

VS/2015/0026

FINAL REPORT

Social dialogue as the most effective means of combating social dumping and undeclared work in the agriculture sector.

The shift towards sustainable and high quality jobs.



With the support of the European Commission – DG Employment, Social Affairs and Inclusion

Chapter 1: Undeclared work, informal economy and regulation: an essential Literature Review	4
1. Outlining a definition of informal economy.	4
1.1. Implications of undeclared work and informal economy. Why we should be worried about them.	5
2. Measurement of informal economy. Methods and debates.	6
2.1. Direct methods.	6
2.2. Indirect methods.	6
2.2.1. Classic indirect methods.	7
2.2.2. Indirect econometric approaches.	7
2.3. The debate on measurement methodologies.	8
3. Determinants and features of the informal economy.	9
4. Tackling undeclared work and informal economy.	11
5. Undeclared work in agriculture.	12
6. Regulatory Studies: just a few essentials	12
Chapter 2: Identifying the phenomenon of undeclared work, the role of labour inspections and the need for a "responsive regulation" approach.	14
2.1. The issue of the legal definitions of undeclared work	14
2.1.1. EU legal definition	14
2.1.2. International definitions	14
2.1.3. Statistical definitions at international level	15
2.1.4. Undeclared work and similar types of work: illegal work, bogus self-employment, and "underdeclared work"	17
2.1.5. Research findings: the set of definitions in EU countries	20
2.1.6. The role of labour inspections	22
Chapter 3: Preventive measures for managing employment relationships in agriculture: forms of flexibility allowed by law and by collective bargaining; simplification of administrative formalities.	25
3.1 Flexibility and employment contracts	25
3.2 Simplifying administrative procedures: the state of the art in the various countries	29
3.3 State of the art of collective bargaining in agriculture and the role of social partners in encouraging regular employment	32
Chapter 4: Good Practices	35
4.1 Regulation	35
4.2 Regulation and flexibility: the case of "joint employment" in agriculture	36
4.3 Regulation and flexibility in agriculture: "seasonal work"	38
4.4 Enforcement: labour inspection	39
4.5 Other enforcement measures: beyond the traditional "command and control" scheme	41

4.6 Perspectives of regulatory simplification	45
4.7 Collective bargaining: innovative measures and contracted flexibility to tackle UDW	46
Chapter 5: Conclusions and Recommendations	50

INTRODUCTION

The project carried out by Geopa-Copa on undeclared work in agriculture, entitled VS 2015/0026, was developed over a period of 24 months, with the participation of the national organisations of employers in agriculture, which are members of Geopa.

All of its activities have been carried out in close cooperation with the Steering committee, which is composed of some members of Geopa and the designated experts.

The activities included three seminars: the first was held in Brussels, from 28 to 30 May 2015; the second in Lisbon, from 15 to 17 October 2015; and the third in Amsterdam from 19 to 20 May 2016. To prepare for these three seminars, three specific surveys were sent to the members, one for each seminar. Where possible and needed, Geopa's members answered the surveys with the technical support of the relevant national public authority experts, who verified the accuracy of the answers relating to their field of expertise.

The first seminar held in Brussels, dealt with the problems encountered in defining undeclared work and in studying the various enforcement systems in place in the Member States where Geopa operates. A specific survey was used for this seminar. The outcome of the seminar and answers given to the first survey are presented in **Chapter 2**.

The second seminar held in Lisbon, using another specific survey, dealt with the following topics: the policies applied to prevent undeclared work, especially the use of several types of individual employment contracts in agriculture, which allow more flexibility in the working activities; the measures aiming to simplify the administrative procedures needed to declare employment; and finally, the role of collective bargaining as an instrument to add flexibility and promote regular employment. The outcome of the seminar and answers given to the second survey are shown in **Chapter 3**.

The third and last seminar held in Amsterdam, focused on the presentation and discussion of the conclusions. Several recommendations have been included in **Chapter 5**. The third and last survey, sent in preparation for the seminar held in Amsterdam, focused on presenting the best practices at national level, which have been illustrated in **Chapter 4** of this work.

Finally, **Chapter 1** was dedicated to an essential literature review on the issue of undeclared work, which will hopefully be useful for those dealing with this matter who need more details on the most relevant elements needed to set policies and measures at EU and national level.

I would like to thank Geopa and all the national member organisations for giving me the opportunity to participate as an expert in the work connected to the entire project and to author this work.

Davide Venturi, PhD

Adapt Senior Research Fellow

CHAPTER 1: UNDECLARED WORK, INFORMAL ECONOMY AND REGULATION: AN ESSENTIAL LITERATURE REVIEW

1. *Outlining a definition of informal economy.*

- The concept of “informal economy” is volatile not only as a category, but also in relation to its actual dimension, because of its low visibility. Consequently, a definition of what informal economy and undeclared work (UDW) are, has been strongly debated over the years.

The ILO and ILCS definition of informal economy and undeclared work

- The concept of informality has evolved over the years, broadening its scope from employment in a specific type of production unit (or enterprise) to an economy-wide phenomenon. The ILO, for instance, in 1991 stated that the informal economy was made up of small-scale economic activities, consisting in self-employed persons who hire family labour or a few workers, so describing typical features of that kind of economy, but not adopting a formal definition (see ILO, *The dilemma of the informal sector, report of the Director-general*, 1991, and SCHLYTER C., *International labour standards and the informal sector: developments and dilemmas*, ILO Working Paper on Informal Economy, 2002).
- In 1993, a definition of “informal sector activities” was adopted, in the branch of statistical studies, at the 15th International Conference of Labour Statisticians (ILCS). That definition was based on the concept of informal sector enterprise, as employment in the informal sector basically comprises all jobs in unregistered and small-scale private unincorporated enterprises that produce goods or services. In particular, focusing on the concept of informal enterprises, certain activities, which are sometimes identified with informal activities, are not included in such definition: agriculture and related activities, for instance, are excluded for data collection reasons, as it is commonly assumed that covering the whole agricultural sector would entail a large expansion of survey operations and a strong costs increase (ILO, *Measurement of the informal economy*, 2013).
- In the early 2000s there was a need for more and better statistics on the informal economy. Moving from this necessity, the ILO and the 17th ICLS took up the challenge of developing new frameworks, outlining a deeper statistical conception for the phenomenon of informality (ILO, *Measurement of the informal economy*, 2013). In 2002 the ILO conceptualized a framework to define informal economy: the subject is defined as «all economic activities by workers or economic units that are [...] not covered or insufficiently covered by formal arrangements. Their activities are not included in the law which means that although they are operating within the formal reach of the law, the law is not applied or enforced; or the law discourages compliance because it is inappropriate, burdensome or imposes excessive costs» (ILO, *Decent work and the informal economy*, 2002).
- Looking at the current state of statistics in defining and measuring the informal economy, the International Conference of Labour Statisticians (ILCS) adopted an official definition of the “informal sector” which refers to enterprises that are unincorporated or unregistered (ICLS, *Resolution concerning statistics of employment in the informal sector*, 15th International Conference of Labour Statisticians, 1993). In 2003, the ILCS adopted some guidelines endorsing the aforementioned framework as an international statistical standard and focusing on an “informal employment” definition, which refers to the total number of jobs without employment-based social protection that may be for either formal firms, informal firms or households (ICLS, *Guidelines concerning statistics on informal employment*, 17th International Conference of Labour Statisticians, 2003).
- However, as a result of the national differences in definitions and coverage, problems with data comparability for the measurement of the informal employment are also due to the differences

in the amount of economic activities involved in that kind of statistical studies. Indeed some countries cover all kinds of economic activity, including agriculture, whilst other countries cover only manufacturing (ILO, *Measurement of the informal economy*, 2013).

The difficulty in defining informal economy within the scientific literature

- A lot of researches debated if informal activities should be taken into account in the GDP's calculation. As an example, FEIGE E. L., *The underground economies. Tax evasion and information distortion*, Cambridge University Press, Cambridge, 1994, outlines a definition of informal economy including all activities that contribute to the official calculation of GDP, whereas SMITH P., *Assessing the size of the underground economy: the Canadian statistical perspective*, in *Canadian Economic Observer*, n. 11, 1994, defines informal economy as a market-based production of goods and services which cannot be considered in the official estimates of GDP.
- Several studies underline the general difficulty of defining informal economy (SCHNEIDER F., ENSTE D., *Shadow economies around the world: size, causes, and consequences*, in International Monetary Fund Working Paper, n. 26, 2000). According to some Authors focusing on informal economy as a whole, measuring exactly undeclared work is – by its nature – almost impossible, as the incidence of undeclared work can only be approximately estimated (MATEMAN S., RENOY P. H., *Undeclared labour in Europe. Towards an integrated approach of combatting undeclared labour. Final Report*, Regioplan Research Advice and Information, Amsterdam, 2001).

1.1. Implications of undeclared work and informal economy. Why we should be worried about them.

- SCHNEIDER F., ENSTE D., *Shadow economies around the world: size, causes, and consequences*, in International Monetary Fund Working Paper, n. 26, 2000, outlines several reasons why the shadow economy figures out as a worrying phenomenon. First, informal economy may lead to an erosion of the tax and social security bases, and, consequently, to a decrease in tax receipts, to an increase in the budget deficit or, alternatively, to a further increase in tax rates, generating a perverse and negative cycle. Secondly, in contexts of strong informal economy, policies would be based on wrong indicators, such as inaccurate unemployment rates or incomes data.
- KIKILIAS E., *An inquiry into the correlates of informal economy and undeclared work*, in *Social Cohesion Bulletin*, National Center of Social Research, n. 1, 2009, sustains that policy makers are concerned about undeclared work because informal workers lack social security coverage as a large part of protections is provided by regular contracts. In addition to this, informal firms tend to stay small to avoid regulation, restricting their access to capital, to new technologies and to markets.
- Similarly, and referring to European Commission, *Europe 2020*, iec.europa.eu/europe2010/pdf/themes/07_shadow_economy.pdf, undeclared work causes productive inefficiencies, as informal business usually do not grow because of the impossibility to access to formal services and credit. Such document underlines also that informal economy has a negative implication which affects macro-economic outcomes. Undeclared work and informal activities decrease tax revenues and incomes, undermining financing and social security. In addition to this, undeclared work distorts fair competition among firms through social dumping phenomena, undermining in this way the social protection of workers and their access to social security schemes.
- According to the ILO, *Measurement of the informal economy*, 2013, informal economy affects national policies negatively, since they are better outlined when the overall entity of work is known. In addition to this, referring to the development of statistics that measure the nature

and magnitude of informal economy, without detailed employment data it is difficult to establish if economic growth policies are able to improve the quality of employment and eradicate poverty. Indeed, including informal activities into national accounts provides a more comprehensive assessment of the national condition. Otherwise, GDP and employment measurement can be underestimated.

- Concerning such informal economy's repercussions, RENOY P. H., IVARSSON S., VAN DER WUSTEN-GRITSAI O., MEIJER E., *Undeclared work in an enlarged union. An analysis of undeclared work: an in-depth study of specific items*, European Commission, Department for Employment and Social Affairs, 2004, and PERRY G., MALONEY W., ARIAS O., FAJNZYLBER P., MASON A., SAAVEDRA-CHANDUVIJ J., *Informality: exit and exclusion*, World Bank paper, 2007, notice that informality prejudices countries' development.

2. Measurement of informal economy. Methods and debates.

- Several studies examine the different approaches to the estimation of undeclared work and informal economy. The subject is controversial, since there are disagreements about the estimation procedures and the use of estimates in the economic analysis (SCHNEIDER F., ENSTE D., *Shadow economies around the world: size, causes, and consequences*, in International Monetary Fund Working Paper, n. 26, 2000). Moreover, other Authors underline that the difficulty in defining informal economy is actually due to large measurement problems (ANDREWS D., SANCHEZ A. C., JOHANSSON A., *Towards a better understanding of the informal economy*, in OECD Economics Department Working Papers, n. 873, 2011).
- The COM (2007)628 (Commission Communication, *Stepping up the fight against undeclared work*) confirms that different methods exist to estimate the undeclared work's size, and such phenomenon can be measured both directly and indirectly. These methodologies aim to estimate the extent of undeclared work and to interpret the phenomenon.

2.1. Direct methods.

- Surveys have been widely used. Direct surveys are addressed to a representative sample of the population, and their aim consists of collecting data on all aspects of the informal economy, from its spread and determinants, to its implications. In particular, referring to such measurement methodology, see HUSSMANN R., *Measuring the informal economy: from the employment in the informal sector to informal employment*, ILO paper, 2004.
- The COM (2007)628 (Commission Communication *Stepping up the fight against undeclared work*) asserts that direct methods are based on statistical surveys. They are more effective in terms of comparability and detail, even if they tend to under-estimate the undeclared work's extent.
- The main European researches on the prevalence and spread of undeclared work, such as the Eurobarometer Survey (European Commission, *Undeclared work in the European Union*, 2007, 2013, 2014), are properly based on direct methods.

2.2. Indirect methods.

- Indirect methods consist in discrepancy methods, labour input methods, and degree of participation methods. Other indirect methods are based on an econometric approach and consist in the monetary method, the electricity consumption method, and the latent variable method. A general classification can be found in GHK and FONDAZIONE G. BRODOLINI Final Report, *Study on indirect measurement methods for undeclared work in the EU*, European Commission, 2009. For a review about such topic, see also DELL'ANNO R., *Metodi di stima dell'economia sommersa: una rassegna*, in *Rivista Italiana degli Economisti*, n. 1, 2005.

2.2.1. Classic indirect methods.

The discrepancy method

- The discrepancy method consists in a comparison among incomes and consumptions, assuming that the first factor can be hidden more easily than the second one. As a matter of fact, such approach considers the difference between income and consumption as an estimation of tax evasion and informality: if the expenditure level is higher than the income level, it can be used as an indicator of the scale of income generated by the shadow economy (PARK T., *Reconciliation between personal income and taxable income*, Washington, D.C. Bureau of Economic Analysis paper, 1979). In relation to such approach, see also GHK and FONDAZIONE G. BRODOLINI Final Report, *Study on indirect measurement methods for undeclared work in the EU*, European Commission, 2009, and DELL'ANNO R., *Metodi di stima dell'economia sommersa: una rassegna*, in *Rivista Italiana degli Economisti*, n. 1, 2005).

The labour input method

- The labour input method is based on the supply side of the labour market. It represents an estimation of undeclared work assuming that individuals are not as motivated as enterprises would request, because of the need to conceal the nature of their work (see GHK and FONDAZIONE G. BRODOLINI Final Report, *Study on indirect measurement methods for undeclared work in the EU*, European Commission, 2009, and DELL'ANNO R., *Metodi di stima dell'economia sommersa: una rassegna*, in *Rivista Italiana degli Economisti*, n. 1, 2005).

The degree of participation method

- The degree of participation method assumes that situations, in which participation in formal work is limited, determine a shift from declared labour to undeclared work. So negative variations in labour force participation in the regular economy are seen as positive variations in undeclared work, and vice versa (see GHK and FONDAZIONE G. BRODOLINI Final Report, *Study on indirect measurement methods for undeclared work in the EU*, European Commission, 2009, and DELL'ANNO R., *Metodi di stima dell'economia sommersa: una rassegna*, in *Rivista Italiana degli Economisti*, n. 1, 2005).

2.2.2. Indirect econometric approaches.

The electricity consumption method

- The Electricity consumption method is an approach based on a single indicator and it considers the electricity consumption elasticity, with respect to GDP, as a measure of undeclared work. Indeed the difference between the growth rate of electricity consumption and the growth rate of measured GDP gives an approximation of the informal economy spread. Hence, the electricity consumption method looks at the relationship between electricity consumption and GDP. After empirically showing electricity consumption and GDP share the same elasticity, the difference in growth of GDP and electricity use is attributed to the informal economy (KAUFMANN D., KALIBERDA A., *Integrating the unofficial economy into the dynamics of post socialist economies: a framework of analyses and evidence*, in World Bank Policy Research paper, n. 1691, 1996). In relation to electricity consumption method, see also GHK and FONDAZIONE G. BRODOLINI Final Report, *Study on indirect measurement methods for undeclared work in the EU*, European Commission, 2009, and DELL'ANNO R., *Metodi di stima dell'economia sommersa: una rassegna*, in *Rivista Italiana degli Economisti*, n. 1, 2005).

The latent variable method

- The latent variable method is a seldom used econometric tool. Such proceeding consists in the MIMIC (multiple indicators and multiple causes) and DYMIMIC (dynamic multiple indicators

and multiple causes) approaches. The main feature is that undeclared work represents a latent (that is to say, unobserved) variable, which is influenced by observable factors and affects observable indicators (FREY B., WECK H. H., *The hidden economy as an unobserved variable*, in *European Economic Review*, n. 26, 1984). MIMIC and DYMIMIC approaches derive information from exploiting an estimation process in which a set of variables are taken into account as indicators (consequences of the informal economy presence) or determinants (informal economy causes). In relation to the latent variable models, see also BARNETT W. A., BERNDT E. R., WHITE H., *Dynamic econometric modeling*, in Cambridge University Press, Cambridge, 1988, and BUEHN A., SCHNEIDER F., *Mimic models, cointegration and error correction: an application to the French shadow economy*, in IZA Discussion Paper, n. 3306, 2008.

The currency demand method

- SCHNEIDER F., ENSTE D., *Shadow economies around the world: size, causes, and consequences*, in International Monetary Fund Working Paper, n. 26, 2000, developed the currency demand approach. Moving to the most recent studies, see also SCHNEIDER F., *Out of the State – The shadow economy and shadow economy labour force*, CESIFO Working Paper, n. 4829, 2014. This method, which was originally looking at the ratios of currency demand to tax burden (see TANZI V., *The underground economy in the United States: estimates and implications*, Banca Nazionale del Lavoro paper, n. 4, 1980, and TANZI V., *The underground economy in the United States: annual estimates, 1930-80*, International Monetary Fund Staff Papers, n. 2, 1983), evolved to an econometric model. Indeed, controlling for other macroeconomic causes, such as interest rates or other relevant variables, it attributes the size of the informal economy to the excess demand for currency.
- The monetary method is one of the most used approach. The currency demand approach is a method based on a statistics-econometric approach. In monetary methods, in general, the development of the ratio between cash and demand deposits represents an indicator of the existence of undeclared work. It consists in proxy indicators such as the amount of cash in circulation. Indeed, as said before, such approach is based on an estimation of overall monetary flows, assuming that illegal and informal activities are mainly financed through cash money movements (VOGLER L. K., *Indirect measurement methods for undeclared work in Germany*, Economix paper, 2009).

2.3. The debate on measurement methodologies.

Direct methods' advantages

- Some researchers claim the opportunity to develop and use direct methods towards the attempt to estimate the informal economy. HUSSMANNS R., *Measuring the informal economy: from the employment in the informal sector to informal employment*, ILO paper, 2004, as an example, sustains the importance of such methods and exemplifies also several survey questions and questionnaire categories.
- RENOY P. H., IVARSSON S., VAN DER WUSTEN-GRITSAI O., MEIJER E., *Undeclared work in an enlarged union. An analysis of undeclared work: an in-depth study of specific items*, European Commission, Department for Employment and Social Affairs, 2004, notice that all monetary (and, more generally, indirect) approaches are not useful, as direct methods are better to measure the volume of labour. The Authors highlight the importance of direct methods in order to achieve a common method of data collection and measurement, as in order to get a definition of informal economy, despite the risk of incorrect answers and critical issues related to the anonymity degree. On the other hand, indirect methods seems to be unreliable because of many pitfalls.

- Similarly, the COM (2007)628 (Commission Communication *Stepping up the fight against undeclared work*) underlines that indirect methods, especially the monetary one, tend to over-estimate the level of undeclared work and moreover they say just a little about its socioeconomic features.

Critics to the direct approaches

- On the other hand, one of the most commonly cited criticisms of surveys and direct methods is represented by the fact that their success strongly depends on the respondent's willingness to cooperate. Moreover, it is difficult to assess the rise and the spread of the undeclared work from a direct questionnaire. Most of people interviewed could hesitate to confess fraudulent behaviors and, in addition to this, respondents could find it difficult to calculate a real estimate of the extent of undeclared work. Another disadvantage is that surveys like those are an expensive and a time consuming approach (SCHNEIDER F., *Size and measurement of the informal economy in 110 countries around the world*, ANU Working Paper, 2002). Consequently, Schneider F. sustains that the most suitable method to detect the size and growth levels of the informal economy is the currency demand approach, even if, he notices, in economics and statistics there is not a definitive and best accepted method of estimating the size of the informal economy.

Electricity consumption and latent variable methodologies' criticals

- Electricity consumption method is a debated approach, as well. It requires an estimate of the initial share of undeclared income, in the overall economic activity, that could be difficult to obtain. SCHNEIDER F., *Size and measurement of the informal economy in 110 countries around the world*, ANU Working Paper, 2002, for instance, in his critique of this method, argues that not all informal activity requires electricity, and, besides, the elasticity of electricity consumption greatly depends on the respective market, on the efficiency of electricity distribution, and on the machinery in use.
- Also the latent variable methods require a difficult estimate, particularly referring to the initial share of undeclared incomes in total economic activity (see GHK and FONDAZIONE G. BRODOLINI Final Report, *Study on indirect measurement methods for undeclared work in the EU*, European Commission, 2009, and DELL'ANNO R., *Metodi di stima dell'economia sommersa: una rassegna*, in *Rivista Italiana degli Economisti*, n. 1, 2005). According to ZIZZA R., *Metodologie di stima dell'economia sommersa: un'applicazione al caso italiano*, in Banca d'Italia Working Paper, n. 463, 2002, on one hand, indirect methods ensure a quick estimation of informal economy; but, on the other hand, they do not ensure univocal measurements. Furthermore, others propose a longitudinal cross-analysis, based on a mix of direct and indirect methods (ANDREWS D., SANCHEZ A. C., JOHANSSON A., *Towards a better understanding of the informal economy*, in OECD Economics Department Working Papers, n. 873, 2011).
- In conclusion, focusing on some theoretical general considerations, DELL'ANNO R., *Metodi di stima dell'economia sommersa: una rassegna*, in *Rivista Italiana degli Economisti*, n. 1, 2005, argues that all methods' techniques, especially indirect approaches, are based on too weak assumptions, so that improvements are necessary to confirm the reliability of underground economy's measurements. From this point of view, research is invited to develop more solid methods.

3. Determinants and features of the informal economy.

Taxation, regulations, and corruption role in the informal economy

- A large burden of taxation and social security contributions combined with government regulations are the main determinants of the informal economy's size. The results of some studies show that an increasing burden of taxation and social security payments, in addition to deep state regulatory activities, are the most important determinants in the informal economy's

increase (see SCHNEIDER F., ENSTE D., *Shadow economies around the world: size, causes, and consequences*, in International Monetary Fund Working Paper, n. 26, 2000, and SCHNEIDER F., *Size and measurement of the informal economy in 110 countries around the world*, ANU Working Paper, 2002).

- Rising corruption also affects the growth of the informal economy positively (see, in particular, SCHNEIDER F., ENSTE D., *Shadow economies around the world: size, causes, and consequences*, in International Monetary Fund Working Paper, n. 26, 2000).
- KIKILIAS E., *An inquiry into the correlates of informal economy and undeclared work*, in *Social Cohesion Bulletin*, National Center of Social Research, n. 1, 2009, conducts a statistical analysis of the correlates of undeclared work and informal economy in developed countries. The Author finds out that trust in government plays an important role in reducing informality. In addition to this, regulations which secure property rights and counter corruption make the formal economy attractive; even the strictness of both the institutional framework conditions and the economic regulation is significantly correlated to the informal economy's size, especially referring to regulations on temporary employment. As a matter of fact, the Author sustains that high tax rates "per se" do not appear to influence levels of undeclared work.

The role of non-standard workers and discrimination

- Some Authors show that a main feature of informal economy is represented by the increase in the number of non-standard and self-employed workers (see VERMEYLEN G., *Informal employment in the European Union*, WIEGO Workshop Paper, 2008, and WILLIAMS C. C., *Europe's hidden economy: how governments can bring undeclared work out of the shadows*, in blog.lse.ac.uk/europpblog/2015/05/18/europes-hidden-economy-how-governments-can-bring-undeclared-work-out-of-the-shadows/, 2015).
- Other studies underline that exclusion and discrimination are the most important determinant in pushing workers into undeclared work. This factor affects immigrants (concerning the role of migrant workers in the informal economy phenomenon, with respect to the Italian case, see REYNERI E., *Immigrazione ed economia sommersa*, in *Stato e Mercato*, n. 2, 1998), low-educated, young, elderly; and persons with disabilities, whereas it does not affect self-employed workers (HAZANS M., *Informal workers across Europe: evidence from 30 European countries*, World Bank Policy Research Working Paper, n. 5912, 2011).

Other undeclared work's determinants: labour relations and geographical variations

- A number of other factors seem to contribute to concern over undeclared work's growth. They consist in growing demand for household and care services; the trend towards smaller and less hierarchical working relationships with more flexible pay systems; the widespread of self-employment, sub-contracting; and flexible contracts; and, finally, the growing ease of setting up cross-border groupings of enterprises (European Commission, *Europe 2020*, ec.europa.eu/europe2010/pdf/themes/07_shadow_economy.pdf).
- According to some researches, finally, undeclared work is more concentrated in particular regions or countries, figuring out strong geographical variations in the configuration of the undeclared phenomenon. As a matter of fact, there are strong socio-spatial variations in the prevalence of informal entrepreneurship and its features. Consequently, some populations are not lacking in entrepreneurial view, since they are more subject to informal activities (see WILLIAMS W. C., *Tackling undeclared work in Europe: lessons from a 27-nation survey*, in *Policy Studies*, vol. 30, 2009, and WILLIAMS C. C., NADIN S., *Entrepreneurship and the informal economy: an overview*, in *Journal of Development Entrepreneurship*, vol. 15, 2010).

4. Tackling undeclared work and informal economy.

- MATEMAN S., RENOY P. H., *Undeclared labour in Europe. Towards an integrated approach of combatting undeclared labour. Final Report*, Regioplan Research Advice and Information, Amsterdam, 2001, studied seven European member countries and identified the main measures adopted to promote employment and face undeclared work: policy measures, often concerning fiscal or social security policy; control activities and cooperation among control actors. According to the Authors, policy options can be split into four categories: changing the system (or part of the system, as in the case of tax reductions); enforcing the system (for instance, increasing sanctions); enhancing access to the formal economy (as an example, through tax credits for the employees); and changing behaviors or attitudes of citizens (mainly through awareness raising and information campaigns). Although sanctions and controls are being implemented all over Europe, such approach is not effective in practice, whereas attention should be focused on methods which enable to effectively identify undeclared work carried out by job holders.
- RENOY P., IVARSSON S., VAN DER WUSTEN-GRITSAI O., MEIJER E., *Undeclared work in an enlarged union. An analysis of undeclared work: an in-depth study of specific items*, European Commission, Department for Employment and Social Affairs, 2004, affirm that since different roots nurture the undeclared work's phenomenon, it is possible to outline different approaches towards informal economy widespread. Coherently, a key element in policies fighting undeclared work consists in strengthening of trust in government and institutions. Moreover, positive results could be achieved through a positive change in information campaigns against undeclared work and adopting a code of ethics in close consultation with social partners. Incentives for the transformation of undeclared work into formal economy should be improved; too.
- WILLIAMS C. C., *Tackling undeclared work in advanced economies. Towards an evidence-based public policy approach*, in *Policy Studies*, vol. 25, 2004, searches for an understanding on how to tackle undeclared work in advanced economies, focusing on the available empirical evidence. The Author underlines the predominance of a deterrence approach, towards undeclared work, supplemented with a further approach that seeks to facilitate its transfer into the declared system.
- Again WILLIAMS C. C., *A critical evaluation of public policy towards undeclared work in the European Union*, in *Journal of European Integration*, vol. 30, 2008, after a presentation of the various potential policy approaches (from repressive measures to attempts to enable compliant conducts), underlines the growing pursuit of a range of different measures, so that many countries remain trapped in a repressive approach against non-compliance. See also WILLIAMS C. C., *What is to be done about undeclared work? Evaluating the policy options*, in *Policy & Politics*, n. 1, 2006.
- According to the same mentioned distinguished Author (WILLIAMS C. C., *Confronting the shadow economy: evaluating tax compliance and behavior policies*, Edward Elgar Publishing, Cheltenham, 2014), indeed, there are four hypothetical and main policy choices with regard to undeclared work: to do nothing; to move declared work into undeclared economy; to eradicate the undeclared economy or to transfer undeclared work into the declared economy. Williams argues that moving undeclared work into the declared economy represents the most viable policy option. As a matter of fact, a mix of deterrence measures, incentives and indirect controls is required in order to bring undeclared work into the declared economy (see also WILLIAMS C. C., *Europe's hidden economy: how governments can bring undeclared work out of the shadows*, in blog.lse.ac.uk/europpblog/2015/05/18/europes-hidden-economy-how-governments-can-bring-undeclared-work-out-of-the-shadows/, 2015).
- Other Authors, finally, focus on a panel consisting of OECD countries to explain that the most widespread policy instrument to prevent people from working in the shadow economy has been

deterrence. However, empirical evidence shows that tax policies and state deregulation can work much better (see LARS P. F., SCHNEIDER F., *Survey on the shadow economy and undeclared earnings in OECD countries*, in *German Economic Review*, vol. 11, 2010).

- An extensive and complete study classifying the public policies to tackle undeclared work within the 27 MS and Norway (WILLIAMS C.C. and RENOOI P., *Tackling undeclared work in 27 European Union Member States and Norway*, Eurofound, 2013).

5. Undeclared work in agriculture.

Determinants and features of undeclared work in agriculture. The scarcity of studies

- There is a scarcity of studies focusing on motivations and features of informal economy in the agricultural sector. In addition to this aspect, some researchers pointed out that in the latest years some countries have excluded agriculture from the scope of their informal statistics, rather moving towards the development of suitable definitions (HUSSMANN R., *Measuring the informal economy: from the employment in the informal sector to informal employment*, ILO paper, 2004).
- DAZA J. L., *Informal economy, undeclared work and labour administration*, ILO Social Dialogue, Labour Law and Labour Administration Department paper, n. 9, 2005, notices that a situation in which labour and social security laws are most frequently not enforced arises in rural work and micro-small enterprises, thus primarily in the agricultural or construction sector, as well as in developing countries. This is because general or special legislation is difficult to apply in such contexts. On one hand, in many countries' rural areas there can be a general ignorance of the existence of the applicable laws or their content. In addition to this, the highest illiteracy rates, which affects many developing countries, usually occur among rural populations, whose local language may be different from the official language, making it more difficult for them to understand legal rules which are usually written only in the official language. On the other hand, much agricultural work is seasonal and involves many itinerant workers. This implies that registration procedures are not observed when they are complex, time-consuming and costly.

6. Regulatory Studies: just a few essentials

- For an introduction to Regulatory Theory, see BALDWIN R. AND CAVE M., *Understanding Regulation, Theory, Strategy and Practice*, Oxford University Press 1999. In particular the analysis of the different regulatory strategies: command and control; self-regulation and enforced self-regulation; incentive-based regimes; market-harnessing controls; direct action; allocating rights and liabilities; public compensation/social insurance schemes. On the methods of checking good regulation, in particular see the chapter "What is good regulation?".
- On the relations between Law and Regulation, see HAWKINS K., *Law as Last Resort*, pp. 288-306, in *A reader on Regulation*, edited by: Baldwin R., Scott C., Hood C., Oxford University Press, 1998; see also HOWE J., *Regulating for job creation*, The Federation Press, Sydney, 2008, 44-52.
- For a very complete study on Regulatory Theory applied to Labour Law, see ARUP C., GAHAN P., HOWE J., JOHNSTONE R., MITCHELL R., O'DONNELL A. (eds.), *Labour Law and Labour Market Regulation*, The Federation Press, 2006. On Regulatory Theory applied to civil contracts in general, see COLLINS H., *Regulating Contract Law*, in *Regulating Law*, Oxford University Press, 2004.

More specifically on Responsive (Reflexive) Regulation, which is particularly consistent with the principle of subsidiarity in regulation

- AYRES I. E J. BRAITHWAITE, *Responsive regulation*, Oxford University Press, 1992 explain what **Responsive regulation** is: «responsive regulation is distinguished (from other strategies of market governance) both in what triggers a regulatory response and what the regulatory response will be. We suggest that regulation be responsive to industry structure in that different structures will be conducive to different degrees and forms of regulation. Government should also be attuned to the differing motivations of regulated actors. Efficacious regulation should speak to the diverse objectives of regulated firms, industry associations, and individuals within them. Regulations themselves can affect structure (e.g., the number of forms in the industry) and can affect motivations of the regulated. We also conceive that regulation should respond to industry conduct, to how effectively industry is making private regulation work. The very behaviour of an industry or the firms therein should channel the regulatory strategy to greater or lesser degrees of government intervention». In that way, «Responsive regulation is not a clearly defined program or a set of prescriptions concerning the best way to regulate. On the contrary, the best strategy is shown to depend on context, regulatory culture, and history. Responsiveness is rather an attitude that enables the blossoming of a wide variety of regulatory approaches».
- For a theoretical framework on the relations between justice and responsiveness of regulation, BRAITHWAITE J., *Restorative Justice and Responsive Regulation*, Oxford University Press, 2002. The studies on responsive regulation evolved in the last decades. See BALDWIN. R. AND BLACK J., *Really responsive regulation*, LSE Law, Society and Economy Working Papers 15/2007. They recognise that putting the system into effect can be challenging, but they argue that «Regulation is really responsive when it knows its regulatees and its institutional environments, when it is capable of deploying different and new regulatory logics coherently, when it is performance sensitive and when it grasps what its shifting challenges are. As regulators across the world have to operate within more complex networks of control and have to face up to increasing rates of change, the case for really responsive regulation can only be expected to grow».

CHAPTER 2: IDENTIFYING THE PHENOMENON OF UNDECLARED WORK, THE ROLE OF LABOUR INSPECTIONS AND THE NEED FOR A "RESPONSIVE REGULATION" APPROACH.

2.1 The issue of the legal definitions of undeclared work

2.1.1 EU legal definition

There is no legally binding definition of "undeclared work" (UDW) for all EU Member States. Nevertheless, a legal definition of this phenomenon was given for the first time with the Communication from the Commission COM(1998) 219 of 7 April 1998, which defines UDW as: "any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account differences in the regulatory system of Member States". This definition is proposed again, with the same wording, in the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions, COM(2007) 628 of 24 October 2007.

The Resolution of the Council of 22 April 1999 then defines UDW as "any paid activities that are lawful as regards their nature, but not declared in conformity with national law and practice". This definition, substantially similar to the first, does not specify whether the entity to which the employment relationship must be declared under national law is a public authority.

The Resolution also specifies that: "in any case, this definition must not be more restrictive than the legislation in force in each Member State". In doing so, it highlights its nature as a "framework definition", whose "general" function is to be integrated in detail by the national regulatory definitions adopted by each Member State. Therefore, the EU definition has a much wider scope or at least the same scope as the national definition integrating it for the correct application of the regulation at national level; yet, the national definition may actually be narrower than the European one, due to the concrete national political choices to tackle informal economy and UDW. As such, in the current EU regulatory environment, there is the possibility that different definitions are chosen at national level. Consequently, national definitions might have a certain lack of homogeneity.

The definition adopted by the Communication of 1998 and repeated in the Communication of 2007 "links undeclared work with tax and/or social security fraud and covers diverse activities ranging from informal household services to clandestine work by illegal residents". The notion of UDW excludes "criminal activities", i.e. activities that are prohibited by national criminal legislation.

Therefore, at this stage, the situation is as follows: the European Union chose to establish a non-binding legal notion of UDW, which is integrated in the legal definitions adopted at national level.

2.1.2 International definitions

ILO Recommendation No. 204 of 12 June 2015 on the transition from informal to formal economy sets a definition of "informal economy" that can be only partially compared to the concept of "UDW".

According to the ILO, "informal economy" means "all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements". The concept of "informal" work (according to the ILO definition) essentially has a contractual nature; therefore it is different from the concept of "undeclared" work (according to the EU definition). The former basically refers to informality as the lack of a contractual agreement between the employer and employee, while the latter – intended more for protecting the public interest – has more to do with the fact that the employment relationship that has not been reported to the competent public authorities is actually hidden, and therefore strictly connected to tax omission/fraud and social security fraud/omission.

Moreover, the ILO definition makes it clear that the concept of informal economy does not cover "illicit activities, in particular the provision of services or the production, sale, possession or use of goods forbidden by law, including the illicit production and trafficking of drugs, the illicit manufacturing of and trafficking in firearms, trafficking in persons, and money laundering, as defined in the relevant international treaties". Here is another difference with the EU definition: while the ILO excludes "illicit activities" from the notion of informal economy, the EU excludes "criminal activities" from the notion of

UDW. The concept of "illicit activity" is much broader than that of "criminal activity" from a legal perspective, because a given activity can be illicit both according to criminal and civil law (for example, breach of contract or non-contractual error) or violate administrative rules (administrative offence). Nevertheless, the different wording does not seem to point to a great difference in terms of meaning. Therefore, criminal activities are also essentially excluded from the definition of "informal economy", i.e. activities that national laws define as criminal offences. The identical nature of the two wordings is highlighted by the choice of examples of "illicit activities" made by the law: they are illicit activities because they are criminal offences.

Now, the following question may be raised at EU level: should the notion of "UDW" exclude only criminal activities that are considered as such from the objective point of view of conduct, i.e. prohibited by criminal law; or should the notion also include activities which are not criminal offences in terms of conduct, but are considered as such by those who perform such activities? For example, child labour is usually punishable under criminal law (minors whose age is below the national legal threshold to access employment, and/or who did not complete compulsory schooling), or a professional activity requiring a specific university degree (doctors, engineers, etc.). The issue is whether these intrinsically lawful activities, whose access is limited to certain individuals by national criminal law, are to be considered as "criminal activities" excluded by the EU notion of UDW. This issue can be and is currently resolved autonomously by Member States. Yet, the EU legal definitions do not currently seem to give a clear and unambiguous indication towards finding a common solution to the problem of definitions. Which is why, at the present time, the choice of a definition is left to national legal systems.

In addition to the definition of "informal economy" given by ILO Recommendation No. 204, "concealed employment" is defined under international law by the OECD as "employment which, while not illegal in itself, has not been declared to one or more administrative authorities to whom it should be made known, thereby leading to the evasion of legal regulations, the evasion of taxes, or the evasion of a reduction of social security entitlements"¹. Although this definition is not legally binding – having only statistical significance – the wording is essentially the same as that used by the EU to define UDW. On the one hand, it refers to the intention to conceal the employment relationship from public authorities, with implications in terms of tax evasion/fraud and social security, while on the other, it excludes "illegal work" (see ILO definition), whose notion at EU level is however further limited to "criminal activities".

2.1.3 Statistical definitions at international level

The statistical definitions of UDW and, more broadly, on informal economy are strictly related to the existing regulatory definitions, whether they are given by international or national legislative frameworks. In fact, legal definitions aim to implement policies (at international level and in particular at EU and/or nation level, of most interest to us) to tackle UDW ("enforcement" broadly speaking) and to define the scope of any unlawful conduct in order to apply sanctions ("enforcement" strictly speaking). Whereas, statistical definitions aim to measure the phenomenon in order to shape national and/or international policies to tackle UDW and, more in general, policies aiming to declare UDW. At international level, the following definitions are relevant.

¹ OECD, Glossary of statistical terms, 2002 (available online)

The ‘non-observed’ economy refers to the following activities [Eurostat]²:

Underground activities, defined as those activities that are productive and legal but are deliberately concealed from public authorities to avoid:

- payment of income, value added or other taxes;
- payment of social security contributions;
- having to meet certain legal standards such as minimum wages, maximum hours, safety or health standards, etc.;
- complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms.

Illegal activities, defined as those productive activities specifically covered by SNA (System for National Accounts) production boundary that:

- generate goods and services forbidden by law (e.g. production and distribution of illegal drugs) ;
- are unlawful when carried out by unauthorised producers (e.g. unlicensed practice of medicine).

Production of households for own final use, defined as those productive activities that result in goods or services consumed or capitalised by the households that produced them, such as:

- production of crops and livestock;
- production of other goods for their own end use;
- construction of own houses and other own-account fixed capital formation;
- imputed rents of owner-occupiers, and services of paid domestic servants.

Non-observed informal activities, being part of the informal sector also covering observed activities undertaken informally; in general, informal activities are those productive activities conducted by unincorporated enterprises in the household sector that are unregistered and/or are less than a specified size in terms of employment, and that have some market production.

Underground production: production activities that are legal but deliberately concealed from public authorities in order to avoid paying tax (e.g. VAT or income tax) or social security contributions; meeting statutory standards; or complying with official procedures and regulations such as the completion of administrative forms or statistical questionnaires. “Underground” is the term most commonly employed, some countries also employ the terms “concealed activities”, “hidden economy” or “black economy” to denote this type of activity. [UN, Non observed economies in National Accounts, 2008, Geneva]

Informal activities: legal production activities which are characterized by a low level of organization, with little or no division between labour and capital as a factor of production. The informal sector typically functions on a system of unofficial relationships and does not rely on official agreements. It is broadly characterised as consisting of units engaged in small-scale production of goods and services with the primary objective of generating employment and incomes for persons concerned. The definition of the informal sector corresponds with that of household unincorporated enterprises. [UN, Non observed economies in National Accounts, 2008, Geneva]

Illegal activities: productive activities which are forbidden by law or which become illegal when carried out by unauthorised persons. The following types of illegal activities are considered in the inventory: production/import/sale of drugs; prostitution; sale of stolen goods and smuggling of goods. [UN, Non observed economies in National Accounts, 2008, Geneva]³

² for more details, see http://ec.europa.eu/eurostat/statistics-explained/index.php/Building_the_System_of_National_Accounts_-_non-observed_sector

³ for more details, see UNECE, Non-Observed Economy in National Accounts, Geneva, 2008, in <http://www.unece.org/fileadmin/DAM/stats/publications/NOE2008.pdf>

Illegal Production:

There are two kinds of illegal production:

- The production of goods or services whose sale, distribution or possession is forbidden by law;
- Production activities that are usually legal but become illegal when carried out by unauthorized producers; for example, unlicensed medical practitioners.

[UN, SNA (System of National Accounts), 2008]⁴

“Non Observed Economy”

Certain activities may clearly fall within the production boundary of the SNA and also be quite legal (provided certain standards or regulations are complied with) but deliberately concealed from public authorities for the following kinds of reasons:

- To avoid the payment of income, value added or other taxes;
- To avoid the payment of social security contributions;
- To avoid having to meet certain legal standards such as minimum wages, maximum hours, safety or health standards, etc.;
- To avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms.

[UN, SNA (System of National Accounts), 2008]⁵

Eurostat's statistical definitions and the aforementioned UN definitions are essentially the same. Moreover, international institutions adopted common definitions a long time ago - SNA (System for National Accounts). These are agreed at global level (United Nations, International Monetary Fund, OECD and World Bank), but also at European level (European Commission). As a matter of fact, the concepts of "underground activities" (Eurostat) and of "illegal production" and "non observed economy" (UN) are essentially the same. They highlight the fact that these activities/productions are "underground", as they are deliberately concealed from public authorities in order to avoid paying the taxes/social security/legal and administrative fees imposed by the legislation of a given country. These definitions are fully in line with the EU legal definition of UDW.

The UN definition of "illegal production", in particular, also uses the terms normally used to define the notion of "illegal production" at national level: "underground", "concealed activities", "hidden economy", or even "black economy". These terms are essentially synonyms.

The definitions of "illegal activities" given by the UN completely match those of Eurostat and include activities that are intrinsically unlawful (objectively illegal) and activities that are intrinsically legal, but are carried out by unauthorised personnel (subjectively illegal).

2.1.4 Undeclared work and similar types of work: illegal work, bogus self-employment, and "underdeclared work"

Undeclared employment, strictly speaking, is an employment relationship that is totally concealed from the national authorities to which it should be declared, according to the legislation applied in the country where the employment relationship is agreed and carried out. Nevertheless, there are also several particular cases, which can be included in the EU notion of UDW in a broader sense. It is for national law to point out whether and to what extent these particular cases are to be included in the national notion of UDW, including in relation to the type of sanction, which can be the same as that applied for UDW. Therefore, regarding the type of targets adopted by national public policies to fight UDW, Member States can choose to define these particular cases within the framework of the national notion of UDW.

⁴ See the document System for National Accounts, 2008, page 100, in <http://unstats.un.org/unsd/nationalaccount/docs/SNA2008.pdf>

⁵ See the document System for National Accounts, 2008, page 100, in <http://unstats.un.org/unsd/nationalaccount/docs/SNA2008.pdf>

a) Illegal work

Article 2.d of Directive 2009/52/EC on the employment of non-EU workers residing unlawfully in EU countries defines "illegal employment" as "the employment of an illegally staying third-country national". Therefore, the European legislation clarifies that the unlawful conduct lies with the employer, i.e. the person who "employs" an irregular worker. Nevertheless, the Communication of the European Commission COM(2014) 286 stipulates that: "In BE, FI, FR, IT, MT, NL and SE, illegal employment constitutes a criminal offence in itself, with or without the circumstances referred to in Article 9(1). These circumstances are usually treated as aggravating factors. The remaining Member States have in general criminalised illegal employment in all the circumstances described in Article 9". As such, the Directive makes it clear that the particular case of "illegal employment" is normally punished by Member States as a "criminal activity", at least in the most serious cases set out in Article 9 of the same Directive. Therefore, the question arises as to whether the various EU national legislations govern this particular case as a possible case of UDW, since, as shown, "criminal activities" are not counted as UDW. Although there is no binding legal definition for Member States, it seems that "illegal employment" is fully included in the notion of UDW, as laid down in Directive 2009/52/EC. As a matter of fact, the Communication COM(2007) 628 of 24 October 2007 stipulates that the above-mentioned European definition of UDW "covers diverse activities ranging from informal household services to clandestine work by illegal residents" within the EU. From an EU legal perspective, this specification does not seem to contradict the Directive. Indeed, the Directive 2009/52/EC does not necessarily mean that "illegal employment" is in itself a case of criminal conduct. It does say that the cases listed in Article 9 are - i.e., when illegal employment is persistently repeated, when it involves many workers, when the working conditions are particularly exploitative and when the employer knows that the worker is a victim of human trafficking.

Nevertheless, this situation creates great confusion when considering that, as explained, several Member States consider "illegal employment" to be an intrinsically criminal activity, considering the cases listed in Article 9 of the Directive as mere aggravating circumstances to the offence of "employment of a third-country worker with no residence permit". Therefore, at least in these countries, the problem certainly arises as to whether or not, according to the Directive in question, "illegal employment", as a criminal activity punished by national criminal law, is to be considered a case of UDW under national law, since UDW is excluded if the case in question is a criminal activity. Following this exclusion from the notion of UDW – due to the unlawful nature of the employment relationship – the same goes for those cases where the criminal law of a Member State denies access to all or specific types of work (for example, cases of offences linked to the employment of children or offences connected with carrying out an activity for which a specific qualification is needed that the worker does not have).

b) Bogus self-employment

Bogus self-employment is certainly to be included in the EU notion of UDW⁶. In fact, legally speaking, bogus self-employment is a fabrication that can cause: the infringement of (national) provisions on the creation of an employment relationship; tax and/or social security evasion; and various types of violations connected to the way the employment relationship is managed (regulations relating to health and safety at work, working hours, breaks, minimum wage, etc.).

The following definitions can be found in the case law of the Court of Justice of the European Union.

⁶ See Communication from the European Commission COM(2007) 628 of 24 October 2007, page 4.

CJEU, Case *FNV Kunsten Informatie en Media c. Staat der Nederlanden* C-413/13

Person who, though hired as a self-employed under national law, for tax, administrative or organisational reasons, acts under the direction of his employer as regards, in particular, his freedom to choose the time, place and content of his work (see judgment in *Allonby*, EU:C:2004:18, paragraph 72), does not share in the employer's commercial risks (judgment in *Agegate*, C-3/87, EU:C:1989:650, paragraph 36), and, for the duration of that relationship, forms an integral part of that employer's undertaking, so forming an economic unit with that undertaking (see judgment in *Becu and Others*, C-22/98, EU:C:1999:419, paragraph 26).⁷
[, paragraph 36]

When defining a worker as employed or self-employed, the relevant factor is the worker's actual autonomy. Therefore, the real behaviour of the parties in the execution of the contract prevails over the formal classification of the contract itself.

CJEU, Case *Confederación Española de Empresarios de Estaciones de Servicio*, C-217/05:

It must be recalled that according to settled case-law, on the one hand, a service provider can lose his status of an independent trader, and hence of an undertaking, if he does not determine independently his own conduct on the market, but he is entirely dependent on his principal, because he does not bear any of the financial or commercial risks arising out of the latter's activity and operates as an auxiliary within the principal's undertaking.⁸

CJEU, Case *Allonby*, C-256/01

The formal classification of a self-employed person under national law does not exclude the possibility that a person must be classified as a worker within the meaning of Article 141(1) EC [*"employee", ed.*] if his independence is merely notional, thereby disguising an employment relationship within the meaning of that article.⁹

c) Envelope wages

The so-called "envelope wages" can also be included in the European notion of UDW. This is the case of an employer paying the employee for an undeclared activity carried out in the framework of a regular employment relationship. In fact, this definition makes explicit reference to the broad notion of undeclared "paid activities" and is not limited to the more specific case of undeclared "employment relationship". Consequently, envelope wages can be included in the European notion of UDW, even though these undeclared payments are made in the framework of an employment relationship that has been properly declared to the competent national authorities¹⁰. The reason behind this inclusion lies in

⁷ C-413/13, Paragraph 36, in

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160305&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=219669>

⁸ C-217/05, Paragraph 43-44, in

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=66539&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=219317>

⁹ C-256/01, Paragraph 71, in

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=48839&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=219745>

¹⁰ See the following definition of "envelope wages": «whereby a formal employee receives part of their wage on a declared basis and the remainder on an undeclared basis. Both jobs and enterprise-based definitions omit these forms of undeclared work, since the worker is in a formal job and the work takes

the fact that these practices, which tend to conceal both the work done and its payment, have a clear impact in terms of tax and social security fraud.

Envelope wages

Partially undeclared work is sometimes also called "under-declared work", "envelope wages" or "cash-in-hand". In these cases only part of the employee's salary, usually the minimum salary, is paid officially, while the rest is given to the employee directly "tax free". It also covers situations where an employee is declared to work part-time, but in reality works full-time

[**EU Commission, Memo on Undeclared Work, 2014**, http://europa.eu/rapid/press-release_MEMO-14-272_en.htm]

Even though "envelope wages" are included in the European notion of UDW, different choices can still be made at national level, which are more restrictive in terms of definitions as well as sanctions. As a matter of fact, as already pointed out, according to the Resolution of the Council of 22 April 1999 (which specifies that "in any case, this definition must not be more restrictive than the legislation in force in each Member State"), Member States can adopt legal definitions that are even more restrictive than the European one (which is not legally binding).

2.1.5 Research findings: the set of definitions in EU countries

The first of the three questionnaires submitted to the national associations of agricultural employers who are members of Geopa aimed to carry out a survey on the current situation in the various EU countries regarding the existence of national definitions of UDW and its related trends (illegal employment and bogus self-employment).

Regarding the investigation carried out in the 16 countries that answered this questionnaire (AT, BE, CY, DE, ES, FI, FR, HU, IE, IT, LV, LT, NL, PT, SE, UK), the first observation to be made is that, even though the various Member States have well-structured sets of definitions, there is a lack of legal definitions of UDW and its related trends of illegal employment and bogus self-employment.

The questionnaire asked if there is a general and systematic definition at national level, which includes the various types of UDW, illegal employment and bogus self-employment. In other words, the participants were asked whether, except from illicit/criminal activities (offence), there is a framework definition that includes all cases when an intrinsically lawful work activity is prohibited due to the characteristics of the individual performing it (for example, child labour below the national legal threshold to access employment, third country workers with no residence permit, unlawfully performed activities requiring a specific qualification, etc.), or because the legal obligation to declare the employment relationship to the competent public authorities is not upheld (undeclared employment in the strict sense).

In general terms, some countries (BE, FR, LT) have developed a broad and systematic concept of "social fraud" (in LT "illegal employment" is the general notion, which also includes UDW), including UDW, bogus self-employment and the illegal employment of third country workers with no residence permit. The legislative choice to include the various situations as cases in point of the broader legal notion of "social fraud" is an interesting example of how these different trends are systematised. On the other hand, the lack of systematisation in the majority of countries surveyed makes it harder to draw a line between one trend and another, making the definitions open to varying levels of uncertainty in the various countries.

Moreover, in almost every country that answered the questionnaire, the legal definition of illegal employment is ultimately the same as the transposition into national law of the notion of "illegal employment" enshrined in Article 2.d of Directive 2009/52/EC on sanctions and measures against employers of third-country nationals illegally staying in EU countries. In this respect, it is important to stress that in almost every country surveyed (16 out of 17), the types of "illegal employment" relate to the employment of third country workers who do not have a regular residence permit.

According to the answers given, the substantial lack of a general definition of illegal employment in Member States is, in fact, offset by a basic convergence of the types of unlawful (therefore sanctioned)

place in a registered enterprise», *Williams-Renooy, Measures to tackle undeclared work in the EU, Eurofound, 2008*.

conduct, which can be included in a common notion of illegal employment, even though there is no systematic legal provision gathering all the various infringements defined by the legal system in a sort of "reductio ad unum".

The following summary table highlights which of the countries surveyed have or do not have a legal definition for "illegal employment" in the broader sense – as mentioned above – of UDW and bogus self-employment.

	AT	BE	CY	D E	ES	F I	FR	H U	I E	IT	L V	LT	N L	PT	SE	U K
Social fraud/illegal employment (*)	no	Yes	no	no	no	n	Yes	no	n	no	n	Yes	n	no	no	no
Undeclared work	Yes	Yes	Yes	Yes	Yes	n	Yes	no	n	Yes	n	Yes	n	no	Yes	no
Bogus self-employment	no	no	Yes	no	no	n	Yes	no	n	no	n	no	n	Yes	no	no

(*) These countries have found a general legal definition that does not just transpose the notion of "illegal employment" enshrined in Article 2 of Directive 2009/52/EC, even though it is actually included.

Nine surveyed countries out of sixteen have a legal definition of undeclared work, while only three countries out of sixteen have a legal definition of bogus self-employment.

Nevertheless, it should be made clear that even though there might not be a legal definition for these phenomena, each country still has commonly accepted definitions that are established by case-law and/or by the rules and acts of control authorities in charge of monitoring and inspections. Therefore, there are still some internal definitions, despite not being established by law.

Even though almost all Member States do not have a specific definition in their national legislation for bogus self-employment, there seems to be a basic agreement on the nature of the case in point. It is considered everywhere as **wage labour that is declared as self-employment in order to pay less social security contributions/taxes** and save on the cost of labour. Moreover, the existing national legal definitions are the same as those outlined in the case law of the European Court of Justice outlined above¹¹. Indeed, cases of bogus self-employment are established upon inspection and/or by other authorities, using some indicators that are meant to check if an employment relationship is genuine, if the self-employed worker is the owner of the equipment used, his/her business volume, if he/she only has one customer, etc.. Nevertheless, if a fictitious business relationship is questioned, the bogus self-employed worker is not automatically considered as an employed worker (with the resulting attribution of the relevant "status", rights and protections), since some jurisdictions merely order contributions to be regularised and/or impose administrative sanctions. In any case, it is interesting to note how almost all jurisdictions analysed in the study are familiar with the problem and essentially consider that it can be included in the notion of UDW in the broader sense.

¹¹ For example, in PT, bogus self-employment is defined as follows by Article 12, Law No. 7/2009 of 12 February 2009 (Labour Code) and by Law No. 63/2013 of 27 August 2013: "The ostensible provision of self-employed work, which meets the characteristics of the employment contract and may result in a loss for the worker or the State".

2.1.6 The role of labour inspections

a) Competent national authorities

The nature, tasks and function of labour inspections vary greatly among Member States.

The first distinction to be drawn is between those countries that concentrated the control over employment and working conditions into one public authority (for example ES, FR), and those that assigned different tasks to specific agencies (for example AT, BE, IE, PT). Among the latter, it is worth mentioning the case of those countries which carry out labour inspections only in the field of prevention on health and safety in the workplace. In these cases, protecting working conditions and tackling UDW are left to tax agencies (for example, AT, DE, FI, HU, UK). In these countries of northern-central Europe, the fight against UDW is usually considered to be essentially an issue of tax and social security fraud, rather than a matter of public defence of the exploited worker. On the other hand, the structure of the enforcement system in southern-central countries (for example, BE, ES, FR, IT, PT) seems to be exactly the opposite. In these countries, protecting workers seem to be a predominant matter compared to assuring the payment of taxes and social security contributions.

As far as trade union organisations are concerned, only in very few countries (NL, SE) they are partially involved in overseeing employment relationships. Finally, there are hybrid systems in a group of countries, which are somewhat at a halfway point between specific and general systems. In these countries, there are several authorities in charge of labour inspections, whose powers can at times overlap (for example IT, LT, LV).

A major organisational aspect highlighted by the answers given to the questionnaires is the issue of coordination among the various agencies performing activities related to labour inspections in the strict sense, especially tax and customs agencies. In fact, some countries currently implement important coordination policies in cooperation with tax authorities (for examples, AT, HU, UK) and/or with customs authorities (DE, HU).

Coordination among control authorities seems to be a relevant issue, both domestically among authorities with similar areas of competence, and internationally among the labour inspectorates in the various Member States¹².

Concerning the role of labour inspection, several countries focused on prevention and on promoting legality (for example, FI, NL, PT, SE, UK), extending the traditional “enforcement” role in the strict sense, i.e. the typical role of labour inspectorates in almost every surveyed country, consisted in carrying out controls and applying sanctions. The issue of the role of inspection services seems to be connected to the type of enforcement system adopted by the various countries. Some of them focus more on compliance (“compliance based systems”) (for example, FI, IE, LT, NL, SE, UK), while others focus on the deterrent of sanctions (“deterrence based systems”) (for example, BE, ES, FR, IT). In some of the countries adopting compliance based systems, the working conditions inspected are partly established by law and partly integrated by “enforced self-regulation” systems, i.e. by self-organisation and self-regulation systems, which give rise to employer obligations towards employees, and which undergo compliance inspections (for example, FI, LT, NL, SE). Moreover, in some of these systems, the role of trade union organisations is integrated in the “enforcement” function and, therefore, in the “compliance” checks themselves (for example, NL, SE).

¹² On the issue of coordination among the various national authorities, see Directive 2014/67/EU, recital 33: “Member States are particularly encouraged to introduce a more integrated approach to labour inspections. The need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level should equally be examined. However, the development of common standards should not result in Member States being hampered in their efforts to combat undeclared work effectively”; and Decision (EU) 2016/344, recital 23: “Different national enforcement authorities are involved with undeclared work, such as labour inspectorates, other authorities dealing with health and safety at work, social security inspectorates and tax authorities. In some cases, migration authorities and employment services as well as customs authorities and authorities in charge of implementation of the common transport policy, the police, the public prosecutor's office and the social partners may also be involved”.

Furthermore, in compliance based systems, on-site labour inspections are often totally or partially announced by the public authorities to the employer before the inspection takes place (for example, LT, SE, UK). On the other hand, in most countries, the employer cannot be warned in advance that an inspection has been scheduled for his/her business.

Regarding sanctions for the employment of undeclared workers, the situation varies greatly from country to country, ranging from a few hundred euros to several tens of thousands of euros. The nature of the sanctions is also very diverse: they go from exclusively criminal sanctions (IE) to a combination of criminal and administrative sanctions based on the severity of the offence (for example, AT, BE, DE, ES, FR), to exclusively administrative sanctions (IT, LT, LV, NL, PT). There are also some systems with no sanctions, but only recommendations of a non-criminal nature, i.e. softer enforcement measures that cannot be considered as sanctions in the strict sense (for example, FI).

Each country also tackles the various trends that are strictly related to UDW in a different way. For example, in some countries (like PT), bogus self-employment is sanctioned just like UDW, while in other countries (like IT), it is sanctioned less than UDW in the strict sense, where it is considered to be less severe than situations where the employment relationship is totally undeclared and unknown to the State.

On the other hand, there seems to be a certain agreement on the sanctions to be applied for the duration of the offence. Therefore, sanctions are generally attributed by law according to the length of the illegal employment of one or more workers.

Some jurisdictions choose to impose heavier sanctions on recidivism than on first offences (for example, in LT and partially in IT), while others impose lighter sanctions on natural persons than on legal persons (for example, LV, NL).

Regarding the use of UDW in outsourced productions, it is not very common to resort to the specific enforcement instrument of joint and several liability between the employer that used the undeclared worker and the outsourced client (indirect employer). Furthermore, even if the joint and several liability in outsourcing is provided for in national legal systems, the relevant legislation essentially varies from country to country.

The answers given to the questionnaires highlight the following situation:

Types of joint and several liability	Country
Wages, social security contributions and taxes	ES
Wages and social security contributions	BE, FR, IT
Only wages	DE, NL
There is no joint and several liability	HU, IE, FI, LT, LV, UK
Only for some production sectors (but not in agriculture)	AT, SE (set by the collective bargaining)

Finally, the analysis on labour inspections focused on the presence at national level of several fundamental procedural rights of the inspected entity, which must be respected by inspection bodies.

The analysis revealed the **following situation**.

	Procedural obligation	Regulation	Country
1	Compulsory written report at the end of the on-site inspection	Yes	BE, HU, IE, IT, FI, LT, LV, NL, PT, SE
		No	DE, ES, UK
		Only some public authorities, but not all	AT
2	Maximum duration of the inspections	Yes	ES, IT
		No	AT, BE, DE, FI, HU, IE, LT, LV, NL, PT, SE, UK
3	Final document at the end of the inspection (also for regular businesses)	Yes	BE, ES, FI, HU, IE, IT, LT, LV, NL, PT, SE
		No	DE
		Only some public authorities, but not all	AT

The questionnaires revealed that in many countries there are administrative practices, which require the labour inspectorate to issue a written report at the end of the inspection, detailing all the activities

carried out by the control body. Very often, the control body also has to give the inspected entity a final document at the end of the whole inspection procedure, even if the outcome of the inspection is positive and no sanction is applied. Nevertheless, there is no provision on the maximum legal duration of the inspection. This might not be a great obstacle if there is no problem of an excessive duration of the inspections at national level. On the other hand, the lack of a maximum legal duration for the inspection is an important right for the employer not to have his/her freedom to carry out the activities of his/her business restricted by public authorities, beyond what is necessary for the checks.

CHAPTER 3: PREVENTIVE MEASURES FOR MANAGING EMPLOYMENT RELATIONSHIPS IN AGRICULTURE: FORMS OF FLEXIBILITY ALLOWED BY LAW AND BY COLLECTIVE BARGAINING; SIMPLIFICATION OF ADMINISTRATIVE FORMALITIES.

A key issue in public policies to tackle undeclared work (UDW) is adopting preventive policies that can provide an effective support for traditional deterrent-based policies. As part of this research, with regard to preventive policies in particular, a specific survey was used to examine the level of national implementation of two specific types of preventive measures: (i) the implementation of contractual instruments, governed either by law or through collective bargaining, which encourage the much-needed flexibility in employment relations as required by the labour market in the agricultural sector, and (ii) the level of simplification of administrative formalities in managing employment relationships¹³. Proper and effective implementation of these types of preventive measures – considered essential tools for compliance-based public policies – tends to facilitate and promote compliance with the rules by those operating in the labour market.

A specific survey was dedicated to this subject, which was answered by agriculture employer representatives from 16 countries: AT, BE, CY, CZ, DE, DK, ES, FI, FR, HU, IT, LT, NL, PL, PT, SE.

3.1 Flexibility and employment contracts

The first area of investigation on the ability of labour market regulations to adequately meet the needs of the market itself is whether or not there is a special regulation for agricultural employment contracts at national level. Indeed, this sector – more than others – has unique features which relate largely to the seasonality of many of its processes.

When asked if there is a special legal regulation for agricultural employment contracts, the responses were largely negative and can be summarised as follows:

Table 1:

Special regulation for agriculture	Countries
NO, no special regulation	CK, DE, DK, ES, FL, FR, HU, LT, NL, PL, SE
YES, but only slightly different from general rules	AT
YES, but only for seasonal work	BE, PT (very short fixed-term contracts)
YES, but only for the fixed-term employment of farm labourers	IT
YES, but only for non-EU workers	CY

To assess the characteristics of the agricultural labour market at national level, national associations of agricultural employers were asked what types of individual employment contracts were most used in agriculture in each country. The answers showed that a wide range of contractual instruments are available in the various Member States.

In particular, it was asked which is the most common contractual instrument provided by national legislation, and which are not commonly used in the sector.

The responses to this question can be summarised as follows.

¹³ See WILLIAMS AND RENOOL, *Tackling undeclared work in 27 European Union Member States and Norway*, Eurofound, Dublin, 2013, page 9.

Table 2:

Type of employment contract	Most common	Very common	Relatively common	Not very common
Permanent full-time work	BE, CY, CZ, DE, DK, LT, PL, PT, SE	HU, NL	AT, ES, FI, FR, IT	
Fixed-term full-time contract	AT, CZ, FR, IT	FI, NL, PL, PT, SE	BE, CY, DE, DK, ES, HU	LT
Seasonal work	AT, BE, ES, FI, FR, HU, IT, LT	CY, CZ, DE, NL, PL, PT, SE	DK	
Part-time work	CZ	BE, CY, NL	AT, DE, FI, HU, IT, LT PL	ES, FR, PT, SE
Apprenticeship		DE, DK, NL	FR, PT	AT, BE, CY, ES, FI, HU, IT, LT, SE
Temporary agency work (Directive 2008/104/EC)		LT, NL, PT	BE, DK, HU, PL, SE	AT, CY, CZ, DE, ES, FI, NL, PT
Mini-jobs, vouchers			DE, DK, IT, LT, PL	CY, DK, ES, FI, NL, PL (Big farms), PT
Jobs on call (zero-hour contracts/few hours)			ES, NL, PL	CY, DE, DK, ES, IT, LT, PL (bf), PT
Contracting self-employed workers		SE	FI, FR, NL, PL	CY, DE, DK, ES, IT, LT, PL (bf), PT
Other contracts			PL, SE	CY, DE, DK, ES, IT, LT, NL, PL (bf), PT

The survey results show significant use of the most common contracts, especially permanent employment contracts, fixed-term contracts and seasonal contracts, whereas apprenticeships overall are not very common (except in countries with a strong tradition of apprenticeships with alternating school-work programmes: DE, DK, NL), temporary agency or self-employed workers, mini-jobs and other flexible types of contract.

By focusing on certain aspects of the table above at national level (see Table 3 below), it is apparent that, in some countries, the agricultural labour market has the widest use of permanent (and full-time) employment contracts (DE, SE). Whereas, in other countries, the agricultural labour market has a predominance of fixed-term and seasonal employment contracts (FR, HU and IT).

Table 3:

Use of types of employment contract: several national examples	
Germany	<u>Most common</u> : permanent and full-time;
	<u>Very common</u> : seasonal work, apprenticeships;
	<u>Relatively common</u> : fixed-term contracts, mini-jobs, part-time;
Italy	<u>Most common</u> : fixed-term contracts, seasonal work;
	<u>Relatively common</u> : permanent and full-time, mini-jobs (vouchers), part-time;
Hungary	<u>Most common</u> : seasonal work;
	<u>Very common</u> : permanent and full-time;
	<u>Relatively common</u> : fixed-term contracts, temporary agency work;
France	<u>Most common</u> : fixed-term contracts;
	<u>Relatively common</u> : permanent and full-time, apprenticeships, contracting self-employed workers
Sweden	<u>Most common</u> : permanent and full-time;
	<u>Very common</u> : fixed-term contracts, seasonal work, contracting self-employed workers

Concerning the aspects of the regulations for **fixed-term contracts**, in almost all countries there are legal restrictions on the use of this type of contract: in some cases, these are subjective/objective limitations (e.g. relating to the employee's age or the type of task for which such contract can be used) (CY, DE, FR, LT, NL, HU), in others, they are numerical limits (HU, PL), and in others still, they are limits on the term of the contract (BE, CZ, DE, ES, FR, LT, PL, PT, SE). Lastly, some countries set other limits associated with the need to justify the reason for establishing a fixed-term (AT, PT, LT, FI). The case of IT is unique, whose regulatory system sets no limit on using fixed-term contracts for agricultural labourers.

In agriculture, seasonal work is very widespread. Yet, with regard to regulations on **seasonal employment**, there is no shared regulatory system between the various European countries; in fact, this type of work takes on features that are unique to each Member State.

First of all, one must clarify the definition (where present) of seasonality at national level. Therefore, when asked which is the source that defines seasonality in national law, the responses showed that: some countries opt for a legal definition of seasonality (law or governmental regulations) (CY, DE, FR, HU, LT, SE), while in other countries, the law treats seasonal work in the same way as fixed-term contracts (AT, PT). Others still have entrusted the definition of seasonality to collective bargaining alone (e.g. AT). In between them, there are several countries where the general definition, and regulation, are determined by law, whilst the detailed definition is established by collective bargaining (BE, CZ, ES, NL). In some countries, the definition has different sources provided by both law and collective bargaining (DK, FI). For example in FI, the definition of what is meant by seasonality lies with the individual employment contract, which provides the main source for the definition and regulation. Lastly, in other countries, there is no specific definition of seasonality (IT, PL); although in IT, collective bargaining does offer a partial, hypothetical definition of seasonality, albeit applied only in part. Essentially, where there are in fact national definitions, they tend to identify seasonality with the typical seasonal agricultural activities, i.e. those tied to the annual cycle of the seasons (**seasonality strictly speaking**). For instance, in FI, seasonal work is commonly referred to as that where "the nature of the work activities is associated with the annual cycle of the seasons for limited periods of time", whereas for FR, seasonality is defined as work carried out in relation to the "rhythm of the seasons or collective lifestyles"¹⁴.

¹⁴ In FR, the regulatory definition of seasonality is laid down in Article 1242-2 of the Labour Code.

Conversely, in some countries, the notion of seasonal work is ultimately identified as being a kind of occasional work (in purely quantitative terms), as in the case of DE¹⁵ (seasonality broadly speaking). Whilst in BE, seasonal work is that which is carried out during seasonal events in the strict sense of the word (e.g. planting and harvesting), as well as that which is merely occasional work. In summary, seasonal work is defined by national regulation according to the following classification:

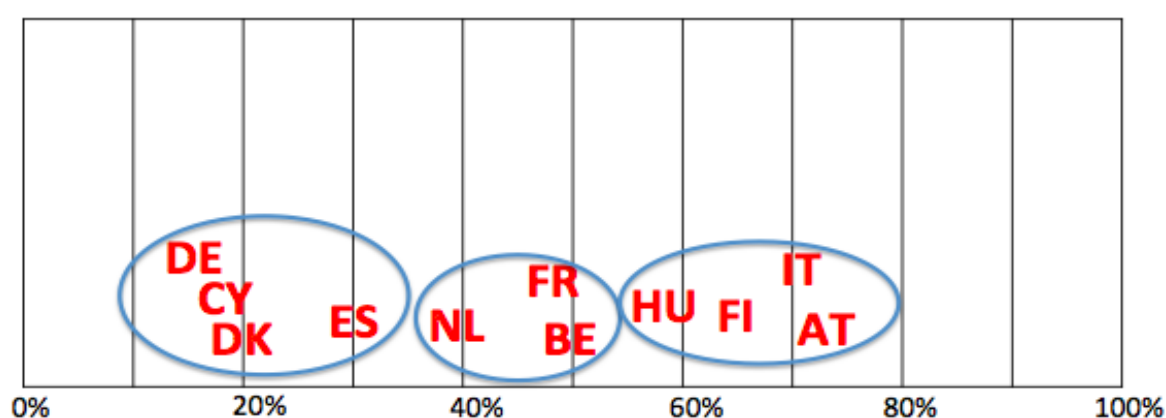
Table 4:

Work provided in relation to the "seasons" (specific periods of the year)	AT, CY, DK, FI, HU, IT, NL, PL, PT, SE
Work not necessarily related to specific periods of the year (quantitative limits over the whole year)	BE, DE, LT

In actual fact, even the proportion of seasonal work across the agricultural sector overall varies greatly from country to country. Percentages range from below 20% in DE and CY to around 70% in AT and IT.

Table 5:

Percentage of seasonal work in agricultural work overall:



Finally, when asked what are the weaknesses on the current regulations of seasonal work at national level, as well as which are the areas where agricultural employers hope to see improvement in regulation, the answers may be summarised as follows:

Table 6:

Seasonal work: areas where greater flexibility is required	Countries
Administrative formalities required for recruiting seasonal workers	AT, CY, ES, IT, PL, PT
Greater flexibility in general	FR
Regulations on working time	AT, SE
Greater scope for collective bargaining	NL
Specialisation/training of labour inspectors in agriculture	CY
Current level of flexibility is adequate	BE, ES, FI, LT
I do not know	DE, DK, CZ, HU

A specific question of the survey deals with the use of employment contracts under the **co-employment** system in the agricultural sector. Co-employment is where the same worker, under a

¹⁵ In DE, seasonality is defined by law, under Article 12E Arbeitsgenehmigungsverordnung – ArGV. Seasonal work involves a minimum of 30 hours per week for an average of 6 hours per day, and a total of 6 months in the calendar year.

single employment relationship, can work for more than one employer. Clearly, this special type of employment contract allows greater flexibility in that sense that multiple employers may use freely – in agreement with each other and with no particular restrictions – the services of the same employee under a single employment relationship (here co-employment differs in essence from having multiple part-time contracts, where there are at least two employment relationships in place and not just one). From a regulatory perspective, the co-employment system removes the duality of the employment relationship. As such, while there are still two parties to the employment relationship (employer and employee), the contract can have multiple individuals who are legally classified as employers. About the question on whether or not there is a specific discipline at national level on co-employment, the situation is as follows:

Table 7:

Is co-employment allowed?	Countries
Yes, it is allowed	CY, FI, HU, IT, LT, NL, PT, SE
Yes, it is allowed, but only in enterprise groups	BE, FR
No, it is not allowed	AT, CZ, DE, DK, ES, PL

It can be seen that co-employment currently occurs in the majority of countries that responded to the survey (10 out of 16). As such, it is no longer a marginal occurrence in an area like agriculture, where the non-continuous nature of many jobs requires special forms of flexibility, which are often unknown in other productive sectors with different structural characteristics, such as the industrial sector for example.

Lastly, during the two workshops in Brussels and Amsterdam, with two panel discussions among Geopa members, was taken into consideration the situation of the use of **posting of workers** (Directive 96/71/EC and Directive 2014/67/EU) in the sector. Geopa's members reported that currently, in the vast majority of the European countries, posting of workers is not particularly common in agriculture, so there are no particular experiences of either genuine posting or the particular type of UDW which is the bogus posting of workers referred to in Article 4.1. of Directive 2014/67/EU. It is noted, however, that the posting of workers, for some countries such as FR, is becoming an emerging trend in agriculture. As such, it is likely that in the future, this trend could become more widespread in the agricultural sector, at least in some areas and for special processes that may be outsourced without direct recruitment by the farmer.

3.2 Simplifying administrative procedures: the state of the art in the various countries

The commitment to simplify administrative procedures is an important preventive measure towards enabling compliance.

Therefore, the extent of simplification of administrative formalities and procedures was assessed relating to the establishment and implementation of the employment relationship, with particular regard to the administrative burden of declaring the employment to the relevant authorities, as well as the administrative formalities involved in paying tax and social security contributions.

a) Administrative formalities in declaring the employment relationship

With regard to the administrative requirement to declare the employment to the relevant authorities, the first area where there is potential room for simplification is where there is a potential doubling up of formalities. In fact, it is not uncommon for an employer to be asked for more than one statement – with similar content – when establishing the same employment relationship as a result of there being multiple administrations in charge of managing this type of information (e.g., employment services authority, social security institutions, tax authorities, etc.). Therefore, it was asked whether one declaration or more than one declaration is required when establishing an employment relationship, with the following result:

Table 8:

Number of required declarations	Countries
Only one declaration	AT, BE, DK, HU, IT, LT, PL, SE
More than one declaration	CY, DE, ES, FI, FR, NL, PT

It is also important to compare this data with the extent to which procedures for declaring the start of an employment relationship are computerised. Indeed, an appropriate level of integration between public IT systems can certainly help to avoid unnecessary duplications, ensuring that the same information is managed in an integrated way between the various administrations involved in processing the same data.

It was therefore asked what was the extent of e-government in managing declarations of recruitment, with the following result.

Table 9:

Means of declaration	Country
Exclusively electronic declaration through the use of "e-forms" sent directly to the database	BE, DE, DK, ES, HU, IT, LT, NL, PL (<i>general rule</i>), PT
Paper declarations	CY, CZ, SE
Both options	AT, FI, FR, PL (<i>up to 5 employees</i>)

The political decision to make computerised declarations mandatory, clearly has significant positive effects. First of all, the fact that the declaration is electronic, and can therefore no longer be amended *ex post*, ensures an adequate level of certainty. For example, it removes the possibility of any postal delays and/or the ability to contest the date and even the exact time when the declaration was made, for the sake of compliance with the deadline within which the declaration must be made. Moreover, computerised procedures allow the database to be immediately updated for use by the control authorities (labour inspections and/or tax audits), which can have real-time remote access to the database, the employment situation of the individual being inspected already during the on-site inspection, or when planning for the inspection. On the other hand, exclusively computerised procedures can be difficult to approach where the employer lacks a basic level of computer literacy and/or does not have internet access, which can be the case in small and very small family-run businesses for example. Particularly symbolic in this respect is the choice of PL, where all employers who employ more than 5 employees are obligated to use computerised procedures, whereas below this threshold, the employer is given the option to choose between the computerised process and the traditional paper submission of forms to declare the start of employment.

In terms of enforcement policies, great importance is placed on the deadline within which, according to national law – the required declaration of recruitment must be made. Indeed, this data is essential to the present research, as it may have a significant impact on the concrete monitoring options and procedures by supervisory bodies (labour Inspectorates) that ensure the actual compliance with the declaration requirement. It may also affect how the wider trend of UDW, as opposed to regular work, is quantified by the same authorities. In actual fact, of course, in (the majority) of systems where labour inspections – particularly those focusing on UDW – are carried out through surprise visits to the workplace, without giving the employer advance notice, national systems allowing the compulsory declaration of recruitment to be made after the start of the employment relationship do not appear to be entirely efficient. This is because such systems take for granted the fact that employment relationships can be reported at a later stage which, without an inspection visit, would go completely undeclared to the relevant authorities. Moreover, such circumstances could cause the inspection body to register this type of situation as regular employment and not as a case of UDW, due to the presence of a regular declaration of recruitment despite being dated after the beginning of the employment relationship and possibly even after the inspection visit.

Based on the responses obtained, the current situation is as follows:

Table 10:

Deadline for the compulsory declaration of recruitment	Country
Before the start of work	AT, FR, HU, IT, LT, PT
At the same time as the start of work	BE, CY, CZ, DE (mini-jobs), ES, NL
Subsequently to the start of work	DE (in all other cases), DK, FI, PL, PT, SE

For a more precise assessment of the actual effectiveness of inspections (enforcement) on the subject of UDW according to the various national regulatory systems, it is interesting to compare the data for countries where the declaration of recruitment is made after the start of work (table 10) with countries with a paper declaration (or the additional option of a paper declaration) (table 9). This comparison shows that some countries give employers the opportunity to comply with the requirement to report the employment relationship through a subsequent declaration (including on paper) (FI, PL, SE), and that in other countries, the declaration (including on paper) can be made at the same time as the start of work (CY, CZ). It can be seen that in both these cases, the system of reporting the start of an employment relationship does not appear to be a particularly effective tool to tackle UDW, as it may enable an employer, who may not have properly reported the employment, to do so even after the inspection visit (where it is required to declare the employment on the same day or after the day of the inspection). This means that where it is required to use computerised processes and to make the declaration in advance or at the same time, it is the very system used to report the employment that provides the fundamental evidence for labour inspections of any suspected cases of UDW.

Participants were then asked whether or not **purely formal errors** – not essentially related to the declaration of recruitment – are considered to be cases of UDW (with the relevant penalties being applied). The results show that in a very large number of countries (AT, BE, CY, DE, ES, FR, LT, NL, PL, SE), formal errors in declaring recruitment are treated in the same way – including in terms of penalties – as cases of UDW. Whereas in other countries (DK, FI, HU, IT, PT), formal errors in the declaration, and respective penalties, are treated differently from the failure to declare. This response would deserve further analysis beyond the present research; in particular to see whether, in actual fact, national penalties for UDW are in line with the substance of the matter, i.e. whether existing national regulations make allowances for having an overly bureaucratic or formal approach.

b) Administrative formalities in managing the employment relationship

Another significant administrative burden on the employer concerns managing information on salaries and recording the employee's working hours and rest periods etc. Besides processing the employee's payslip, these tasks must be carried out by the employer as required by the relevant authorities for administrative purposes. By and large, the frequency of this type of administrative burden is monthly (although in some cases, statements are required at different intervals, e.g. half-yearly or yearly). On these types of compulsory statements to government bodies, a specific direct question was asked to highlight situations where there may be a doubling up of the required administrative documentation regarding the employment relationship. The results are as follows:

Table 11:

Administrative formalities relating to the ordinary management of the employment relationship (registration of salaries, working hours, rest periods, etc.)	Country
Single electronic document	BE, DK, HU, IT, PL
Single paper document	CZ
Multiple electronic documents	AT, DE, FI, FR, NL, PT, SE
Multiple paper documents	AT (employer's choice whether or not to send e-docs), CY, ES, FR (some formalities require paper only), LT, PT (employer's choice whether or not to send e-docs)

A potential area for simplification to be assessed at national level would be the adoption of measures to be able to request – in the same period of time (usually a month) – a single document, preferably in electronic format.

The administrative formalities involved in the management of the employment relationship also require the employee to provide statements relating to the employee's **social security contributions**. Here again, the level of simplification of such formalities varies somewhat from country to country.

Table 12:

Administrative formalities relating to social security contributions	Country
Single document (serving as both a payslip and a statement for government bodies)	CZ, DK, HU, PL
1 document for the employee (payslip) and 1 document for government bodies	BE, CY, IT, LT, SE
1 document for the employee (payslip) and multiple documents for government bodies	DE, ES, FI, PT
Multiple documents for the employee (including other documents aside from the payslip) and for government bodies	AT, FR, NL

When analysing the survey responses, it appears that the existing administrative burden on the employer is another potential area to be assessed by national authorities truly striving towards simplification. Indeed, in most countries, the option could be assessed of whether to require – with the use of technology – a single statement that can serve as both a payslip, to be given to the employee, and as a means of transferring the information to the relevant national body for social security.

c) Employer's declaration of the employment relationship to tax authorities

The administrative formalities involved in the management of the employment relationship required of the employer also include reporting to tax authorities for the collection of tax.

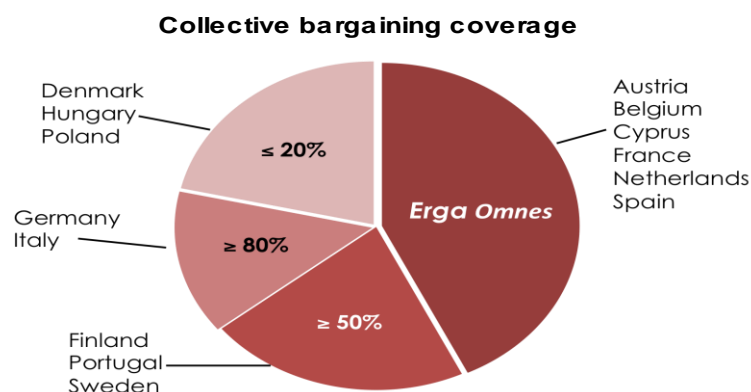
With regard to these administrative formalities, some countries have a single declaration for both social security contribution purposes and tax purposes (AT, BE, DE, DK, SE). Whereas, other countries require extra tax formalities on top of the social security formalities (CY, ES, FI, IT, LT, NL, PT).

3.3 State of the art of collective bargaining in agriculture and the role of social partners in encouraging regular employment

In all countries surveyed, the common perception among employers in agriculture, based on the experience gained, is that there is greater compliance among employers where there is a stronger local presence of agricultural employers' associations and where such associations involve the majority of employers. The presence of an intermediary body to represent employers ultimately creates added value, not only for its members, but also for the overall labour market, which can benefit as a whole in terms of greater legality and compliance with regulations.

In the agricultural sector, collective bargaining is widespread and strongly-embedded everywhere, and collective agreements are widely used across companies in the sector.

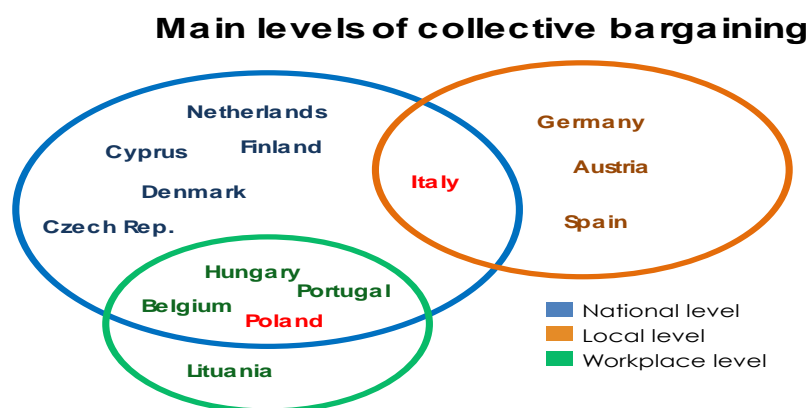
Table 13: Collective bargaining coverage in agriculture



Overall, even where collective bargaining is not used "erga omnes", the percentage of the use of collective bargaining in agricultural companies is very high almost across the board. Only in three countries (out of the 14 that answered the question) the use of collective bargaining is less than 50% (DK, HU, PL).

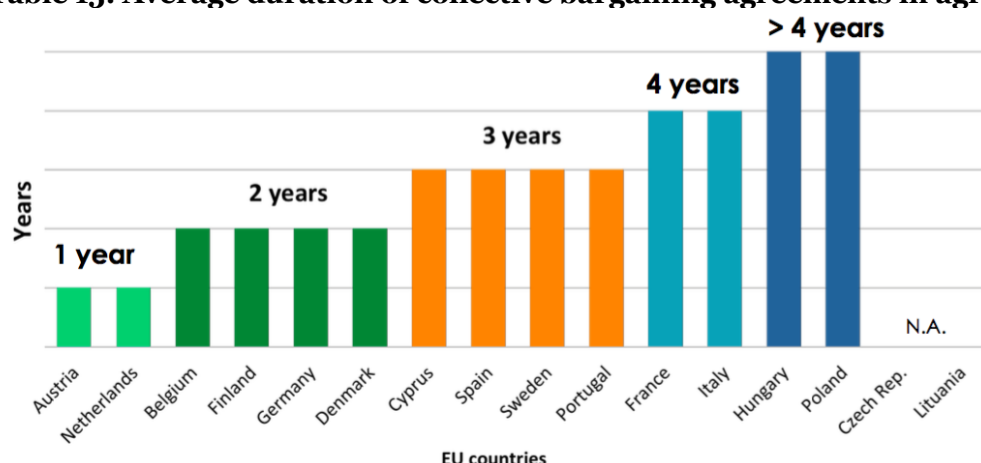
In the various countries surveyed, the sector's levels of decentralisation of collective bargaining are quite varied at national level, local level and workplace level. In some countries, there are multiple inter-connected levels of collective bargaining co-existing in the sector: in some cases, this is co-existence at national level and local level (IT); and in others, it is at national level and workplace level (BE, HU, PL, PT).

Table 14: Levels of decentralisation of collective bargaining in agriculture



The average duration of a collective bargaining agreement varies a lot from country to country, showing highly diverse traditions of industrial relations.

Table 15: Average duration of collective bargaining agreements in agriculture



Regulations on working times and rest periods is a key area where collective bargaining in agriculture can be a key regulatory instrument to ensure the much-needed flexibility in managing employment relationships, including in relation to the sector's peak season periods.

When asked whether collective bargaining is now able to ensure an adequate level of flexibility in managing employment relationships, positive answers were received from agricultural employers' associations from 11 countries (BE, CY, CZ, ES, DK, FI, HU, IT, LT, NL, PT). Whereas, negative answers came from the representatives of 5 Countries (AT, DE, FR, PL, SE) who complain of a certain inadequacy in national industrial relations on this specific issue.

Regulations on working times and rest periods by collective bargaining takes place, in some countries, through national collective agreements (BE, CY, CZ, DK, FI, LT, NL, PT). In other countries, however, the matter is governed by local collective bargaining (AT, DE, ES). Whilst in FR, IT and SE, the matter is regulated by both local and national collective agreements. In HU, on the other hand, regulations on working times are made through company-level collective agreements.

Aside from traditional regulations on working time and rest periods through collective bargaining, social dialogue has also expanded its scope and – in so far as is relevant – has gained more and more ground as a vehicle towards legality and establishing and managing regular employment. Indeed, in some countries, various best practices are being developed, some of which are implemented by social partners alone, and others by government bodies through tripartite dialogue or enforced self-regulation¹⁶.

¹⁶ For a description of several best practices in this area, please refer to the specific section of Chapter IV.

CHAPTER 4: GOOD PRACTICES

Many national good practices referring to measures meant to contrast undeclared work emerged in the course of the Project. Those which have been selected to be presented in this work are grouped following the major items treated in Chapter 2¹⁷ and in Chapter 3¹⁸, in order to make it easier to follow the logical order of the research¹⁹.

4.1 Regulation

Those which follow are some good practices of regulation evidencing innovative approaches promoting social dialogue.

General Subject	Good Practice
Regulation	ES: "La Comision Nacional de riesgos laborales": a case of regulation through tripartite dialogue in Spain
	LT: The Tripartite Council of the Republic of Lithuania (LRTT)
	FR: The National Convention against illegal work: regulatory framework and perspectives in agriculture.

SPAIN – "La Comision Nacional de riesgos laborales": a case of regulation through tripartite dialogue in Spain

The National Commission for safety and health at work, established on October 30, 2001, is a working group composed by 5 representatives from each group of the National Commission (Central Government, Autonomy Communities, Business Organizations and Trade Unions) and holds the following subgroups: Farm equipment; Health surveillance in agriculture; Occupational hazards and gender in agriculture; Use of plant protection products; Education and training in prevention of occupational risks. The National Commission contributed to identify and manage the occupational risks in agriculture by: providing a guide for monitoring the health of workers in agriculture; proposing legislative changes regarding rollover protection; analysing accidents in agriculture; promoting documents on occupational diseases of farmers; recommending the development of a single health booklet for monitoring the working life of worker, impact on their health, preventive and protective measures, and avoiding unnecessary repetition of medical tests (especially relevant in the seasonal workers). That resulted in greater safety and health of workers and therefore a benefit to the agricultural entrepreneur.

* * *

LITHUANIA – The Tripartite Council of the Republic of Lithuania (LRTT)

The "Tripartite Council of the Republic of Lithuania is established by the Lithuanian Labour Code (Law n. IX-926, 2.6.2002), art. 45. LRTT has been functioning since 1995, and it is composed by 15 members – 5 representatives from each of the social partners and 5 for the Government.

The TC's main tasks are:

- to issue recommendations on draft state laws and government decrees concerning socio-economic and labour matters;
- to draw up, at the request of the government or on its own initiative, studies and reports on economic and social matters referred to labour;

¹⁷ Paragraphs 4.1, 4.4 and 4.5 are referred to the items treated in Chapter 2.

¹⁸ Paragraphs 4.2, 4.3, 4.6 and 4.7 are referred to the items treated in Chapter 3.

¹⁹ The presentation of each good practice was made in cooperation with the Geopa member of the interested Country, in order to avoid misunderstandings due to National specificities always possible in a comparative work.

– to draw up and implement the common annual and biennial programmes for collaboration between the partners, which address concrete and practical matters (such as education and training for the partners, preparation of analyses, research, consultations, methodological assistance and organisation of negotiations.)

The Tripartite Council may conclude trilateral agreements on labour relations and social and economic conditions of workers. These agreements, after being published in "*Valstybės žinios*" (the Official Gazette) as Prime Minister's orders, come into force in the manner prescribed for Government resolutions.

Tripartite collaboration in Lithuania has been proved to be effective in the regulation of many subjects related to labour, such as unemployment status, wages, social guarantees for employees, safety at work and health care.

Even the drafting of the Lithuanian Labour Code, in force since 1st January 2003, benefited of the contribution of the social dialogue and of the works of the Tripartite Council.

* * *

FRANCE: The national agreement on tackling illegal work: legal framework and repercussions on agriculture

The tools at national level are as follows: national coordination plan against tax fraud, the national plan against illegal work, the national committee for tackling illegal work and monitoring committees for each agreement. The national plan for tackling undeclared work aims to counter fraud through prevention. The national agreement for tackling illegal work in agriculture is the profession's commitment alongside the State. The agreement in agriculture is a four-way agreement: government, trade union organisations, employers' organisations and social security in agriculture.

The key objectives are: defining the scope and implementation of various activities; stressing the importance of having information that can be readily understood by employers and workers regarding the different types of illegal work and working situations which, if poorly managed, could be described as bogus; sanctions that apply in the event of illegal work being discovered; definitions of the signatories' respective roles to encourage companies to comply with legislation. Example from production: a booklet explaining the various provisions offered by the different services.

* * *

4.2 Regulation and flexibility: the case of "joint employment" in agriculture

Joint employment is a specific tool which may grant more flexibility to employment relations, especially in agriculture where activities are often not continuously requested²⁰. In a joint employment contract, an employee works for two or more employers within the same employment relation.

The followings are some example of national regulation of joint employment.

General Subject	Good Practice
Regulation - joint employment	FI: "joint employment" in Finland
	FR: "joint employment" within Groups of Employers in France
	HU: "Employee sharing" ("joint employment"): the case of Hungary
	IT: "joint employment" in agriculture, the case of Italy: regulation and practice

²⁰ Joint employment is present and regulated in 10 out of 16 of the responding Countries. See Chapter 3.1.

FINLAND: Joint employment

Joint employment is an employment contract between one employee and more than one employers. This special type of employment contract may be suitable for smaller farms and enterprises which are not able to employ full-time workers on their own, but still need permanent workforce. There are more possibilities of joint employment regulation in Finland.

1. **“One employer” model:** two farms may constitute a so called “employer ring” where one of the employers acts as a main employer, and therefore is in charge of all legal duties (withdrawing tax, social security fees and other social insurance fees). Both employers have to take care of occupational health and safety aspects. The sharing of employment costs between employers is contractually agreed by the employers themselves.
2. **“Two employers” Model:** in this case employers act independently one from the other in relation to the obligations they have towards the employee. Both of them pay wages and social security fees independently. There is still need for agreement between employers e.g. to define annual leave, sick pay etc. during the employment.
3. **“Organised employer” model:** it is also possible for employers to form an enterprise, company or cooperative, which acts as a normal employer. In this case the new legal person acts as a formal employer, being in charge of all obligations, and the employee works for both farms who have constituted the new legal person.

* * *

FRANCE: The employers’ group and possibility of “joint employment”

The employers’ group (EG) makes it possible for employees to be “shared” between multiple users²¹. Aggregating the labour needs in a given area and offering stable work to the employee, it is a response to the need for labour that is designed to fit the rural world.

Principally developed in agriculture and rural areas, EGs take care of recruitment, reporting formalities, the drawing up of employment contracts and workers’ pay. The number of agricultural and rural EGs is steadily growing in metropolitan France. In 2014 there were over 3,800 of them, representing an increase of +17% since 2003. They represent over 22,000 full time equivalent employees. 75% of EGs employ fewer than 5 FTE workers.

Nevertheless, as numbers of EGs at department level are currently growing; they could grow to see 100/200 members for 50/100 employees on average, or up to 350 members and 1000 employees for the larger ones. There is also a type of EG that is specific to agriculture, the alternative service arrangement, which provides a replacement for the farm owner in the event of death, illness, maternity leave or trade union mandate. There is one per department.

EGs were developed as a response to the needs of smallholders in agriculture. This is why in livestock farming regions, the contracts offered tend to be for an unlimited duration, i.e. permanent, to respond to the need for a regular supply of labour; in crop production, the contracts can be for a limited duration to respond to the need for labour periodically. Increasingly, EGs at administrative department level are making it possible to combine the needs of several types of production and offer employees longer fixed-term contracts or open-ended contracts.

Finally, the employees of employers’ groups are acquiring more and more experience, by working for the different companies they are made available to. This is all adding to their professional experience.

* * *

HUNGARY – “Employee sharing” (“joint employment”): the case of Hungary²²

Several employers may conclude an employment contract with one worker for carrying out the functions of a job. The employment contract shall clearly indicate the employer designated to pay the

²¹ Code du Travail, Livre II, Titre V, Chapitre 3. Voir:

http://www.lexinter.net/Legislation5/JURISOC2/chapitre_iii_contrats_conclus_avec_un_groupement_d'employeurs.htm

²² The “employee sharing” contract is regulated by section 195 of the Labour Code of Hungary. See <http://www.ilo.org/dyn/travail/docs/2557/Labour%20Code.pdf>

employee's wages. The liability of employers in respect of the employee's labor-related claims shall be joint and several. Unless otherwise agreed, the employment relationship may be terminated by either the employers or the employee. The employment relationship shall cease when the number of employers is reduced to one.

* * *

ITALY: Joint employment in agriculture, the case of Italy: regulation and practice

Joint employment in Italy is a specific aspect of the agriculture sector, which is very popular among employers' associations. They allow the formalities relating to staff management to be greatly simplified, producing economies of scale for agricultural companies that jointly hire trained staff. Decree-Law No 76/2013²³ – converted by Law No. 99/2013 – gave agricultural companies the option to jointly hire workers to carry out work at their companies. The employers are jointly liable for contractual, legal and social security obligations arising from the employment relationship. Furthermore, the Ministerial Decree of 27 March 2014²⁴ laid down the declaration procedures for this type of recruitment, as well as the individuals responsible for implementing them. Operationally speaking, the various companies must identify the role of the Single Contact Person, i.e. the person who reports the recruitment, processing, extension and termination declarations on jointly hired workers to the "Centre for Employment" through the so-called "Unilav-Congiunto" computerised tool.

4.3 Regulation and flexibility in agriculture: “seasonal work”

Seasonal work is a very typical contract in agriculture. In some Countries, a central role in regulating such contracts is left to collective agreements.

General Subject	Good Practice
Regulation - Seasonal work	BE: Seasonal work: regulation, and in particular, the issue of “daily termination”
	ES: Seasonal work in agriculture: regulation (law and collective agreement) and practice

BELGIUM: Seasonal work. Regulation and especially the question of “daily stoppage”²⁵

For seasonal or occasional work there is a system of daily contracts in place. An employer may use the system throughout the year. Each seasonal worker may work for 65 days per year according to this system. This leaves the employer free to decide on a day to day basis and depending on the time and volume of work who will be employed (or not) the following day.

There is no notice period to be respected or compensation to be paid for breaking off the contract. This means it is a relatively supple and flexible system. This may be a way of avoiding undeclared work. The system also calculates social security contributions not on the basis of real wages but on a daily rate. This leads to a significant reduction in social security contributions for the seasonal worker. The system is enshrined in law.

* * *

²³ See art. 9.11 in

<http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2013-06-28&atto.codiceRedazionale=13G00123¤tPage=1>

²⁴ see https://www.cliclavoro.gov.it/Normative/Decreto_Ministeriale_27_marzo_2014.pdf

²⁵ See http://www.fonds-tuinbouw.be/HOME/WSFTUINBOUW/FSGHorticulture/HOOFDNAVIGATIE/Travailsaisonnier/LET_RAVAILSAISONNIER/Descriptiondutravailsaisonnier/tabid/16676/language/fr-FR/Default.aspx

SPAIN: Seasonal work in agriculture: regulation (law and collective agreement) and practice

In Spain seasonal or temporary work is regulated within the general framework set out in Articles 15 and 16 of the Statute of Workers²⁶. This broad generic framework, which is statutory, allows collective agreements regulate seasonal work in detail. Thus it is the social partners to finally determining the conditions of seasonal and temporary work in agriculture, taking into account every single crop, and providing adequate regulatory flexibility.

4.4 Enforcement: labour inspection

Some good practices are related to enforcement measures, and in particular to labour inspection definition (see for example, in France, the definition of “travail dissimulé”, as follows), measures (see, for example, the power to impose a “guarantee” for unpaid wages in the Netherlands, as follows) or procedures (see for example, in Italy, the “procedural rights, as follows).

General Subject	Good Practice
Enforcement - Labour Inspection	FR: «Travail dissimulé» and labour inspection in France: sanctions and remedies
	IT: Procedural and substantial rights of undertakings in case of labour inspection
	NL: The power of SZW (labour inspectorate) to impose “orders” for recovering of unpaid wages
	PT: Information, advice and promotion: the role of Labour Inspection (ACT)
	UK: HSE powers related to non compliance of OSH rules and measures. A case of responsive enforcement measures

FRANCE – “travail dissimulé” (concealed work) and labour inspections in France: sanctions and remedies

In France, the following offences constitute illegal work: concealed work; bargaining, the illicit supply of workers; employment of foreign citizens without a residence permit; fraudulent or false declarations²⁷. The more precise notion of undeclared work would be closer to that of concealed work through the covering up of a salaried employee which consists of failing to supply one or the other of two mandatory formalities which are, for each employee, the preliminary declaration prior to hiring and submission of the wage slip.

The other example of concealed work is the concealment of activity. Any natural or legal person performing a profitable activity in the field of production, processing, repair or the provision of services, or involved in acts of commerce whilst evading one of the following obligations: applying for registration on the jobs register (...) or making the declarations required by the social protection or fiscal administration authorities.

Although it is complex and contains many administrative burdens, this legal framework covers all forms of illegal work rather than only combating certain types of illegal work only.

* * *

ITALY – Procedural and substantial rights of undertakings in case of labour inspection

Access of inspection staff to the workplace is regulated by law and must be carried out in compliance with the “Code of conduct for the use of labour inspectors”²⁸ – issued by the Italian Ministry of Labour – which set out the following procedural rights for the individual subject to inspection:

²⁶ see <https://www.boe.es/boe/dias/2015/10/24/pdfs/BOE-A-2015-11430.pdf>

²⁷ see <http://travail-emploi.gouv.fr/droit-du-travail/lutte-contre-le-travail-illegal/article/les-sanctions-liees-au-travail-illegal>

- at the beginning of the on-site inspection, inspectors must prove their identity by showing their identification card;
- the employer is entitled to be assisted by a qualified professional (including professional associations) and to make statements;
- at the end of the inspection visit, the inspection staff shall give the employer the first access report, which contains the list of inspections carried out, including the statements made by workers and by the employer, as well as the documents examined and any infringements found;
- once the necessary investigations have been concluded, the labour inspector:
 - a) where no disciplinary measures are to be adopted, shall issue a final inspection report (the individual subject to the inspection is entitled to receive a certificate of inspection completion to certify the relevant compliance);
 - b) where infringements are found and penalties are to be adopted, shall provide the employer, within 90 days, the single inspection report, a notification containing the results of the investigations carried out with evidence of any infringements, a prompt for compliance, as well as information for the employer on appeals;
- following the inspection – both in the event of compliance with no penalties, or a report with penalties to be applied – the inspection authority cannot contest any further infringements relating to the previous inspection ("*ne bis in idem*").

* * *

NETHERLANDS – The power of SZW (labour inspectorate) to impose “orders” for recovering of unpaid wages

The Labour Inspectorate SZW has the power to fine employers not respecting the provisions of the Minimum Wage Act²⁹. Labour inspectors can also impose penalties to compel the employer to compensate the workers for unpaid wages (i.e. paying those wages). As a consequence, the employer has 4 weeks' time to compensate his employees and give proof of compliance to the Inspectorate. After that deadline, in case the employer has not offered compensation, the Inspectorate SZW imposes a very heavy extra-fine (up to 40.000 euros per employee), which actually works as a deterrent for employers who are thus pushed to comply.

* * *

PORTUGAL – Information, advice and promotion: the role of Labour Inspection (ACT)

ACT is the national Authority in charge of controlling compliance with labour and health and safety regulations and also to promote health and safety at work.

In the field of information, advice and promotion ACT competences are: promoting raising awareness campaigns; providing information for workers and employers on labour regulations and occupational health and safety; supporting public and private organisations identifying professional risks, applying prevention measures and organising health and safety and wellbeing at work services.

Social partners (employers and workers confederations) take part to the organization of raising awareness campaigns, as they are represented in the ACT Consultation Council to Promote Health and Safety at Work. Examples of raising awareness campaigns related to occupational health and safety issues, with relevance to agriculture and forest sectors, are Health and safety at work in agriculture and forest sectors (from 2012 to 2015) and Risk prevention on machinery and work equipment (2015).

Raising awareness campaigns are planned in the following way: partner organisations (social partners, public institutions, central and regional services of ACT) prepare leaflets, documents on the subject of the campaign and organize information sessions with farmers' organisations to provide information. After that phase of information, specific labour inspections focused on the themes of the campaign are carried out by ACT.

* * *

²⁸ see <https://www.win.lavoro.gov.it/Pagine/Normativa.aspx>

²⁹ see <https://www.government.nl/topics/minimum-wage>

UNITED KINGDOM: HSE powers related to non compliance of OSH rules and measures. A case of responsive enforcement measures.

In England and Wales health and Safety law is enforced by inspectors from the Health and Safety Executive (HSE).

Inspectors have the right to enter work places with or without notice. Inspectors can check: the workplace and workplace activities; management of health and safety; compliance with health and safety law.

If there has been a breach of the law inspectors, according to the situation, can:

- Deal with the matter informally (informal advice) if the breach is minor explaining to the duty holder what needs to be done and why. This can be confirmed in writing.
- Serve an improvement notice where the breach is more serious and they consider that there is a risk to health and safety that needs to be actioned straight away.
- Serve a prohibition notice in situations where it is considered that an activity presents a risk of serious personal injury. A prohibition notice prohibits the activity either immediately or after a specified period of notice. A prohibition notice will not allow a prohibited activity to resume until remedial action has been taken.
- Prosecute in some cases for breach of the law.

Both improvement notices and prohibition notices can be appealed to the Employment Tribunal which has the jurisdiction to hear such appeals. Usually there is a time limit of 21 days in which to lodge an appeal with the Tribunal starting from the date the notice is served by an inspector on a duty holder. The appeal form can be downloaded from the Tribunal website and either completed directly by the appellant or by a representative.

4.5 Other enforcement measures: beyond the traditional “command and control” scheme

Some good practices are referred to innovative enforcement measures, with very different nature one from the other, but having in common the effort of going beyond the traditional “command and control” scheme of direct State regulation. In outsourcing contracts, for example, traditional sanctions often prove not effective (see examples of “joint and several liability” in BE and IT, as follows). Other measures are based on registration on databases which might be consulted in programming inspections (for example, the “Limosa system” in BE, as follows). Some national systems pay attention to self-regulation (see examples of BE-“Prevent Agri”, NL-“Arbo Catalogi”, SE and FI), or create regulatory bodies whose task is improving compliance and reducing the administrative burdens on business (see GLA in UK, as follows).

General Subject	Good Practice
Enforcement - measures beyond the traditional “command and control” scheme	BE: The “Limosa” system
	BE: The experience of “Prevent Agri” as an example of social dialogue in OSH
	BE: Joint and Several liability in subcontracting chains
	IT: Joint and Several Liability in contractual chains
	FI: The assignment of a pay claim to a trade union and its role of claimant in a trial: how procedural rights may grant effective enforcement in PW
	NL: OSH and industrial relations: the case of the Netherlands. The “Arbo Catalogi” in agriculture
	NL: Joint Committees for restoring fair work conditions (combating UDW and underpaid work): a tool of (collective) self-regulation
	NL: A self-inspection tool for the employer: how technologies help self-evaluation on standards of decent work
	SE: Role and powers of trade unions in labour inspection
	UK: Farm inspections: what is the GLA (Gangmaster’s Licensing Authority) licensing scheme, and how it works

BELGIUM: The “LIMOSA” system

For Belgian employers taking on an employee, before any work is performed the employer must submit a Dimona declaration. Each contractual relationship between an employer and a worker has to be declared before work commences.

For the self-employed and employers coming to Belgium for their activities, a Limosa³⁰ declaration must be signed. They must state their identity, where they will be working and for what period they will be coming to Belgium. Where applicable they must also state the identity of any persons coming with them (employees or self-employed persons) to carry out the work. The Limosa system is enshrined in law and the aim is to keep stock of all persons coming to work in Belgium but who are not employees hired by a Belgian employer. The aim is to avoid any abuse of posting, avoid bogus self-employment, avoid undeclared work and avoid social dumping.

* * *

BELGIUM: The experience of “Prevent Agri” as an example of social dialogue in OSH

It was the social partners in the agriculture sector who took the initiative to launch Prevent Agri³¹.

Prevent Agri is a joint professional body between employers and employees in the sector.

The people who work for Prevent Agri are paid for by the Sectoral Social Funds (the funds are jointly managed by the social partners). Prevent Agri carries out on-site screening for agricultural businesses. The employer receives a report containing a risk analysis and a series of recommendations to follow. Prevent Agri does not file a report.

Prevent Agri also works together with occupational health services, with companies insuring against workplace accidents and with social inspectors. Prevent Agri prepares documents per (sub) sector (one sheet per machine with safety instructions in the workplace) which may be used by employers.

* * *

BELGIUM – “Joint and several liability in subcontracting chains”

Legislation states that when a business owner calls upon a subcontractor to carry out works and the subcontractor fails to respect minimum wage provisions, the co-contractor (business owner) is responsible for overseeing payment of the share of wages that have not been correctly paid by the subcontractor.

In the agriculture sector, a collective labour agreement has been signed which grants the co-contractor the possibility of terminating the contract thus avoiding the responsibility of having to pay wages in place of the subcontractor.

It also states that it is possible to use part of the amount that has been invoiced for the payment of wages that have not been paid by the subcontractor.

This increases the legal certainty for employers in the agriculture sector.

The law also offers social partners the possibility of signing agreements regarding responsibility in subcontracting chains.

* * *

ITALY: Joint and several liability in contractual chains

Italian law (Article 29.2 of Legislative Decree No. 276/2003) provides for joint and several liability between the client, the contractor and any subcontractor for sums due in relation to services provided during the contract.

The joint and several liability system applies whenever the contractor (or subcontractor) fails to pay all or part of the wages to their employees, and/or social insurance contributions and insurance premiums due in relation to the performance of the contract. Joint and several liability is subsidiary and its main

³⁰ see https://www.socialsecurity.be/foreign/en/employer_limosa/home.html

³¹ see <http://www.secteursverts.be> and <http://www.preventagri.vlaanderen/nl/home>

purpose is to safeguard the rights of employees who work in outsourced production, where a company contracts part of its production process to third parties.

The deadline for exercising this right is two years from the termination of the contract. As such, it is not unusual for the client to have to pay the debt of the contractor-employer, despite having already paid the full price of the contract. In this case, it is up to the client to institute proceedings for recourse against the contractor for what it had to pay on its behalf by way of joint liability.

* * *

FINLAND: The assignment of a pay claim to a trade union and its role of claimant in a trial: how procedural rights may grant effective enforcement in PW

Under Finnish law, the standing of Trade Unions to bring proceedings before Court is governed by Finnish procedural law, and Trade Unions have standing to bring proceedings on behalf of workers, so that Trade Unions stand in Courts as claimants. This specific procedural right, acknowledged to Trade Unions by Finnish law, is particularly effective in case workers are not permanent residents of the State where working activities were performed (Finland). This specific procedural tool made it possible for some Polish posted workers to act in Finnish Courts through Trade Unions in the case decided by the Court of Justice C-396/13. Though contested by the employer, this Finnish procedural measure was found compatible with Union Law by the Court³².

* * *

NETHERLANDS: OSH and industrial relations: the case of the Netherlands. The “Arbo Catalogi” in agriculture

In the Netherlands “Arbo Catalogi”³³ is a regulatory tool for improving the working conditions of employees. The Dutch Working Conditions Act gives the general framework for sectors. The social partners in a sector develop together practical means and methods to be used in firms tackling priority risks identified in that sector. The catalogue (of risks and possible solutions) gains official status if it has passed the Labour Inspectorate's assessment. Every sector can choose its own form and content of its catalogue. Communication to the employers is also a responsibility of social partners.

* * *

NETHERLANDS: Joint Committees for restoring fair work conditions (combating UDW and underpaid work): a tool of (collective) self-regulation

The Social partners in the agricultural and horticultural sectors have made special collective agreements meant at ensuring fair salary to workers.

An employee who is not paid according to the rules of the CAO (Collective Labour Agreement) can address to a special joint committee composed both of employers' and of employees' organisations. They analyse the concrete situation and in case the claim is founded, the committee contacts the employer for additional payments to be granted to the claimant-employee.

* * *

NETHERLANDS: A self-inspection tool for the employer: how technologies help self-evaluation on standards of decent work

The Inspectorate SZW (the ministry of social affairs and employment) in The Netherlands has developed a digital tool for self-inspection on “decent work” (zelfinspectie 'eerlijk werken'). This tool

³² C-396/13, see <http://curia.europa.eu/juris/liste.jsf?num=C-396/13>

³³ see <http://www.arbocatalogi.nl>. For more information, see <https://www.eurofound.europa.eu/it/observatories/eurwork/comparative-information/national-contributions/netherlands/the-netherlands-the-role-of-governments-and-social-partners-in-keeping-older-workers-in-the-labour>, in particular Section 2.2 on “health and safety and health promotion”.

can easily be used by employers to check which rules they have to respond. With this tool they can get also concrete suggestions how to better the situation in their firm, in the interest of their workers. The fields related to self-check are: minimum wage compliance, housing for foreign seasonal workers, labour conditions, etc. The application is accessible for laptop, tablet or smartphone. This application is strongly promoted by the employers' organisations in the agricultural sector, as part of the whole of instruments the organisations as LTO offer to their members to improve “good employment relations” in their firms³⁴.

* * *

SWEDEN – Role and powers of trade unions in labour inspection

Collective agreements contain specific provisions enabling trade unions to enter the workplace in order to carry out examination of facts referred to employment relations. Trade unions are not free to enter the employer's premises unannounced, as they have to agree their intervention with the employer. For example, in Swedish Collective Agreement for landscapers, the local office of the Swedish Municipal Workers' Union has the right to come to their member's workplace to carry out an examination of the wages/salaries. The company and the local trade union office agree on how the trade union's examination is to be carried out.

The Swedish Municipal Workers' Union must give the company a list of its members among employees. The salaries of the employees who *aren't* members of the trade union is presented on a different list which contains no personal information, in order to grant their privacy. Moreover, in case some one or more employees do not want to share information on his/her salary with the union representative, they are excluded from the list and thus from the examination.

* * *

UNITED KINGDOM – Farm inspections: what is the GLA (Gangmaster's Licensing Authority) licensing scheme, and how does it work?

The GLA³⁵ is responsible for operating a licensing scheme which regulates businesses that provide workers for the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law.

Employment Agencies, labour providers or gangmasters who provide workers in the agriculture, horticulture, shellfish gathering, and any associated processing or packaging sectors, will need a GLA licence.

Labour providers are assessed to check they meet the GLA licensing standards which cover health and safety; accommodation; pay; transport; and training. The GLA checks that they are fit to hold a licence and that tax, National Insurance and VAT regulations are met.

Applications can be made online or via telephone. The licence fee is payable on an annual basis and is determined by a range of fee bands relating to the anticipated turnover based on previous year's figures. The Gangmasters legislation lists the scheme in detail, including the information sought in the application. These include the extensive details of the personal background of the principal of the business, including: Criminal convictions; Court judgements; Investigations by public authorities; Trading history as an agricultural supplier in the previous five years; Turnover and Names of the partners or directors of the business.

The GLA will also consider compliance with legal obligations (e.g. health and safety requirements) in determining if the applicant's conduct is fit and proper for the issue of licence.

In considering a licence application the GLA will only licence a business to act as a labour provider if their conduct is fit and proper for such activities. It is not unusual for a licence to be refused. It is an offence to use agricultural labour supplied by an unlicensed labour provider. Consequently, labour users should take steps to confirm that labour providers hold a current GLA licence before dealing with them.

³⁴ See: www.zelfinspectie.nl

³⁵ see: <http://www.gla.gov.uk>

4.6 Perspectives of regulatory simplification

The present research recognizes a very central role to simplification of regulation and of administrative requirements as necessary preventive measures to tackle UDW³⁶.

General Subject	Good Practice
Perspectives of regulatory simplification	CY: The fight against informality
	HU: A case of administrative simplification: the “model employment contract” for seasonal workers
	FI: Collective agreements and flexibility in “working time”: the case of Finland
	SE: “the average annual working time” in horticulture. Which perspectives for the entire sector of agriculture in Sweden?

CYPRUS: Joint inspection units for combating UDW:

In order to better combating undeclared work, Cyprus decided it was necessary to have stricter cooperation between the national Authorities in charge of controls: the Departments of Labour Relations and the Department of Labour and Social Insurance Services. In that way special “Joint Inspection Units” were introduced since 2009. Presently, in Cyprus four “Joint Inspection Units” are operating in the different Districts, with good operative results (more than 6.500 inspection per year).

* * *

HUNGARY: A case of administrative simplification: the “model employment contract” for seasonal workers

Employment contracts may only be concluded in writing, except the case of seasonal work. The employment relationship shall be considered concluded upon fulfilment of the notification requirement specified by law.

In order to foster a specific employment contract model, the administrative requirements referred to regulation of working time registration and the records referred to rest periods and payroll are not applicable in case the parties use such a model to conclude the occasional work employment contract.

* * *

FINLAND – Collective agreements and flexibility in “working time”: the case of Finland

Social partners have agreed collective agreements for agriculture, horticulture, green area construction and farming. These agreements include provisions referred to average ordinary working time, giving the employers the opportunity to use variations in working time during the year.

Regulation is as follows: average working time is 40 hours/week; daily working time 4–10 hours, by local agreement 11 hours for short period of time; weekly working time 50 hours (5-days working week); postponing of weekly free days: 6 or 7 days working week (example: 6 days x 10 hours = 60 hours ordinary working time); compensation by giving free time hour-for-hour with no extra bonus; reference period for compensation: 52 weeks; working time scheme is required in advance.

Flexibility in working time makes it possible to concentrate ordinary working hours during high seasons (e.g. planting, harvesting season). It also decreases annual labour costs (no overtime bonuses) and makes it possible to employ more permanent workers. Flexibility in working time favour permanent employment in agriculture with stable income, as wages can be paid constantly for 40 hours regardless to variations in working hours, which are compensated with reduction of working time in other periods of the year.

* * *

³⁶ See chapter 3, paragraph n. 2.

SWEDEN: “The average annual working time” in horticulture. Which perspectives for the entire sector of agriculture in Sweden?

In order to achieve more flexibility in working time, some of the Swedish Collective Agreements include a system/method called “average annual working time”. This allows the employer to organise the work in much a more flexible way than law provisions provide. At present, such a provision exists, for example, in the sector of horticulture, and it would be the employer’s intention to extend it to collective agreements of agriculture too.

This is how the average annual working time works: the employer is allowed to organise the working time so that working time may be longer in some parts of the year, according to seasonal activities (mainly in summer), compensating these periods of extra-work with others with shorter working time (winter).

This flexible organization favours both the requirements of employers, who can dispose of workforce exactly when they need it, and the interests of employees, as it favours permanent employment.

4.7 Collective bargaining: innovative measures and contracted flexibility to tackle UDW

The good practices which follow are example of regulatory contracted measures directly or indirectly meant to combating undeclared work. They can attest throughout Europe the increasing role and interest of collective bargaining and social dialogue in this matter.

General Subject	Good Practice
Collective bargaining – innovative measures and contracted flexibility	BE: the “Social Label” in the culture of mushrooms
	NL: “Fair Produce”: a social label in the culture of mushrooms
	BE: La réglementation tripartite sectorielle pour l’agriculture (partenaires sociaux et gouvernement) visant à identifier des indicateurs et des critères distinctifs entre travail indépendant et travail salarié en tant qu’instrument pour lutter contre le phénomène du “faux travail indépendant”
	IT: Gli Avvisi Comuni per combattere il lavoro nero in agricoltura
	IT: L’esperienza della “Rete del lavoro agricolo di qualità” in Italia
	NL: The Labour Foundation: an example of social dialogue and tripartite regulation
	PT: “2015 Campaign to fight Undeclared Work”: instruments and results
	SE: A Tripartite working group with Tax Authorities to tackle UDW

BELGIUM: The “social label” (mushroom growing).

The “mushroom growing” sector is experiencing many difficulties because of prices which are too low for many farmers. A large number of firms in Belgium have been forced to close.

Together with the social partners, a plan for the sector’s future was put in place: employers who sign up (they have to sign a declaration each year) to respect Belgium’s social legislation and not to resort to systems involving social dumping (posting abuses, bogus self-employment) and who agree to keep the number of permanent workers at 2011 levels, may use the seasonal work system for up to 100 days per seasonal worker per years instead of 65 days. The social partners are responsible for drawing up the list of companies eligible to make use of this expanded regime.

The minister for social affairs approves this list and the list is then sent to the administration. The social label system has brought about a fresh increase in the number of companies in the mushroom growing sector. The system is enshrined in law.

* * *

NETHERLANDS: Fair Produce - fair working conditions in Dutch mushroom sector

The foundation Fair Produce³⁷ certifies companies that have demonstrated to pursue a social policy for fair working conditions that meets the legal and extra requirements set up by social partners in the Dutch mushroom supply chain.

Fair Produce stimulates good employment practices in the mushroom supply chain. Social partners as LTO Nederland have taken their responsibilities regarding producing 'fair' mushrooms. Therefore they founded Fair Produce in 2011 after a period of labour abuse and bad working conditions in the mushroom supply chain.

With Fair Produce, social partners strive for fair working conditions. The companies in the Dutch mushroom supply chain aim for producing mushrooms under fair working conditions, by paying wages according to the Dutch law and regulations, having access to good housing accommodation and working conditions.

The Fair Produce label meets stricter conditions than legally required and operates in monitored chains. The monitoring focuses for example on labour constructions, if all working hours are paid out well, the maximum amounts withheld for housing accommodation, and - if temporary employment agencies are involved - the obligation that only NEN 4400 certified agencies are considered qualified. During the audit, employees are extensively interviewed, and if necessary with the help of an interpreter. If the audits meet the required standards of Fair Produce the company receives the Fair Produce label for a certain period of time.

With the help of the Fair Produce label, the working conditions in the Dutch mushroom supply chain have very much improved.

* * *

BELGIUM: Tripartite sectoral legislation for agriculture (social partners and government) aiming to identify indicators and criteria to distinguish between self-employment and salaried employment as a tool for combating the phenomenon of "bogus self-employment"

There is a law dating back to 2012 which covers the subject of the nature of the working relationship between the contractual parties³⁸. The aim is to avoid the phenomenon of bogus self-employment springing up in other sectors.

The law grants social partners the possibility of formulating criteria which can be applied on the ground to create a distinction between salaried workers and self-employed workers in agriculture.

The social partners in agriculture listed 10 criteria for assessing the nature of an employment relationship. The 10 criteria were transformed into a royal decree. There are also similar examples in the construction sector; transport for third parties. There is therefore a law underpinning it. There is an agreement between the social partners in agriculture. This agreement has been enshrined in a royal decree and therefore has a legal basis.

The criteria produced together with the social partners appear as a checklist which is highly useful in the field. The number of bogus self-employed workers has declined sharply.

* * *

ITALY: Joint Communications to tackle illegal employment in agriculture

Good labour relations in the agricultural sector in recent years have made it possible to reach important agreements to tackle undeclared, irregular and bogus work with the signing of several agreements and joint communications to encourage legal employment relations.

In particular, on 4 May 2004, agricultural social partners signed the Joint Communication on tackling UDW in agriculture³⁹. In addition to recognising the need to constantly study and monitor this trend,

³⁷ See: <http://www.fairproduce.nl>

³⁸ The law of 25 August 2012 entered into force on 1 January 2013, amending heading XIII of the law-programme (I) of 27 December 2006, concerning the nature of employment relationships (Belgian official journal from 11/09/2012).

³⁹ See <http://www.dplmodena.it/05-05-04avvisocomuneagr.htm>

they set out several important steps to tackle UDW by stabilising employment, reforming criteria for the provision of temporary work, and through incentives to tackle illegal employment. The Agreement on tackling illegal and undeclared work in agriculture⁴⁰ of 21 September 2007 signed by the government, agricultural social partners, INPS and INAIL, set out a series of regulatory changes relating to agricultural unemployment, extraordinary wages guarantee funds for the agricultural sector, incentives to stabilise employment relations, safety and training, in order to discourage undeclared or bogus work.

* * *

ITALY: The experience of the "Network of high-quality agricultural work" in Italy

The "Network of high-quality agricultural work"⁴¹ has been active since 1/9/2015, after which agricultural companies could apply for membership. Its underlying principle is that in order to tackle the use of irregular work, one must reward companies that respect collective agreements, social legislation and the protection of health and safety for workers, while at the same time strictly pursuing individuals who exploit illegal employment including through the criminal gangmaster system. The Network therefore creates a close correlation between compliant companies and high-quality products. The philosophy behind this action has also given rise to many expectations in the agricultural produce market, so much so that some large retail outlets have started to consider joining the Network as a pre-condition of acquiring suppliers. Yet whilst this may show the effectiveness of the tool, it also highlights a problem where only employer companies are entitled to join, and companies led by self-employed workers are currently excluded by law.

As of 10/2/2016, months after the launch of the Network, 814 applications had been sent, of which 207 were accepted, 11 were rejected, 7 were not admissible, 535 were under examination and 54 in preparation. This is definitely disappointing and begs the question as to why so few applications were submitted (0.4% of potential applicants). Part of the problem is undoubtedly the current legislation regulating the system (which is in no way conducive to the aim of supporting ethical brands for high-quality products). Firstly, there are excessive entry requirements: even in the event of minor administrative penalties – perhaps paid because it was less expensive than contesting them – the company cannot join the "Network". Secondly, the requirements are utterly inconsistent. For example, where an entrepreneur is convicted of very serious crimes, which are not considered by the rules of the "Network" as being an obstacle (such as an association with the Mafia), he/she would be fully entitled to become a member, if the law does not change. The right direction has therefore been taken, but based on initial results, it must be adapted.

* * *

NETHERLANDS: The Labour Foundation: an example of social dialogue and tripartite regulation

Established on 17 May 1945, the Labour Foundation⁴² is a national consultative body organised under private law. Its members are the three most representative trade union federations and the three most representative employers' associations in the Netherlands.

The Foundation provides a forum in which its members discuss relevant issues in the field of labour and industrial relations. Some of these discussions result in memorandums, statements or other documents in which the Foundation recommends courses of action for the employers and trade unions that negotiate collective agreements at sectoral or at workplace level.

Upon request, the Foundation also advises the government on labour-related topics. A recent example was the agreement of April 2013 on social affairs ("Prospects for a socially responsible and enterprising

⁴⁰ See

<http://www.commissioneemersionecalabria.it/images/stories/emersione/uploads/documenti/AccordoEmersAgricolturaRoma21settembre2007.pdf>

⁴¹ see <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/9062>

⁴² see <http://www.stvda.nl/en/home.aspx>

country: emerging from the crisis and getting back to work on the way to 2020”)⁴³. This agreement of social partners formed the basis of a tripartite agreement with the Government, which was the basis for the new law on labour and security of 2015 (WWZ), meant to bridge the gap of protection granted to “flex workers”.

* * *

PORTUGAL: “2015 Campaign to fight Undeclared Work”⁴⁴: instruments and results

In this campaign ACT (the Labour Inspection Authority), social partners and other public services such as social security and immigration services were involved. The campaign was addressed to the following forms of undeclared work: (i) lack of compulsory notice of commencement of work and (ii) failure to payment of social security contributions; (iii) partial declaration of the wages paid to workers to social security, to the insurer and to the tax services; (iv) false statements regarding the amount of wages (“envelope wages”).

The goals of the campaign were: informing employers and workers on the rights and obligations concerning employment; informing employers and workers, and the public in general, on the advantages of declared work and the negative aspects of undeclared work; promoting transformation of fully or partially undeclared work into regular work.

Instruments: some flyers and posters were distributed and some public sessions were organised, where CAP was actively involved.

* * *

SWEDEN: A Tripartite working group with Tax Authorities to tackle UDW

Agricultural workers’ representatives, along with other branches of industry, participate in a group that is governed by the Tax Authorities. Both trade unions and employers’ organisations are represented, whose mission is to convince members of Parliament and other policymakers to agree upon the^[58] arrangements to be adopted. For example, for a fair competition on the Swedish market, some of the actions are referred to the following principles:

- making all companies working in Sweden “visible” – today, only Swedish companies must register with the authorities;
- the Tax Authorities should be able to make an unannounced inspection of the people working at a workplace. The group’s work is carried out by annual seminars and other meetings with policymakers.

⁴³ see <http://www.stvda.nl/en/~media/files/stvda/talen/engels/2013/20130411-sociaal-akkoord-en.ashx>

⁴⁴ see <http://www.eurofound.europa.eu/mt/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/national-campaign-on-undeclared-work-portugal>

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

We, the Employers Associations of Agriculture GEOPA-COPA,

Provided that we:

1. Deplore all practices of UDW and social fraud both at national and at international level, as they produce on one side unfair competition among undertakings and disadvantage to those who comply with rules, and on the other side unfair conditions and disadvantage to employees;
2. Strongly affirm, on the basis of a vast experience of regulatory overload both at EU and at National level: in tackling UDW, as in many other subjects, **not more regulation is needed, but better regulation is possible**. In particular, a regulatory approach based on responsive regulation provides better regulation as it grants subsidiarity and cooperation between regulators and regulated in a multi-level and balanced regulatory framework;
3. Have already experimented that more regulation in many cases does not achieve consistent results in terms of effective enforcement, which can contribute to raise resistance to new regulation among employers;
4. Believe simplification of administrative requirements related to employment is an essential regulatory tool for effectively tackling UDW.

On the basis of the results and the findings of the project VS/2014/0026, we provide the following

Conclusions and Recommendations

I. Towards simplification, flexibility and responsiveness: administrative requirements from a regulatory approach⁴⁵

Conclusions:

1. The regulatory literature tends to confirm the fact that too many and too heavy administrative burdens do not necessarily increase compliance. On the opposite, repeated and heavy administrative burdens tend to favour non compliance. Moreover, it is a matter of fact that complex and redundant administrative burdens cause mistakes in good faith. Nonetheless, in terms of enforcement, these formal mistakes are treated, in some cases, as undeclared work by national legislation.
2. It is quite widely common that MSs oblige employers to fulfil forms (related to employment registrations, tax and social security, and other requirements related to employment relations) and deliver the same data several times to the same national Authority and/or to different Authorities within the same Country.
3. According to the European Employers in Agriculture, at National level simplification is necessary as part of a modern and multi-level policy to tackle UDW from a regulatory perspective based on responsiveness. This approach is already present in the regulatory background of some MSs, in particular where Public Authorities tend to favour compliance through few rules easy to comply.

Recommendations:

⁴⁵ See Chapter 3 and Chapter 1.

To the Platform and to the EU institutions, in order to promote towards MSs better regulation regarding administrative burdens linked to recruitment of workers and tax/social security related issues .

1. It is a top priority to promote simplification of administrative burdens, following a responsive regulation approach: if burdens are not necessary or not effective in terms of results expected, they should be abandoned.
2. In the same way, law should avoid duplication of the same administrative requirements (same data).
3. E-government is essential to simplification processes.
4. The Platform should collect data from MSs on the procedures and administrative burdens connected to employment registration, in order to highlight and share among all MSs information on good practices.
5. Both law and competent Authorities should concentrate on the requirements which are strictly necessary for the objectives public policies mean to achieve.
6. National Authorities should test existing regulation in terms of consistency with the national objectives they expect to achieve in order to check how procedures could be optimised and made more effective.
7. A major point in regulation which is specifically connected to administrative requirements is the following: adequate impact analysis should be granted at national level before regulation is approved, and after application has started in order to monitor consistency between rules and the political objectives to achieve.
8. In regulating administrative requirements, specific concern should be addressed to SMEs and to micro-enterprises in particular, in order to assure compliance is made easy and possible even to undertakings not having specialised HR services.

II. The role of the Social Partners⁴⁶

Conclusions:

1. Practical experience in agriculture seems to confirm that where employers' organisations represent a large amount of undertakings, and have a strong and spread presence among them, there compliance to labour market regulation is better and higher. Organized employers have better knowledge on regulation through information and consulting services granted by their own organization. In some cases, national legislation confers to employers' associations duties of supervision on compliance to law and to collective agreements.
2. Several MSs have important examples of good practices of social dialogue and tripartite regulation meant at enhancing compliance in labour market regulation and at promoting regular employment.
3. Collective bargaining in agriculture is very much spread. Besides traditional issues of negotiation (ex. working time, wages, working conditions), other issues are emerging linked to the need employers have of more flexibility in employment relations (productivity salary, flexibility in working time). These positive forms of flexibility, if conveniently regulated through collective bargaining, can favour the recourse to regular and regulated work, making recourse to forms of undeclared work like envelope wages less profitable and attractive.
4. In that respect, through Europe, in more and more cases, national law tends to leave increasing spaces of regulation to collective agreements. Though, gaps between rules and implementation often emerge: for example, in the majority of Countries, collective bargaining is entitled to make working time more flexible, and yet in some MSs this possibility is hardly ever negotiated.

⁴⁶ See Chapter 3 and Chapter 4.

Recommendations:

1. EU and National Policies should consider both employers' organisations and trade unions as intermediate bodies whose work of regulation has important effects in contributing to build up better-regulated societies and markets more respectful of rules, even in terms of regular work.
2. Employers believe in social dialogue and in tripartite dialogue as sources of effective and shared regulation in employment relations, whose positive influence in the labour market also contributes to grant and promote regular work and loyal labour relations. In that perspective, when appropriate, MSs should privilege a multilevel approach to regulation not always based on direct regulation, but also, when appropriate, open to social dialogue and tripartite regulation as forms of self-regulation and enforced self-regulation.
3. EU regulation related to working life (e.g. working time directive) should always include norms meant at granting social partners at national level the power to negotiate and conclude collective agreements to regulate working relations, in particular, as appropriate, where direct State regulation is not strictly necessary. On the other hand, EU Institutions should favour this approach with convenient action towards MSs.
4. The social partners, who are always free to choose bargain or not, should be adequately prepared to implement the spaces of positive flexibility in the regulation of working conditions, which are left by State direct regulation to collective bargaining.
5. The Social Partners, and the employers' associations in particular, have a central role of direct sensitization those that they represent, but also to sensitize the public (ex. actions of communication, public information campaigns, promotion of social labels), in order to promote compliance and regular work.
6. The Social Partners should, when appropriate, be prepared to work with National Governments in actions of tripartite dialogue meant at tackling UDW.

III.

Benchmarking in search of good practices⁴⁷

Conclusions:

1. On the subject of policies and concrete actions meant to tackling undeclared work, there are, throughout Europe, many good practices at national level, whose positive effects have already been experimented and proven. They are important sources of information for regulation and actions for all MSs and for the social partners at national level.
2. Good practices at national level in tackling UDW are due both to State direct regulation and to self-regulation through social dialogue at central and at workplace level. In some MSs, even voluntary self-regulation at company level is present, for example where "company quality systems" applied in agriculture have experienced forms of "social labels".

Recommendations:

1. In its work, the Platform should adopt benchmarking in search of good practices at national level as a major methodological issue and concern.
2. National regulators and social partners at national level should have the opportunity of being informed of the good practices existing elsewhere. Therefore, the prospective European Platform should collect good practices in tackling undeclared work, and make them available to national regulators and to the representative of the social partners of all sectors, both at national and at EU level.
3. National regulators should be aware that, though not always easy to export, good practices experimented by other MSs allow them to take advantage of the experience made by others, making easier to benefit of someone else's achievements and to avoid mistakes made already by others.

⁴⁷ See Chapter 4.

4. The EU Institutions, in their policies and actions directed to promote regular employment relations, are invited to promote exchange of good practices of social dialogue among MSs.

IV. UDW and National approaches to regulation. Preference for responsive regulation⁴⁸

Conclusions:

1. Comparing how MSs are regulating the labour market in order to tackle UDW, it turns out that regulation on this matter is reflecting the different political and cultural approaches among MSs which, though typically national, might be grouped as follows:
 - a. (full) workers protection concern;
 - b. tax (& social security) evasion concern;
 - c. social fraud concern.

These different approaches lead to regulatory outcomes which can be very different from one MS to another.

2. In tackling undeclared work and its related issues, some MSs tend to privilege traditional approaches based on direct regulation and on the deterrence of heavy sanctions. Others are more inclined to recur to compliance-based regulation and to forms of self-regulation left to collective bargaining.
3. Undeclared work (strictly intended), illegal employment, bogus self-employment, envelope wages, are all related subjects possibly entering in the large concept of “undeclared work” under the non binding definition of COM/2007/0628. Though all these phenomena are different and create different levels of social alarm as some are objectively more serious than others, not all MSs treat them differently. So, it is not rare the fact that some MSs punish heavier and substantial wilful misconduct in the same way, and through the same enforcement measures, as formal and minor offences.
4. However, on the other hand, a few MSs are approaching undeclared work and its related issues providing regulatory measures inspired to graduation of sanctions responding to the seriousness of the specific misconduct, as well as to prevention, through preventive measures aimed at promoting compliance before misconduct occurs.

Recommendations:

To all Regulators, both at EU and at National level:

1. The employers in agriculture recommend a responsive regulatory approach: we do not need more regulation, but better regulation, and in the end that might result in less regulation.

To the prospective European Platform to enhance cooperation in the prevention and deterrence of undeclared work.

1. It should promote integrated regulatory approaches as suggested by responsive regulation⁴⁹, or better “balanced regulatory approaches”⁵⁰, in order to tackle undeclared work: not only traditional direct regulation and command and control systems based on the threat of sanctions, but also preventive measures strictly linked to favour compliance and the process of turning from non-compliance to compliance. To be more concrete, some examples of tailored preventive measures might be the followings: (i) promoting easy rules to comply with in case of termination of employment; (ii) tailored incentives/tax reductions connected to compliance in selected specific cases, such as in case of engagement of long term unemployed persons and/or of young people and/or of over 50 years old unemployed

⁴⁸ See Chapter 2.

⁴⁹ See “responsive regulation” in chapter 1, paragraph 6.

⁵⁰ This expression is used by ILO Recommendation n. 204/2015, II.7.k

people (this type of incentives might apply to the employers who apply collective agreements in all their parts), (iii) incentives/no sanctions in case of “voluntary disclosure” procedures defined by law in specific cases according to national policies tackling UDW (ex. for “micro-enterprises”), etc.⁵¹.

Modern democratic societies need also effective and concrete actions of public communication pointing out the main issues related to the recourse of regular work. For example, it should be clear to everybody that social protection can be assured to workers-citizens as long as social security contributions are regularly paid.

Regulation only based on the fear of sanctions tends to be less effective than multi-level responsive regulation. In fact, the fear of direct sanctions addressed to all employers in case of misconduct is not particularly effective in preventing violations, as effectiveness of sanctions occurs and it is revealed to regulates only after misconduct has been put in practice and after it has been detected by the enforcing Authorities. On the opposite, pedagogical and preventive measures are based on prevention of misconduct and are as effective as misconduct is prevented and therefore it does not take place. That is why integrated (balanced) responsive regulation is needed. In other words, though direct regulation (command and control State rules) is certainly a central regulatory tool to tackle UDW, it should not be the only one, neither at EU nor at National level.

2. Therefore, in law making, responsive regulatory approaches based also on positive and preventive rules intending to favour compliance (and/or to turn the attitude of non-complying subjects from non-compliance to compliance) are better than solely traditional “command and control” approaches, based on deterrence and only intended to punish non-compliance.
3. Following a responsive regulatory approach, enforcement measures and sanctions should be consistent with regulation and with its goals of tackling UDW effectively. Therefore, enforcement measures and sanctions should be (i) proportionate to the specific misconducts they are addressed to, (ii) responsive to the behaviour of the subject involved, and effective.

V

Labour inspection in tackling UDW and its related issues⁵²

Conclusions:

1. Member States have different concepts of the role, powers and tasks of labour inspection, so that it is possible to say that – abide the common grounds basically due to ILO rules – at present labour inspection is to be considered a national issue and a MS concern, with characteristics which are peculiar to each national context.
2. In general, Member States have different approaches to labour inspection. Some have developed deterrence-based systems, whose approach is based on sanctions meant at punishing non compliance, and others have set compliance-based systems, whose intent and action is more devoted to favouring compliance than to punishing non-compliance.
3. In terms of organisation, some MSs have “generalist systems” of labour inspection, whose duties cover a wide range of forms of protection of workers’ rights (UDW, OSH, social security contributions, defence of major workers’ rights), and others prefer “specialised systems”, where labour inspection is responsible for some issues only (i.e. OSH).
4. Following a regulatory approach, we came to the conclusion that there are not best organizational solutions for labour inspection, as we believe the type of enforcement measures and of enforcement authorities should be respondent to the specific type of regulatory system these institutions are meant to enforce. Nevertheless, in case national regulation is inspired by a “responsive” approach to regulation, which is the approach

⁵¹ See Williams C and Renooi P., *Tackling undeclared work in 27 European Union Member States and Norway*, Eurofound, Dublin, 2013, page 9.

⁵² See Chapter 2.

we tend to privilege for the reason above reported, consequently labour inspection and sanctions should be consistent with this approach, and concrete action should be inspired to graduation and responsiveness.

5. Even in relation to the nature of sanctions (penal, civil, administrative) which enforce regulation in UDW, there is no common view among Member States. Though pecuniary sanctions are generally referred to violations of UDW rules, the differences in terms of “average” amount among MSs are fairly impressive among Member States.
6. Not all Member States grant adequate procedural rights to inspected undertakings, such as maximum duration of the inspection and written communication marking the end of labour inspection even in case no sanction is issued. Attribution to employers of such procedural rights, we believe, not only does it grant sustainability and transparency in terms of effectiveness of the enforcement of direct regulation, but it is also particularly important for the employers whose intention is compliance, and not misconduct.

Recommendations:

To the prospective European Platform and to National Labour Inspectorates, as appropriate:

1. A better knowledge of the objectives, methods and organisation of labour inspection at national level will surely highlight profound differences among Member States. Therefore, the very first priority for the Platform should be to collect all necessary information from National Authorities regarding labour inspection procedures/organization and enforcement systems regarding rules and policies to tackle undeclared work and other related subjects.
2. Exchange of good practices in labour inspection, both through top-down and through bottom-up actions. For National Authorities, the former, top-down actions, could result from sharing good practices within the Platform, as they might pick up the most appropriate and promote concrete actions among labour inspectors at national level; the latter, bottom-up actions, could be the results of programs of bilateral/multilateral exchanges of labour inspectors for limited periods, aimed at enhancing administrative cooperation among Labour Inspectorates and at promoting projects with common goals of all National Inspectorates involved.
3. Responsiveness of enforcement depending on the conduct of the offender is one of the central principles enforcement of UDW regulation should be based on. Just as an example: in case of minor violations, unlawful conduct may lead to non-punishability in case of first offence or, even better, in case misconduct, though committed, is followed by unsolicited and appropriate acts of the offender restoring legality. On this basis, the Platform should promote enforcement approaches in relation to inspections and sanctions based on responsiveness. This principle should also be recommended to MSs by the EU Institutions.
4. Proportionality as a principle of enforcing should be promoted at EU level and recommended to MSs. In fact, Law should provide sanctions which are proportionate to the type of misconduct, so that on the one hand severe sanctions should be issued for major violations/wilful violations, and on the other hand unintentional mistakes, minor violations or omissions committed in good faith should be punished with lighter sanctions.
5. Procedural rights for employers in case of labour inspection focusing on undeclared work and related issues, such as providing (i) a maximum duration of labour inspection and (ii) an official document which marks the end of an inspection to be delivered though no sanctions are issued, should be promoted at national level. In fact, adequate procedural rights can enable all employers, and complying employers in particular, to have clearer and better regulated relations with National Authorities in charge of labour inspection

The transnational dimension of social fraud in agriculture⁵³

Conclusions:

1. The employers associations of agriculture deplore all practices of UDW and social fraud both at national and at transnational level, as they produce unfair competition among undertakings and disadvantage to those who comply with rules.
2. It should be noted that “social fraud” is neither regulated by legally binding definitions in all MSs, nor it is defined by Union law. It is a legal concept which appears in some MS’s legislation, and it tends to group all the related phenomena above mentioned of “undeclared work”, “under-declared work” and/or “bogus self-employment”.
3. In agriculture, “undeclared work”, “under-declared work” and/or “bogus self-employment” is present in all MSs. In the employers’ opinion, all these phenomena, though strictly related (as they all appear as practices of “social fraud”), differ from one to the other and produce different levels of social concern.
4. Most of national employers’ associations report that at the moment the phenomenon of posting of workers is not very much diffused in agriculture, and as a consequence fraudulent and abusive practices in posting are not particularly relevant too. However, on the other hand, a few Countries are registering posting of workers is an increasing phenomenon, in some cases and in relation to some specific cultures, such as forestry.

Recommendations:

1. The Platform should collect data referred to the transnational abusive and fraudulent practices which can be referred to UDW. These data should be possibly disaggregated in accordance to the different phenomena (differences not related to the nature but to the level of seriousness of misconduct) of “undeclared work”, “under-declared work” and/or “bogus self-employment” and fraud/abuse in posting.
2. In order to better target effective policies to tackle UDW, the Platform and the EU Institutions should advise MSs that all the related phenomena of “undeclared work”, “under-declared work” and/or “bogus self-employment” should be differently regulated and/or differently approached in terms of enforcement.
3. In tackling undeclared work and social dumping and all transnational fraudulent/abusive practices exploiting EU law and national law, the EU Commission should always reaffirm its role of coordination, attributed by EU law in general and by the decision establishing the Platform in particular, seeking the support and help of the social partners, where appropriate.
4. Transnational posting of workers is a resource for undertakings and for workers, as it grants better opportunities in larger markets. Though, abusive practices in posting need to be adequately tackled by national competent authorities.
5. When recurring to workers coming from other MSs for limited periods, in particular in case of seasonal work, farmers are free to choose either to employing other MSs nationals themselves or to recurring to posting, provided that they comply with applicable regulation.

⁵³ See Chapter 2.

VII. Legally binding definitions of the phenomena related to UDW⁵⁴

Conclusions:

1. At EU level, there is no legally binding definition of “undeclared work” (from now on UDW), and of the following related subjects: “illegal work”; “bogus self-employment”; “envelope wages”/“under-declared work”; etc.. Therefore, legal definitions of these subjects have to be looked for, if existing, at national level.
2. At EU level a broad definition of UDW is provided by COM/2007/0628: “any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States”. That definition, though not legally binding for the MSs, can help MSs in defining national policies meant at tackling UDW and in providing, in case they decide to do so, legal definitions (command & control rules) of UDW to enforce such policies.
3. Anyhow, not all MSs provide for legally binding definitions related to these concepts, and in case definitions exist, they tend to be very different from one MS to another, not only in conceptual terms but also with regard to enforcement measures.
4. Some MSs adopted more comprehensive legal concepts, such as “social fraud”, which are meant to regulate more than one of the phenomena connected to UDW, illegal employment, bogus self-employment, envelope wages, etc.. Anyhow, social fraud, though as a concept is generally understandable and even possibly immanent in many national systems, does not have a specific legal definition in all MSs.

Recommendations:

To the prospective European Platform to enhance cooperation in the prevention and deterrence of undeclared work.

1. It should promote a shared knowledge of the National legally binding definitions of UDW and of its related subjects, in order to make information available to all national competent Authorities and to all the stakeholders, and in particular to Social Partners at EU level and at national level.
2. Moreover, the role of the Platform should be also to promote a common understanding on these themes.
More precisely, the discussion at EU level should help MSs in:
 - a) Better programming their policies tackling UDW and, consistently with them, clearly defining what is to be considered “undeclared work” at national level and what, on the other hand, are to be considered “illegal activities” (or, “illegal work”), which are not covered by the concept of “undeclared work”;
 - b) Better defining concepts like “illegal work” and/or “illegal employment” (see for ex. Dir. 2009/52/EC, art. 2.d) and/or “illegal activities” (see statistical definitions provided by Eurostat and other International Institutions, within the definition of “non-observed economy”);
 - c) the legal concepts of “undeclared work” and “under-declared work” (“enveloped wages”, or “partially undeclared work”) should be properly discussed in order to achieve a better and shared knowledge of such concepts, in order to make it possible, at national level, to have precisely tailored rules in relation to the specific policies and priorities MSs intend to put in practice. That could be a sound basis for any possible path of harmonisation which might eventually be considered needed in the future;
 - d) Provided that UDW and its related concepts are strictly connected to the concept of “social fraud” (all related as subsets of “social fraud”): starting a discussion at EU level on the concept of “social fraud”, which, though existing in the legislation of some MSs, is not a common legal concept among all MSs;
 - e) stating and clarifying that “undeclared work” causes “social dumping” (and “social fraud”), both at national and at transnational level.

⁵⁴ See Chapter 2.

3. Great expectations are set for the Platform to be a place for reflection on the methods directed to grant better administrative cooperation among National Authorities. In particular, among other issues, in order to better grant effective and timely exchanges of information in case of transnational work.