

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



Who is Geopa-Copa?

- ✓ It's the Employers' Group of Professional Agricultural Organisations. It was created in 1963.
- ✓ The 26 Geopa members are national agricultural organizations that are entitled to negotiate collective agreements at national level.
- ✓ Geopa is recognized by the European Commission as the Social Partner representing the employers in the agricultural sector in the **negotiations of European recommendation agreements** on social aspects (art. 153° TFEU). Geopa is also **consulted by the EC** on proposals for Regulations and Directives governing social policies (art. 154° and 155° TFEU).
- ✓ It's estimated 20 199 360 agricultural workers.
- ✓ There are **no figures** of undeclared/ illegal workers in agriculture.

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

What? Analyze and study the phenomenon of undeclared work and irregular work in EU agriculture

Why? Undeclared work → Social dumping → Unfair competition

How?

- Step 1: Legal framework & definitions
(≠ Under-declared work; ≠ Illegal Work; ≠ Bogus self-employment)
- Step 2: Control (systems & entities & sanctions)
- Step 3: Best practices
- Step 4: Recommendations

Definition of Undeclared Work by EC & Eurofound

- ✓ Paid activities that are **lawful** as regards their nature;
- ✓ **Not declared** to public authorities (tax and/or social security fraud);
- ✓ Covers a **range of activities** from informal household services to clandestine work by illegal residents (but excludes criminal activities);
- ✓ **Abusive behaviour** regarding working conditions and/or health and safety norms, leading to the involvement of labour inspectorates.

Illegal Work by EC

- ✓ Employment of an illegally staying third-country national.
- ✓ In BE, FI, FR, IT, MT, NL and SE, illegal employment constitutes a **criminal offence** in itself.

Illegal work vs Undeclared Work

Undeclared work is a form of illegal work

AT, BE, DE, FR, HU, LT, PT

Totally Different Regulation (definition & sanction)

ES, IE, IT, NL, SE, UK

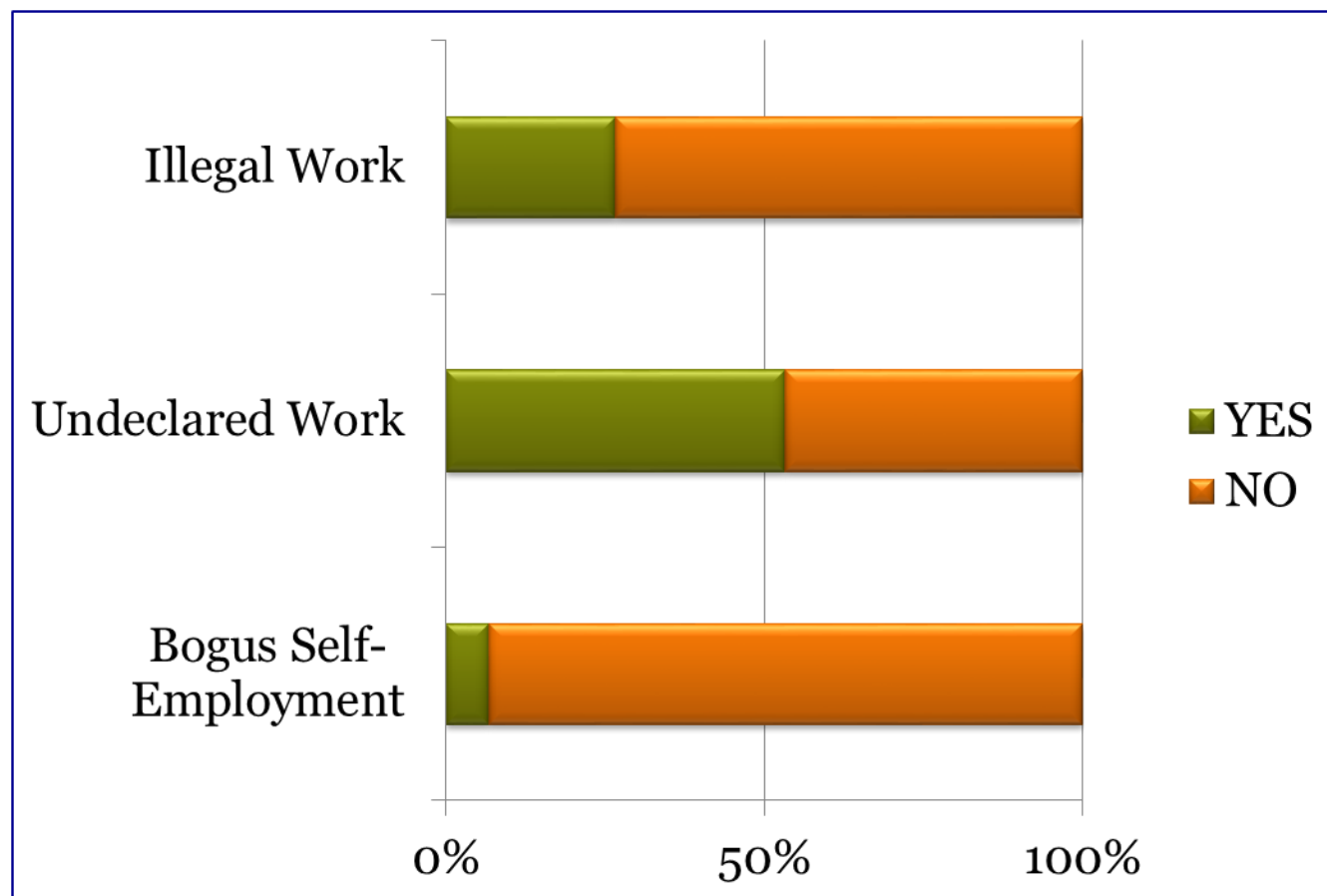
Quite Confused (lack of both definitions)

FI, LV

Bogus self-employment by CJEU

- ✓ Person hired as a self-employed person under national law
- ✓ **But** acts under the **direction** ...
 - with no freedom to choose the **time**, **place** and **content** of his work,
 - does not share the employer's commercial **risks**;
 - and is **part of** the company (so forming an economic unit).
- ✓ Some MSs in Europe consider bogus self-employment as a form of “**social fraud**”.

Legal Definitions (at national level)

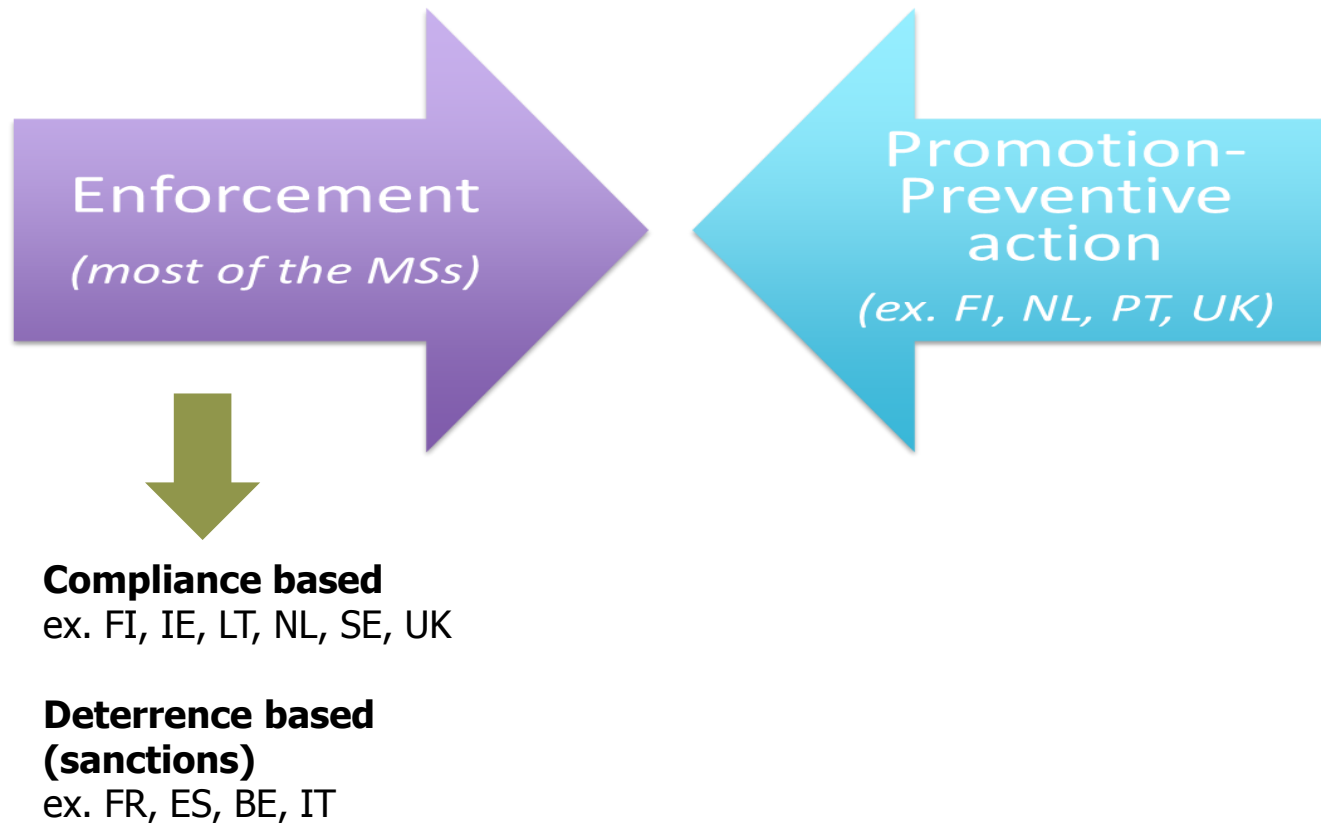


Note: the answers are referred to 16 EU MSs.

Step 2: Control

- ✓ Labour Inspection – enforcement
- ✓ Coordination of Controls at National level
- ✓ Effectiveness of sanctions
- ✓ Effectiveness of workers rights (tools)
- ✓ Joint and Several Liability at National level

The role of labour inspections



The role of labour inspections: Preventive measures

- Preventive measures provide an **effective support** for traditional deterrent-based policies which is a key issue to tackle undeclared work:
 - ✓ **contractual instruments** (by law or collective bargaining for more flexibility);
 - ✓ **simplification of administrative formalities** for the employment relationship
 - . declaring (employment services, authority, social security institutions, tax authorities, etc.)
 - . managing (salaries, working hours, rest periods)
 - . tax authorities (single for social security & tax or extra tax formalities)

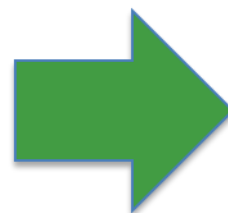
Formal communication to Public Authorities: How does it work? Declaring Employment Relations



Formal communication to Public Authorities: Formal Errors: How are they treated?



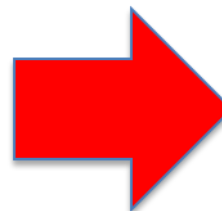
Formal errors are
treated
differently than
Undeclared Work



DK, FI, HU, IT, PT



Formal errors
are treated the
same as
Undeclared
Work



AT, BE, CY, DE, ES,
FR, LT, NL, PL, SE

Formal communication to Public Authorities: How does it work?

Managing Employment Relations

ADMINISTRATIVE DOCS

Just 1 e-doc:
BE, DK, HU,
IT, PL

Just 1 paper
doc: CZ

More e-
docs: AT, DE,
FI, FR, NL,
PT, SE

More paper
docs: AT, CY, ES,
FI, FR, LT, PT

SOCIAL SECURITY DOCS

Just 1 doc:
CZ, DK, HU,
PL

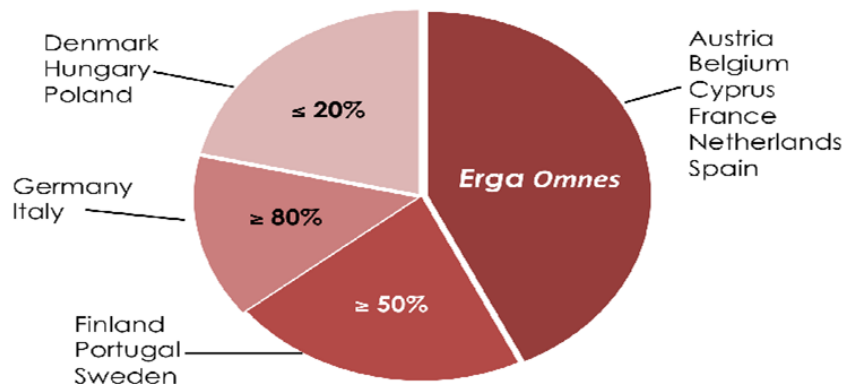
1 to worker+1
to P.A.: BE, CY,
IT, LT, SE

1 to worker+
more to P.A.s:
DE, ES, FI, PT

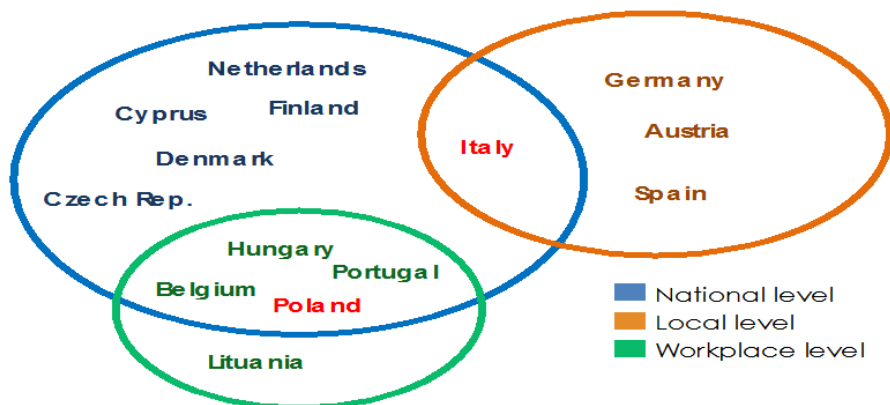
More docs to
wrkr + to P.A.s:
AT, FR, NL

The role of collective bargaining in agriculture

Collective bargaining coverage



Main levels of collective bargaining



New issues related to flexibility (working time, employment contracts, salary, “productivity bargaining”);

Good practices of social dialogue and tripartite regulation directed to improving regular work.

Good practices collected on regulation

General Subject	Good practices
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.

Good practices collected on labour inspection

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

Good practices collected on enforcement

General Subject	Good Practice
Enforcement - measures beyond the traditional “command and control” scheme	BE: “Prevent Agri” - social dialogue in OSH
	BE: Joint & several liability in subcontracting chains
	FI: Assignment of a pay claim to a trade union and its role of claimant in a trial
	NL: OSH & industrial relations and the “Arbo Catalogi” in agriculture
	NL: Joint Committees for restoring fair work conditions
	NL: A self-inspection tool for the employer (technologies can 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

Good practices collected of regulatory simplification

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”
	SE: “the average annual working time” in horticulture.

Good practices collected on collective bargaining measures

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: Tripartite regulation for distinguish independent worker from employee
	IT: Gli Avvisi Comuni to fight undeclared work
	IT: Quality Agricultural network
	NL: The Labour Foundation: social dialogue & tripartite regulation
	PT: “2015 Campaign to fight Undeclared Work”
	SE: A Tripartite working group with Tax Authorities to tackle UDW

Legally binding definitions UDW & related issues

Conclusions

1. No legally binding definition of UDW at EU levels;
2. Related issues: “illegal work”; “illegal employment”; “bogus self-employment”; “envelope wages”/“under-declared work”;
3. Not all MSs provide for legally binding definitions of UDW & related issues;
4. Some MSs: legal concept of “social fraud”

Recommendations

1. Need for shared knowledge of the National binding definitions of UDW & al.
2. Need for **better administrative cooperation on transnational work** topics
3. Starting a **discussion on the concept of “social fraud”**;
4. Stating **UDW causes social fraud**, a damage for the society as a whole.

UDW and National approaches to regulation

Conclusions

1. Regulation reflecting the **different political and cultural approaches**:
 - a. (full) workers protection;
 - b. tax (& social security concern);
 - c. Social fraud concern.
2. Direct regulation & deterrence \neq compliance-based regulation & self-regulation;
3. UDW & al. are different, not always treated differently;
4. A few MSs: (i) graduation of sanctions and (ii) preventive measures.

Recommendations

1. promote multi-level regulatory approaches: not only direct regulation/command and control/ threat of sanctions, **but also preventive measures**;
2. **Responsive regulatory approaches** are better than solely command & control approaches;
3. **Sanctions: (i) proportional to specific misconduct; (ii) responsive to the behavior of the offender.**

Administrative burden - from regulatory approach to simplification, flexibility & responsiveness

Conclusions

1. Too many and too heavy **administrative burdens** do not increase compliance;
2. Complex & redundant administrative burdens can cause mistakes in good faith;
3. Formal mistakes often considered as UDW;
4. MSs (very often) deliver same data to same/different Administrative Authorities;
5. Administrative simplification: strategic tool for multi-level policy to promote regular work.

Recommendations

1. Promote **simplification of administrative burdens is a priority**;
2. Avoid duplication;
3. Share information on **good practices**;
4. Test existing regulation on consistency with objectives/policies;
5. “**impact analysis**”: “ex ante” & “ex post”;
6. **Specific concern to very small undertakings.**

Labour Inspection and UDW

Conclusions

1. MSs ≠ on role, powers and tasks of Labour Inspections (L.I.);
2. different approaches to L.I. reflect ≠ different regulatory approaches;
3. “generalist systems” vs. “specialised systems”;
4. Enforcement organizations & measures: graduation & responsiveness;
5. Different nature of sanctions (penal, civil, administrative), but normally pecuniary sanctions;
6. Not all MSs grant adequate procedural rights to inspected employers.

Recommendations

1. Collect **information at national level of Labour Inspections** procedures/organization/enforcement systems;
2. **Exchange good practices:** top-down & bottom-up;
3. Responsiveness of enforcement to the conduct of the offender;
4. Proportionality to type of misconduct;
5. Procedural rights: ex. (i) maximum duration of L.I.; (ii) document marking the end of L.I..

The role of the Social Partners

Conclusions

1. Wider Employer's Organization presence/activity correspond to higher compliance to Labour Market Regulation;
2. Collective bargaining in agriculture is very much spread everywhere;
3. Some MSs have good practices of social dialogue & tripartite regulation;
4. MSs: leave more space of Labour Market Regulation to CAs. Not always Social Partners are prepared to it.

Recommendations

1. Recognize and **consider social partners as subjects for the regulation**;
2. **Privilege “multi-level” approaches** to regulation: tripartite regulation and self-regulation (social dialogue);
3. Social Partners: free to bargaining but adequately prepared to new spaces left by State direct regulation;
4. Social Partners: **essential role of sensitization in promoting compliance.**

The transnational dimension of social fraud in agriculture

Conclusions

1. UDW & related phenomena are present in agriculture in all MSs;
2. Social fraud is a comprehensive concept in some MSs has been governed by the law;
3. Posting of workers is not that present in agriculture. But in some MSs is emerging as a phenomenon of externalisation;
4. In agriculture, the transnational dimension of social fraud is related to UDW more than to fraud/abuse in PW.

Recommendations

1. **Collect data** on transnational abusive/ fraudulent practices;
2. EC role of **coordination**;
3. MSs: **enforcement measures** on UDW & related issues in relation to social alarm/policies/objectives;
4. Farmers: free to benefit of free market, free provision of services and free movement of workers. **Sensitized to practices** respectful of EU/National regulation.

Benchmarking in search of good practices

Conclusions

1. Many good practices throughout Europe;
2. Good practices:
 - (i) direct regulation;
 - (ii) tripartite regulation;
 - (iii) self regulation (social dialogue), both at central and at workplace level.

Recommendations

1. Adopt “**benchmarking**” in search of good practices as a major working method;
2. Collect good practices for the benefit of all MSs and national Social Partners.

Summarizing ...

- ✓ **GEOPA-COPA deplores all practices of UDW and social fraud both at national and at transnational level, as they produce unfair competition among companies and disadvantage to those who comply with rules;**
- ✓ **Not more regulation is needed, but better regulation is possible: responsive regulation.**



Thank you!