

Factsheet on Undeclared Work – SLOVENIA

1.1 Nature and Estimated Scale of Undeclared Work

1.1.1 Definition of undeclared work

The relatively recently adopted and implemented (from 18 August 2014) Prevention of Undeclared Work and Employment Act (ZPDZC-1) differentiates between undeclared work and undeclared employment.¹ Both forms are prohibited in Slovenia.

Article 3 of the Act states that the pursuit of activities or work shall be deemed undeclared work when:

- A legal person or a foreign legal entity that is a legal person pursues an activity not defined in its constituent instrument or has no statutory documents relating to fulfilment of the conditions for performing the activities defined in its constituent instrument;
- A self-employed person or a foreign legal entity that is a self-employed person pursues an activity not recorded in the register of companies or has no statutory documents relating to fulfilment of the conditions for performing that activity;
- A legal person, a foreign legal entity or a self-employed person pursues an activity despite a ban on carrying out such activity;
- A foreign legal entity pursues an activity in the Republic of Slovenia and does not have a registered subsidiary there or does not hold a relevant statutory permit;
- A legal entity established in an EU Member State or the European Economic Area or Swiss Confederation fails to carry out service activities in accordance with the act governing services in the internal market; and
- An individual who is not registered or notified as provided by this or any other act pursues an activity or work.

Similarly, Article 5 of the Act states that undeclared employment shall be deemed to occur when an employer:

- Allows an individual to work but fails to conclude an employment contract with him and does not register him for compulsory social insurance schemes or deregisters him from compulsory social insurance schemes during employment;
- Allows an individual to work but fails to conclude a civil law contract on the basis of which work can be carried out or does not register him for compulsory social insurance schemes;
- Fails to conclude a contract with a retired person for temporary or occasional work in accordance with the act governing the labour market;
- Allows a school pupil or student to work in contravention of the regulations governing temporary or occasional work of pupils and students; OR
- Illegally employs a third-country national.

However, there are several forms of work and activities, which are not defined as undeclared work or employment, such as neighbourly help and humanitarian work.

¹ The Government of the Republic of Slovenia (Vlada Republike Slovenije), 2014. Prevention of Undeclared Work and Employment Act (Zakon o preprečevanju dela in zaposlovanja na črno (ZPDZC-1)).

Internet: <https://www.uradni-list.si/1/content?id=117354>

These are further elaborated in Article 7.

In the law, there are also two definitions of activities related to undeclared work, which are also prohibited – facilitation of undeclared work (Article 4) and illicit advertising (Article 6).

All organisations with an interest in UDW and UDE within Slovenia follow the same definitions.

1.1.2 Characteristics of undeclared work

The most frequent forms of undeclared work are:

- When employers provide work to individuals with whom no employment or civil-law contract has been concluded;
- Employers who have failed to enter employees into relevant social insurance, and where employers de-register employees from social insurance while they still work for them; and
- Violations in the employment of foreign persons.

According to the report of the Government Commission for detecting and preventing undeclared work and undeclared employment for 2016², the main sectors where undeclared employment is found are: construction, transportation, accommodation and food service activities.

No information on the employer size distribution of undeclared work were available.

According to Nastav (2009)³ Slovenia does not deviate significantly from other countries in terms of the causes for the development and persistence of the shadow economy. The main reason for the shadow economy to exist is financial gains for working (or consuming) in it. That is why the shadow economy in Slovenia can in many cases be the only way out of difficult living conditions. Thus, it encompasses the characteristics of the social economy (the one that strives for survival and not sheer profit-making). Amongst the main causes for the shadow economy to be present in Slovenia are also high administration barriers (procedures, work of institutions) and tax load, which altogether push production into the shadow economy. Besides, social security fraud is a significant characteristic of the shadow economy in Slovenia.

1.1.3 Estimated scale of undeclared work

According to the data presented in the Report on Effects of Prevention of Undeclared Work and Undeclared Employment for the year 2014 prepared by the Government Commission for detecting and preventing undeclared work and undeclared employment (2015), the share of undeclared employment is almost negligible – 0.006% of all employed persons in Slovenia. According to the Statistical Office of Slovenia, the share of shadow economy in 2010 was 8.3 % of Slovenian GDP.

² The Government of the Republic of Slovenia, Report on Activities and Effects of Prevention of Undeclared Work and Undeclared Employment for the year 2016 prepared by the Government Commission for detecting and preventing undeclared work and undeclared employment.

³ Nastav Bojan. 2009. The grey economy in Slovenia. Measurement, causes and consequences. Doctoral dissertation, Faculty of Economics, UL Ljubljana (Siva ekonomija v Sloveniji. Merjenje, vzroki in posledice. Doktorska disertacija, Ekonomska fakulteta, UL Ljubljana). Internet: http://www.protisiviekonomiji.si/fileadmin/dokumenti/si/projekti/2013/siva_ekonomija/bojan_nastav_-_doktorska.pdf

1.2 Institutional Framework

1.2.1 Responsibilities for addressing Undeclared Work:

In Slovenia, there are several authorities with responsibilities for identifying, tackling and/or preventing UDW. With the new law in 2014, the main responsibility for tackling undeclared work was transferred to the Financial Administration of the Republic of Slovenia (FURS), which is in charge of undeclared employment (Article 5) and undeclared work regarding the supervision of individuals – tinkers (šušmarji). The Labour Inspectorate, MIRS and Inspectorate of the Republic of Slovenia for Infrastructure have responsibility for certain forms of undeclared work, as stated below:

- Labour Inspectorate: part of illicit advertising;
- MIRS: undeclared work (with the exception of tinkers); facilitation of undeclared work of legal persons and part of illicit advertising; and
- Inspectorate of the Republic of Slovenia for Infrastructure: undeclared work, facilitation of undeclared work and illicit advertising, focus is on the supervision of the activities of passenger and goods transport in the road, especially activities of taxi services.

Other supervisory authorities are responsible for violations of the provisions of this Act related to the fulfilment of specific conditions for performing activities in the areas of agriculture and the environment, forestry, energy and spatial planning, health, education and sport and the interior.

The Government Commission for detecting and preventing undeclared work and undeclared employment has special role – more on its characteristics and activities is given below.

1.2.2 Characteristics of the responsible organisations

- Government Commission for detecting and preventing undeclared work and undeclared employment: for the determination, coordination and monitoring of the areas of prevention of undeclared work and undeclared employment the Commission is appointed by the Government of the Republic of Slovenia. The Commission is composed of a representative of the ministry responsible for the field of prevention of undeclared work and employment (Ministry of Labour, Family, Social Affairs and Equal Opportunities), of the Ministry of Economy, Ministry of Finance, Ministry of Justice, Ministry of Internal Affairs, representatives of the supervisory authorities under ZPDZC-1, employers' and trade unions' representatives.
- Financial Administration of the Republic of Slovenia: at the end of 2016 there were 166 members of mobile units and 250 financial inspectors which also carry out inspections in the area of undeclared work and employment. The main tasks of the Financial Administration of the Republic of Slovenia are: assessment, calculation and collection of taxes and duties; customs clearance of goods; financial supervision and investigation; gaming supervision; cash controls on entering or leaving the EU; and more; since 18 August 2014 it is also responsible for inspections and control of undeclared work and employment in Slovenia.
- Labour Inspectorate of Slovenia: 42 labour inspectors at the end of 2016; until 18 August 2014 were responsible for inspections of undeclared work and employment; the Labour Inspectorate oversees the implementation of laws, other regulations, collective agreements and general documents regulating employment, wages and other receipts from employment, the employment of workers at home and abroad, cooperation of workers in management, strikes and occupational safety, unless otherwise provided by regulations. The main areas of inspections are: Employment relationships, Occupational Safety and Health and Social Protection.

- MIRS: is an inspection office, operating within the Ministry of Economic Development and Technology. Market inspectors carry out surveillance of execution of several legislative acts, which specify market relations. They are responsible for areas such as consumer protection, trade and craft, tourism and catering, protection of copyrights and some others. At the moment there are 100 inspectors.

The rest of the authorities (inspectorates) are responsible for specific areas.

1.2.3 Cooperation and collaboration between authorities within Slovenia and cross-border authorities

According to the new Prevention of Undeclared Work and Employment Act (ZPDZC-1), the Financial Administration of the Republic of Slovenia (FURS) has (from 18 August 2014) exclusive competences and new powers of control over undeclared work and employment of individuals. It is also responsible for controlling unauthorised advertising of undeclared work and employment of individuals.

Since there are also other authorities involved, the Slovenian government appointed a special commission, in which all the involved authorities are cooperating. The tasks of the Commission are as follows:

- Coordinate the work of the supervisory authorities related to the prevention of undeclared work and employment;
- Propose to the Government of the Republic of Slovenia measures for more efficient prevention and detection of undeclared work and employment;
- Report on the implementation and effects of this Act to the Economic and Social Council, the Government of the Republic of Slovenia and the Inspection Board of the Republic of Slovenia by the end of June for the previous calendar year;
- Give initiatives to amend regulations within the limits of its competence;
- Identify annually the activities it considers prone to illegal employment of third-country nationals and draft an inspection plan; and
- Draw up a report on the inspections referred to in the preceding indent carried out in a calendar year and inform the European Commission of their results by the end of June for the previous calendar year.

If UDW and UDE are detected by other authorities that are not specifically stated in the law, these authorities have the obligation, to draw up a report on the findings and submit it to the competent supervisory authority.

According to the reports from different authorities involved in the activities of identifying, tackling and/or preventing UDW, the mechanisms for cooperation between them is relatively effective.

There is no specific information on cooperation and collaboration with other Member States.

1.3 Policy Focus and Measures

1.3.1 Policy approach

The Financial Administration of the Republic of Slovenia is the main authority responsible for the supervision of undeclared work and employment. System supervision over taxpayers is provided on the basis of the annual plan. Criteria on the basis of which audits are performed are defined on the basis of risk analysis, received reports and random selection. Supervision over undeclared work and employment is directed into activities which are detected as risky and into implementation of activities in individual industries where this type of audits has not been performed yet. We would like to emphasize the following activities: accommodation and food service activities, construction, transport of passengers, trade, bakeries, taxi drivers and various service

activities. Financial penalties are prescribed for violations. The most severe violations are processed within the criminal procedure.

Within the policy for managing undeclared work and employment the significant emphasis is placed also on preventive activities, with which taxpayers are encouraged to register and legalise performing of work and activities and to raise tax awareness. Also in cases of violations in connection with undeclared work and employment offenders are encouraged to eliminate them already during supervision, which results in the primary purpose of supervision, i.e. legalisation of employment, performing of work or activities.

1.3.2 Measures to tackle UDW

Preventive measures

Taxpayers are with preventive measures encouraged to register and legalize the performed work and activities and to raise tax awareness. Also in cases of violations related to undeclared work and employment the offenders are encouraged to eliminate them already during supervision, with which they achieve the primary purpose of supervision, i.e. legalization of employment, performing of work or activities. Joint actions of supervisory authorities have also a preventive effect on prevention of grey economy, which includes also undeclared work and employment. Other preventive measures include also extensive informing via the website and the media, informing takes place about negative consequences in connection with rights from the obligatory health insurance, compensation for sick leave, deprivation of rights related to the employment relationship, deprivation of severance pay, pay for annual leave, reimbursement for meals during work and commuting, at losing jobs there is no entitlement to unemployment benefit, the work performed is not included into the period of employment nor pensionable service and earnings.

Introduction of fiscal cash registers and influence on undeclared work and employment

In 2016 fiscal cash registers were introduced in Slovenia. On the basis of data on fiscally verified invoices and data about individuals (cashier, operator), who have issued the invoice, cases of undeclared employment may be established.

Introduction of fiscal cash registers has several positive effects. One of them is evident also on the base of increased entries into the social security insurance, which has resulted in increased payments of social security contributions and personal income tax on income from employment. A part of these entries is a consequence of the fact that the Slovene Financial Administration supervises also undeclared work and employment with the assistance of data within fiscal tax registers because the invoice shall include the data about the invoice issuer – cashier.

As an indirect effect we may take also data into consideration about persons, who have entered into the social security system for the first time. In the first ten months of 2016 there were 46,836 persons registered for the first time at 15,311 employers at taxpayers, who use fiscal cash registers. Out of this number there are 24,569 newly registered persons, who issue invoices (cashiers).

Penalties and sanctions

The ZPDZC-1 states fines for undeclared work from EUR 2,000 to EUR 26,000 for legal persons and sole traders and from EUR 1,000 to EUR 7,000 for individuals – moonlighters.

Undeclared employment shall be fined from EUR 5,000 to EUR 26,000 for employers, who are not individuals, when they employ illegally. The fine from EUR 500 to EUR 2,500 is also prescribed for individuals, to whom employers enable work without conclusion of employment contracts or other civil-law contracts, on the basis of which work may be performed. If the work is performed on the basis of the civil-law contract, the fine

prescribed for individuals is from EUR 100 to EUR 2,500 in cases when they don't have contracts on the spot where they perform the work all the time.

Additional obligations, which shall be fulfilled in cases of violations established in supervision, are prescribed for employers, who enable work to individuals, with whom they have no concluded employment contract:

- They shall conclude full-time employment contracts for an indefinite period of time with these persons and register them in social insurance and
- They shall pay all obligations related to the employment relationship for the period of the whole undeclared employment. If it is not possible to establish the period of employment, it shall be deemed on the basis of law that the person has been in undeclared employment for three months.

In cases when the supervisory authorities establish undeclared employment of citizens from third countries, additional sanctions or limitations are prescribed for employers, to whom fines are finally imposed for these offences, as follows:

- They shall be excluded from the procedures of public procurement or the right to public funds is limited to them, including funds of the European Union, for the period of five years after the offence decision is final (employers with the negative reference); and
- They shall return public funds, including funds from the European Union, paid in the period of twelve months before preparation of the first record of the supervisory authority until the imposed fine for the offence is final.

Deportation conducted by the Police is envisaged as the secondary sanction for citizens of third countries illegally employed in the Republic of Slovenia, which means that this person is illegally located on the territory of the Republic of Slovenia.

The ZPDZC-1 defines also joint and several liability for the main contractor and intermediary sub-contractors in cases if employers, who have illegally employed persons, are subcontractors. In these cases the main contractor and all intermediary subcontractors are jointly and severely liable for possible outstanding liabilities related to the employment relationship for the time of undeclared employment if they have known that employers have illegally employed those persons.

At supervision over undeclared work and employment the measure is also applied for prohibition of performing of activities and sealing the business premises, which is one of the most severe measures, used by the supervisory authority in cases when this is absolutely necessary due to prevention of further violations, failure to comply with prior prohibitions, due to health hazard and also other circumstances.

In cases of the most severe violations the Slovene Financial Administration shall submit criminal charges due to suspicion of criminal acts of undeclared employment in accordance with Article 199 of the Penal Code (Official Journal of the RS, No. 50/12 – Official consolidated version, 6/16 – corr., 54/15 and 38/16), which is submitted when suspects in conflict with regulations employ two or more workers and they fail to enter them into the appropriate insurance or they employ several foreign persons or persons without citizenship without proper permits for work. Severe penalties are envisaged in cases of, for example, especially exploitative work conditions or exploitation of victims of human trafficking.

1.3.3 Good practice

One of the most important examples of good practice is improved cooperation between many authorities responsible for identifying, tackling and/or preventing UDW. This was emphasised by the majority of those authorities in their reports. The implementation of the new legislation and the transfer of major responsibilities for identifying and/or preventing UDW to Financial Administration of Slovenia (FURS) enabled utilisation of

FURS's mobile units in identifying and preventing UDW and UDE. It also increased the effectiveness of the inspections and control in the field.

Preventive activities or raising awareness at people through various media have an important role in prevention of undeclared work and employment.

1.3.4 Challenges and barriers

The majority of authorities that perform inspections report that they are understaffed.

Another important challenge is the attitude of the Slovenian population about the acceptance of illegal activities and perception of how widespread they are in the Slovenian society. According to the Eurobarometer 402 (Eurobarometer 402, 2014), the level of risk of being detected in Slovenia is the lowest among all EU countries – only 14% of Slovenian respondents said that there is high risk of being detected by tax or social security institutions in the case of not declaring income.⁴

In this part public awareness activities shall be continued about the consequences of undeclared work and employment and about activities of supervisory authorities.

⁴ EU Commission (2014), Undeclared Work in the European Union, Eurobarometer Special Survey 402, Internet:
http://ec.europa.eu/public_opinion/archives/ebs/ebs_402_en.pdf