

Factsheet on Undeclared Work – POLAND

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

There is no single and official definition of undeclared work in Poland. However, there are two definitions of undeclared work that are widely used in Poland. The first definition is the one of 'illegal employment' laid down in article 2 of the Act of employment promotion and labour market institutions¹. The Act defines 'illegal employment or other illegal paid job' as:

- Employment of a person without a written confirmation of the reached agreement and its conditions within required time,
- Failing to register the employed person, or other person performing a paid job, in social security,
- Taking up by an unemployed person employment or other paid job or activity without reporting to district labour office,
- 'Illegal employment of a foreigner', as carrying out work by a foreigner or illegally entrusting work to a foreigner², who is not entitled to work in the understanding of article 87 item 1 or does not have a work permit, is not exempt from the obligation to have a work permit, or whose residency basis does not entitle him/ her to work, or who carries out work on other conditions or post than indicated in the work permit or who carries out work on other conditions or post than indicated in the temporary residency permit³.

This formal definition is widely used by organisations with an interest in undeclared work in Poland and institutions entitled to control the legality of employment (e.g. National Labour Inspectorate, local labour offices, Social Security Institution, tax inspection offices).

The second of the definitions has been elaborated by the Central Statistical Office for statistical purposes in their methodological approach to the measurement of this phenomenon⁴. For the description of UDW, the CSO uses the term 'unregistered employment', which, apart from the contract requirement, broadens the definition to any relationship (also in private households and in private farms), lack of social insurance and Labour Fund contributions and income taxes, as well as including unregistered self-employment⁵.

1.1.2 Characteristics of undeclared work

A recent study⁶ of UDW by the Central Statistical Office revealed that: (1) people employed in the hidden economy comprise more men (71.6 %), than women (28.4%); (2) unregistered work is performed by persons at different ages, from youth to persons at the retirement age. The highest share of the employed in the hidden economy constitutes persons aged 45-59 years (27.0 %); (3) in the structure of the employed in

¹ Act of 20 April 2004 on employment promotion and labour market institutions (Journal of Laws of 2004, No 99, item 1001, with amendments).

² Art. 2, par. 1, item 22a of the Act on employment promotion and labour market institutions.

³ Subject to article 119 and 135 item 3 of the Act on Foreigners of 12 December 2013

⁴ *Zasady metodyczne statystyki rynku pracy i wynagrodzeń* [The methodological principles of statistics of labour market and salaries], Central Statistical Office, Warszawa 2008 Internet: http://stat.gov.pl/cps/rde/xbcr/gus/Zasady_metodyczne_stat_ryнку_pracy_i_wynagrodzen.pdf

⁵ See for example: *Praca nierejestrowana w Polsce w 2014 r.* (Unregistered employment in Poland in 2014), Statistical information and elaborations, Central Statistical Office, Warsaw 2015.

⁶ *Praca nierejestrowana w Polsce w 2014 r.* (Unregistered employment in Poland in 2014), Statistical information and elaborations, Central Statistical Office, Warsaw 2015.

the hidden economy, workers with an education level no higher than basic vocational education are dominant – 57.8 %, while persons with at least secondary education comprise 42.2 %.

The National Labour Inspectorate's audits most often reveal the following irregularities⁷: (1) employment without a written employment contract and without social security registration or not complying with the dates for fulfilling those duties ('the first day' syndrome⁸); (2) registered unemployed persons, who fail to inform the local labour offices of their employment – registration in the registry of unemployed persons entitles to health insurance and state health service – thus can be attractive for persons carrying out undeclared work; (3) lowering the amount of official wages in employment contracts and, paying higher compensations than declared (wages set at the minimum wage level, and the remaining part is paid unofficially), (4) declaring part time employment in an employment contract, whereas in reality the employed person works additional hours outside the official registry (lowering social insurance fees and personal income tax), (5) hiding overtime hours (and paying for overtime 'under the table'); (6) hiding some parts of compensation: bonuses, awards and benefits paid outside the official mode, without obligatory tax and fees. In many cases one can observe 'falsely declared work', for example by signing the civil-law contract (on which the social security contributions do not need to be paid) where the conditions of work agreement are met or temporary work contract where the relationship is evidently long lasting.

The CSO study⁹ indicates that **gardening and farming** were the most common types of work performed in the hidden economy (22.2 % of UDW), followed by **construction and installation maintenance and repair** (13.5 %) as well as **construction and installation services** (14.5 %). Other significant areas of UDW comprise: neighbourhood services (9.8 %), taking care of a child or elderly person (5.6 %), manufacturing (3.5 %) and trade (3.9 %). The most commonly performed jobs by both men and women were gardening and farming. The next most common jobs for men were construction and installation services and construction and installation maintenance and repair, while women took care of children or elderly persons or provided neighbourhood services.

The CSO survey¹⁰ indicates that the main group of employers for whom UDW is performed is constituted by natural persons (households) (68.9 % of UDW incidences). Among the formal employers offering unregistered work, 26.5 % were private companies. Only a minority of those employed in the hidden economy (2.5 %) were self-employed. The analysis of the CSO survey results¹¹ indicates that according to the respondents, the main reasons for taking up UDW are: inability to find a formal job (58.8%) and difficult material situation (insufficient income) (39.6 %). Other reasons include: the higher pay without formal employment contract proposed by the employer

⁷ *Ocena skali zjawiska zawierania umów cywilnoprawnych i zatrudnienie w szarej strefie* [Assessment of the scale of concluding civil-law agreements and employment in grey economy], General Labour Inspectorate, Warsaw, February 2016. Internet: (http://rop.sejm.gov.pl/1_Old/opracowania/pdf/material91.pdf).

⁸ Currently, the Labour Code requires the signing of the labour agreement until the end of the first day of work. Therefore some employers, who use UDW, while controlled claim to have just employed the person, and deliver the signed contract at the end of the day of control (which they claim to be the first day of work).

⁹ *Praca nierejestrowana w Polsce w 2014 r.* (Unregistered employment in Poland in 2014), Statistical information and elaborations, Central Statistical Office, Warsaw 2015.

¹⁰ *Praca nierejestrowana w Polsce w 2014 r.* (Unregistered employment in Poland in 2014), Statistical information and elaborations, Central Statistical Office, Warsaw 2015.

¹¹ *Praca nierejestrowana w Polsce w 2014 r.* [Unregistered employment in Poland in 2014], Statistical information and elaborations, Central Statistical Office, Warsaw 2015.

(24.6 %), high insurance rate (20.5 %), and taxes discouraging from declaration of income (13.2 %). According to Human Capital Balance research carried out throughout 2010-2014¹², key causes for not concluding a formal employment agreement are as follows: unwillingness of the other side to conclude an employment agreement (40 %), treating undeclared work as additional or temporary work (30 %), working mainly for family/ friends (19 %) and too high taxes and fees (18 %).

1.1.3 Estimated scale of undeclared work

Analysis of the scale of undeclared work has been performed by the CSO on the basis of the special module to LFS survey in the years 1995, 1998, 2004, 2009, 2010 and 2014. The survey on unregistered employment carried out in 2014 indicated that the scale of the phenomenon is still significant, despite a slight decrease – as compared to the results of the previous surveys – in the percentage share of people employed in the hidden economy in the entire working population. In the period between January and September of 2014, unregistered work was performed by 711 000 people, i.e. 4.5 % of the total number of the employed (as compared to 2010: 732 000 / 4.6 %; 2009: 785 000 / 4.9 %; 2004: 1 317 000 / 9.6 %; 1998: 1 431 000 / 9.3 %; 1995: 2 199 000 / 14.9%). In 2014, unregistered employment constituted the main job for 396 000, i.e. for 55.7 % of the total number of the illegally employed. Also the study of Human Capital Balance estimated the scale of UDW to reach 974 000 people (4.0 % of the population) in 2014 (as compared to: 937 000 / 3.8 % in 2013; 932 000 / 3.8 % in 2012; 1 006 000 / 4.1 % in 2011; 1 210 000 / 4.7 % in 2010). Therefore one can assume that the estimates of CSO are slightly underestimated. National Labour Inspectorate on the basis of conducted controls estimates the number of illegally employed in 2015 at 600 000 workers¹³.

The scale of UDW as a share of GDP is difficult to estimate. First of all the estimates of the shadow economy as % of GDP are differentiated, depending on the source and methodology used. The CSO¹⁴ estimates the shadow economy at 13.7 % of GDP in 2013 (13.2 % in 2012; 11.4 % in 2011; 11.9 % in 2010). At the same time the share of UDW in GDP is estimated by the CSO at 3.9 % in 2013 (3.7 % in 2012; 3.5 % in 2011; 3.3 % in 2010) – so it constitutes around one third of the shadow economy¹⁵. These calculations are often regarded as underestimated. Other available national estimates¹⁶ indicate that the scale of the shadow economy oscillates around 20 % (19.5 % in 2014; 19.9 % in 2013; 21.1 % in 2012; 20.0 % in 2011; 21.0 % in 2010). Also the analyses of the shadow economy with the use of indirect methods prepared under the project initiated by Ministry of Labour in 2008 indicated roughly similar results (demand for electricity – 22.1 %; demand for money – 22.8 %). From a comparative perspective, Schneider et al.¹⁷ estimates the informal economy in Poland at 23.8 % in 2013 and at

¹² Bilans Kapitału Ludzkiego [Human Capital Balance], Internet: www.bkl.parp.gov.pl

¹³ *Skutki dla budżetu państwa zastępowania umów o pracę umowami cywilnoprawnymi i zatrudniania w szarej strefie* [The effects for the state budget of replacing employment contracts with civil-law contracts and shadow economy work], National Labour Inspectorate, Warszawa, kwiecień 2016 r.

¹⁴ *National accounts by institutional sectors and sub-sectors 2010-2013*, Central Statistical Office, Warsaw, August 2015.

¹⁵ Pasternak-Malicka M., *Zatrudnienie nierejestrowane w kontekście problematyki bezrobocia w Polsce* [Unregistered employment in the context of unemployment problems in Poland], Studia BAS, Nr 4(36) 2013, s.27-56.

¹⁶ Łapiński K., Peterlik M., Wyżnikiewicz B., *Szara strefa w polskiej gospodarce* [The gray zone in Polish economy], IBnGR, Warszawa 2014.

¹⁷ Schneider F., Raczowski K., Mróz B. (2015), *Shadow economy and tax evasion in the EU*, Journal of Money Laundering Control, Vol. 18 Iss 1, pp. 42.

23.5 % in 2014. This suggests that the scale of the shadow economy in Poland might be two times larger than official CSO statistics. If the rough estimate of the share of UDW in the shadow economy (one third) are correct, the share of the UDW in GDP would be as much as 7-8 %.

1.2 Institutional Framework

1.2.1 Responsibilities for addressing Undeclared Work

During the past 20 years, the control of the legality of employment in Poland underwent significant changes, especially within the institutional framework. From 1995 to 1999 the control of legality of employment was conducted by voivodeship labour offices, in 2000-2001 district governments, and further on (2001-2007) Legality of Employment Control of Voivodeship Office became the responsible organs. The **National Labour Inspectorate** has played a controlling function since 1 July 2007 on the basis of the Act of 13 July 2007 on the National Labour Inspectorate (Journal of Laws of 2007, Nr 89, item 589). The National Labour Inspectorate is governed by the Sejm of the Republic of Poland. It is supervised by the Labour Protection Council¹⁸, established by the Sejm Marshal. Controls of the legality of employment and other paid work are carried out by specialised *employment legality sections* functioning in Regional Labour Inspectorates.

The National Labour Inspectorate cooperates with a number of institutions interested in particular aspects of counteracting undeclared work and its results. Cooperation with **Public Employment Services** and state administration - **Police, Border Guards, Tax Offices** and **Social Insurance Institution**, and **local governments** is of particular importance. The control of the legality of **employment of foreigners**, which is an obligation of the National Labour Inspectorate (since 1 July 2007) and Border Guard (since 1 January 2009), is a special case of sharing competences between two institutions.

1.2.2 Characteristics of the responsible organisations

The organisational structure of the National Labour Inspectorate is as follows: the General Labour Inspectorate, 16 regional labour inspectorates with 42 functioning departments, and the National Labour Inspectorate Training Centre in Wrocław. On 31 December 2014, 2 751 persons were employed in the Inspectorate, including 1 572 persons employed as inspectors, including around 130 at local units dealing directly with legality of employment issues¹⁹. Legality of employment controls carried out by the National Labour Inspectorate are carried out based on an annual work programme, complying with an accepted plan of action. Additionally, ad-hoc measures are carried out in the form of organised seasonal actions. Another kind of action is intervention controls, carried out in response to complaints and referrals filed to the National Labour Inspectorate.

1.2.3 Cooperation and collaboration between authorities and cross-border authorities

The rules of cooperation of particular services within the framework of controls of legality of employment are set out within the framework of sharing competences defined by law. The regulations are often specified by bilateral agreements between particular

¹⁸ The Labour Protection Council is an organ of authority over working conditions and the activity of the National Labour Inspectorate. The Council is established by the Sejm Marshal and it is appointed for the term of four years (<http://rop.sejm.gov.pl>)

¹⁹ The report on the activities of the National Labour Inspectorate in 2014 (*Sprawozdanie z działalności Państwowej Inspekcji Pracy w 2014 r.*), General Labour Inspectorate, Warsaw 2015.

institutions²⁰. The National Labour Inspectorate can also conduct controls on behalf of a cooperating institution. In 2014 there were 1 084 such controls, of which the most usual requests were from: the tax offices (513 controls), district labour offices (226), Social Insurance Institution (156) and the Police (126).

According to the reports of the Inspectorate²¹, cooperation between the National Labour Inspectorate and the regional **Social Insurance Institutions** has been systematically improving. Labour inspectors and Social Insurance Institution employees take part in meetings, conferences and joint trainings on labour law and social security. Moreover, cooperation between **district labour offices** (carrying out controls and explanatory actions on behalf of the National Labour Inspectorate, verification of personal data of employees as far as the obligation to inform the labour office on taking up employment, other paid work or starting activity is concerned, common prevention and information actions) is also positive. Cooperation with the **Police** (both controls by the National Labour Inspectorate with Police assisting and on behalf of the Police) is also assessed positively²².

However, cooperation is not always that effective and is hampered by many barriers. Between 2010-2012 there was no improvement in cooperation between National Labour Inspectorate and tax offices. The report²³ emphasises that the cooperation of labour inspectors and tax control offices, and tax offices is limited to informing on the breach of the tax law found during the control. Despite requests for feedback directed to tax organs, the Inspectorate is not being informed on the method of examining the information sent and on the resulting actions of tax offices. The **imperfect system of exchange of information**²⁴ has been the key barrier for many years. Labour inspectors do not have full and direct (online) access to databases and registries, like the personal identification system (PESEL) and data of the Social Insurance Institution – as far as the social insurance security registry and labour fund fees arrears are concerned, as well as the data of district labour offices – concerning persons in the registry of the unemployed (Syriusz system)²⁵. Currently, the employees of the National Labour Inspectorate can use current data from databases on written request.

The National Labour Inspectorate cooperates actively in the work of international bodies such as SLIC. In 2014 under the Programme of Exchange of Labour Inspectors organised by SLIC and financed by the European Commission, the delegates of the National Labour

²⁰ Example: Agreement between General Labour Inspector and the Chief Commandant of the Border Guard of 12 May 2015 on the rules of cooperation on National Labour Inspectorate and Border Guard; Agreement of 5 November 2010 between General Labour Inspectorate and the president of Social Insurance Institution on the cooperation of National Labour Inspectorate and Social Insurance Institution.

²¹ Report on National Labour Inspectorate operation 2007-2014. Internet: <http://www.bip.pip.gov.pl/pl/bip/sprawozdania>.

²² It increases safety for controllers and enables immediate verification of personal data of workers as well as allows for operational actions by the Police, which are not allowed for labour inspectors.

²³ Checks legality of employment, including employment of foreigners (*Kontrole legalności zatrudnienia, w tym zatrudnienia obcokrajowców*), General Labour Inspectorate, Warsaw, May 2013 Internet: http://rop.sejm.gov.pl/1_0ld/opracowania/pdf/material64.pdf.

²⁴ The problems with coordination of works aiming at the limitation of undeclared work (among others: lack of central data base, dispersion and partial character of gathered data) were identified in analyses made in 2007 commissioned by the Ministry of Labour and Social Affairs. Not all the problems have been solved yet.

²⁵ *Ocena skali zjawiska zawierania umów cywilnoprawnych i zatrudnienie w szarej strefie* [Assessment of the scale of concluding civil-law agreements and employment in grey economy], General Labour Inspectorate, Warsaw, February 2016. Internet: http://rop.sejm.gov.pl/1_0ld/opracowania/pdf/material91.pdf.

Inspectorate have taken part in study visits in Finland, Sweden, France and the Netherlands.

1.3 Policy Focus and Measures

1.3.1 Policy approach

Deterrence is dominant in the policy approach to combating UDW in Poland. The Labour Inspectorate is equipped with a number of measures (described below) to detect and punish the non-compliance with registering of work. Also, recent policy changes initiated by the new government are focused on the strengthening of detection and punishment of illegal practices. For example, the new amendment to the Labour Code²⁶ aims at the introduction of the obligation to confirm in writing the conditions of work related to the conclusion of an employment contract before allowing the employee to work (and not as before – no later than at the end of the first day of work). It is aimed at “increasing the protection of workers’ rights and prevention of illegal employment” by giving the National Labour Inspectorate “more effective tools to ensure the effectiveness of controls in the field of legal employment”. This amendment will lead to improving detection of the undeclared work during the inspections, as the work on the basis of the civil-law agreements where employment contracts should be signed might be contested by labour inspectors²⁷.

Some of the elements of the existing and planned policy can be categorised as enabling (preventive) measures. The first of such policies regards the existing lowered amount of the social security contributions for the first business start-up for the first two years of performing economic activity. Such a measure effectively discourages UDW self-employment (at least in terms of the formal registration – not in hiding part of the income) and makes it easier to run companies in the first period. Another action is the announced intention of raising the tax-free amount up to 8 000 PLN, which would possibly affect the employee-initiated UDW, especially for low-paid workers.

One of the measures that can be considered ‘curative’ is the introduction (from 1 October 2011) of the possibility to easily register a childcare assistant working in the family home (i.e. nanny) to social security on the basis of the Act of 4 February 2011 on the care for children under three years of age. On the basis of the simple civil-law agreement the parents (who are formally the contribution payers) register the nanny in the Social Insurance Institution. What is important (and encouraging), is that the Social insurance contributions (pension, disability and accident insurance) and health insurance for the nanny who earns no more than the minimum wage are covered by the Social Insurance Institution from the state budget.

Apart from these actions, the National Labour Inspection undertakes a number of so-called ‘preventive actions’, which should in fact be categorised as actions fostering commitment, as they focus on awareness-raising campaigns (e.g. the ‘Before you undertake work’ campaign; ‘On the wave of first work’ campaign; ‘Learn your rights at work’ competition).

1.3.2 Measures to tackle UDW

In the case of breach of duty to prepare a written contract or failure to confirm in writing the kind of contract and its conditions - not later than the first day of work of the employee - which was recorded during the legality of employment control, the employer

²⁶ Project of an Act on the amendment of the Labour Code (project submitted to the Marshall of the Sejm on 4th March 2016).

²⁷ Labour inspectors have the right to start legal (court) action to establish the existence of an employment relationship, even without the consent of the employee, or to join the already ongoing proceedings - with party rights.

can be charged with a **fine**. The labour inspector is also entitled to resign from giving a fine and submit a motion to court. In the case of not registering the employee in social security the labour inspector directs such information to the Social Insurance Institution, which starts adequate fine procedures²⁸. The labour inspector is also obliged to inform other relevant institutions, including tax control, of infringements found in the course of the control. The employee who is employed illegally can also be punished in the course of a control, when he/ she was registered as unemployed and did not inform the relevant district labour office on taking up employment within seven days²⁹. Separate penalties are provided during the legality of employment controls carried out by the Border Guard and National Labour Inspectorate, both to employer and a foreigner³⁰. In 2014, as a result of legality of employment controls, labour inspectors fined 1 253 persons, amounting to PLN 1.5 million (352 900 EUR) in total and submitted 2 050 motions for punishment to courts. On the basis of findings from the legality of employment controls, labour inspectors submitted 138 referrals of suspected criminal offences.

1.3.3 Good practice

There is little evidence on good practice examples in tackling UDW in Poland. In terms of the 'curative' actions, one could consider the possibility to register a childcare assistant with the social security institution (as described in point 1.3.1) as this brought about increased protection of this significant group of workers, the majority of whom were previously employed in UDW.

In terms of the other actions, the promotional campaigns of the National Labour Inspectorate could be considered. One of such examples is the 'Before you undertake work' (Zanim podejmiesz pracę) campaign. The campaign aims to disseminate knowledge about labour law among workers, students and employers. The campaign comprised activities such as telephone duty of inspectors (inspectors were available to take calls from the public and respond to questions on issues of labour law, etc), radio broadcasts, and information on web portals. In 2014, two editions of the campaign were organised³¹. Also EU funded projects aimed at legality of employment of foreigners, in cooperation with International Organisation for Migration and Ministry of Internal Affairs have been undertaken (e.g. 'Migrants' rights in practice / 'Prawa migrantów w praktyce'; 'Migrant Info'), including operation of the helpline with information on legal employment in Poland.

1.3.4 Challenges and barriers

One of the biggest challenges is the economic character of UDW, which is hard to change without significant improvement of the labour market conditions, along with reducing key barriers of legal employment – which are high social security contributions and other non-wage costs, bureaucracy and administrative procedures. As noted above, a large part of UDW takes place in households / is provided on behalf of individuals. The high (but lowering) level of social acceptance of UDW, especially performed for households, makes penalising measures ineffective in combating this kind of UDW. Also, lack of understanding of the consequences of UDW for both worker and the employer plays significant role. The changes stipulated as the result of the project initiated by the Ministry of Labour in 2007 still remain valid³², including: (1) introduction of the financial

²⁸ Article 98 item 1 point 1 and 2 of the act of 13 October on Social Security System.

²⁹ Article 119 item 2 of the Act on the Promotion of Employment and Labour Market Institutions

³⁰ Act of 20 April 2004 on employment promotion and labour market institutions (Journal of Laws of 2004, No 99, item 1001, with amendments).

³¹ Internet: www.prawawpracy.pl.

³² The reasons for undeclared work, its scale, nature and social consequences. As part of the orders were carried out simultaneously and independently two research projects: (1) a draft

incentives that would diminish the motivation of the employees to undertake undeclared work (e.g. diminishing the tax wedge, tax burden and social security contributions), (2) liquidation of administrative burden (e.g. simplifying procedures of employment, cooperation with the labour market institutions); (3) increasing coordination of actions among public institutions (e.g. through sharing of information), (4) introduction of individual help to unregistered employees (thus helping them to leave the shadow economy and supporting those at risk of entering UDW), (5) organising preventive informative and educational campaigns.

of the Institute of Labour and Social Affairs (ILSS) and the Public Opinion Research Centre (CBOS); (2) the project Center for Social and Economic Research (CASE), and Millward Brown SMG / KRC. *(Przyczyny pracy nierejestrowanej, jej skala, charakter i skutki społeczne. W ramach zlecenia prowadzone były równocześnie i niezależnie dwa projekty badawcze: (1) projekt Instytutu Pracy i Spraw Socjalnych (IPiSS) oraz Centrum Badania Opinii Społecznej (CBOS); (2) projekt Centrum Analiz Społeczno-Ekonomicznych (CASE) oraz Millward-Brown SMG/KRC).*