with the organisations cited above. By law it is authorised to also request and receive, if needed, the support of Police and eventually of the Gendarmerie if this is deemed necessary. In cases of undeclared work involving trafficking of persons or illegal immigration it has the right to request the support of the Frontier Police and of the Romanian Office for Immigration. Case by case when campaigns are organised it may work, basing on inter-institutional protocols with the ANAF and other designated state bodies such as also the Office for the Protection of Consumers and the Social Inspectorate. It has also a cooperation protocol with the Special Telecommunications Service.

In regard to data exchange between these organisations, the Labour Inspectorate operates and maintains REVISAL, or the national electronic register of the employees, where all employers are obliged by law to input data on the labour contracts concluded, as well as all of changes occurring. Data are shared regularly with the ANAF, the Social Inspectorate, the National Agency for Employment as well as other state bodies if necessary. Information is also exchanged with the National Health Insurance House and the National Pension House. The single numerical personal code of all individuals aged 14 and above allows for accurate registration of all employees and of all of their

employment contracts under the labour law. Employers also have their single registration codes.

Most of the campaigns directed by the Labour Inspectorate for the targeted prevention and combating of undeclared work are carried out in cooperation with the other state bodies already mentioned using both the general inter-institutional cooperation protocols as well as ad-hoc cooperation arrangements for each and every action. In 2011 an integrated mechanism for the prevention and combating of undeclared work was created via a government decision. The main body of evidence is constituted by the number of controls performed by the Labour Inspectorate as well as by the number of cases identified and the volume of fines and sanctions applied. Since the modification of the Labour Code in 2011 which included a toughening of sanctions against undeclared work, including criminalisation of what has been deemed to be a 'significant resort to it', the number of employers found as using undeclared work and sanctioned for it has decreased from more than 9 000 in 2011 to around 3000 in 2015.

In regard to cooperation and collaboration with other Member States, the Labour Inspectorate regularly cooperates with similar bodies in practically all of the Member States including for the development of good practices using also EU funds in the frame of EU co-financed projects.

Data exchanges between the Labour Inspectorate and other similar bodies also takes place on a case by case basis. The Labour Inspectorate also works with other national specialised authorities for the protection of the rights of Romanian workers abroad. For these purposes, it acts in conjunction with the offices of the labour attaché of the Ministry of Labour.

1.3 Policy Focus and Measures

1.3.1 Policy approach

Tackling undeclared work has always been considered a priority in Romania given the dimensions of the phenomena as well as its social and economic implications. Measures have always included both an enabling as well as deterring approach. In milder cases the Labour inspectors have refrained from applying fines and generally offer options for rather more preventive or enabling type measures, while resorting to fines and other measures only if preventive measures failed or if cases were serious, involving large numbers of persons as well as significant fiscal evasion and fraud. The measures have become more deterring in their character as of 2011 with the changes to the Labour Code (applied as of 1 May 2011) when undeclared work above a certain level (more than five workers simultaneously without a labour contract) has become equal to a criminal offence and as such liable for prosecution.

Also notable are the successive rounds of VAT reductions implemented starting in 2013, which included first a targeted reduction of VAT for bread and bakery products from 24 % to 9 %, then extended to meat products and then generalised to all of the alimentary products as of mid-2015. This has been followed by a general reduction of VAT from 24 % to 20 % as of 2016. Social security contributions have been also reduced by 5 pp as of the last quarter of 2014.

1.3.2 Measures to tackle undeclared work

The backbone of the ensemble of measures taken for the prevention and combating of undeclared work relies on inspections and controls. These are carried out regularly as well as in the form of campaigns directed towards those sectors where either there is a regular prevalence or where seasonally such prevalence tends to occur. Also the Labour Inspectorate responds to individual complaints from the public with regard to breaches of either labour law or of the regulations regarding health and safety at work.

Apart from this the Labour Inspectorate runs information campaigns that warn against the perils of undeclared work and the disadvantages and risks associated with it. It runs such initiatives both with other state bodies involved as well as in cooperation with

employers and unions, schools and universities. The Labour Inspectorate has worked so as to enhance the system of electronic registration of all labour contracts via the REVISAL system. It has worked with the National House of Pensions as well as in cooperation with the National Labour Research Institute as to create a national database for all data previously contained in the so-called labour booklets (RO: *Carnet de Munca*) and ensure that scanned copies of all of these booklets (in total around 9 million out of which more than 7 million have been scanned finally) were stored into a national database maintained by the National House of Pensions. As such, the paper record of the labour booklet has been removed from use as of 31 December 2010.

A certain effectiveness of the measures is visible in practice. As said in the previous paragraphs, undeclared work has been on the fall as of 2010-11, which means after the introduction of tougher sanctions as part of the Labour Code as well as after electronic registration has become the sole mean of registration of labour relations. A significant role may also be attributed to the daily labourer's law, passed in 2011.

1.3.3 Good practice

Definitely here stands the introduction of the single salary employees register, the REVISAL system, as well as the process by which the paper records have been removed from use and replaced with a database created at national level for the storage of all information previously contained by those (i.e.; previous to 2010). The introduction of criminal charges for what may be deemed as significant recourse to undeclared work also may be counted as good practice.

1.3.4 Challenges and barriers

The main challenges are related basically to the deeply rooted mistrust of the state and its bodies and staff by the general public as well as by employers and employees equally. State civil servants are viewed as corrupt and abusive, as well as self-serving rather than acting in the general interest of the public and the tax payer. This makes resorting to undeclared work very common and not necessarily socially unacceptable. It is also viewed as the only response possible, at times, to poverty, lack of jobs and low-income which affect large sections of the population in Romania and which may be considered as the main rationality behind the significant recourse to undeclared work.

These challenges and barriers are being addressed in the following ways:

- by enhanced cooperation between the various state bodies as well as by the introduction of more electronic instruments of contract registration;
- through several rounds of fiscal and contribution relaxation; and
- through a toughening of penalties for situations where undeclared work is considered as 'significant' (criminalisation of the recourse to undeclared work).

The key remaining challenges to be addressed regarding undeclared work are as follows:

- A still pervasive culture of mistrust in the state and its agents;
- Far too much reliance on the punitive aspects of the legislation with less weight given to enabling, education and preventive actions. Severity should be applied with caution and only where strictly the case and not with largesse;
- The persistent lack of jobs and employment opportunities, especially in rural areas but also in small cities; and
- Low incomes of the majority of households which encourages undeclared work in all of its forms.