



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper - Greece

Making the fight against undeclared work a priority

**Peer Review on “Enhancing whistleblower protection
through better collaboration between responsible
authorities – a tool to prevent and tackle
work-related crime”**

Norway, 14-15 February 2019



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Contact: Kim Henriksson

E-mail: EMPL-A1-UNIT@ec.europa.eu

Web site: <http://ec.europa.eu/social/mlp>

European Commission

B-1049 Brussels

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1 Introduction

This paper has been prepared for the Peer Review on "Enhancing whistleblower protection through better collaboration between responsible authorities – a tool to prevent and tackle work-related crime" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country (Norway) and the situation in Greece. For information on the host country example, please refer to the Host Country Discussion Paper.

2 Undeclared work remains a significant feature of the economy

Overall, there are no data or research available on the scale of whistleblowing to expose work-related crime and other wrongdoings in the workplace in Greece, while legislative provisions for employee protection (whistleblower protection) present several gaps as they are limited to reporting cases of bribery and only cover public sector employees.

Greece has gone through a prolonged economic crisis, which started in 2010 and continued well into 2017. After eight years of recession, the Greek economy started showing signs of recovery in 2018. The OECD projects that GDP will grow over the next couple of years, by 2.19% during 2019 and by a further 2.12% during 2020.

Undeclared work remains a significant feature of the economy, despite measures taken in recent years to address the issue. The size of the undeclared economy in Greece is estimated to be equivalent to 25% of GDP¹. Eurofound identifies the high level of self-employment and large number of micro- and small businesses as a key factor. Micro enterprises with between one and nine employees make up 96% of all enterprises and employ 55% of the labour force (compared with less than 30% in the EU28).

The Labour Inspectorate (SEPE) is responsible for monitoring the implementation of labour legislation and the investigation of incidents of illegal labour and uninsured labour in Greece. A SEPE study from 2012 assessed the rate of undeclared work to be over 30%, and even higher in sectors with seasonal employment (e.g. agriculture and tourism). The percentage of undeclared work reported/estimated by entrepreneurs themselves is also high at 26%. The highest percentage of undeclared work in the employers' assessment is apparently associated with uninsured work (59%), followed by non-issuance of a social insurance voucher (10%), non-notification of overtime (6%), not respecting the 5-day week (8%), exceeding the hours of part-time work (9%), working outside the registered working hours (6%).

A 2015 study from a social partner research institute (INE GSEE, 2015) assesses that in trying to survive the crisis, many employers probably came to view health and safety measures as being of secondary importance. In addition, in the public debate, there are voices arguing that while undeclared work appears to be decreasing, under-declared work is on the increase, as employers increasingly declare part-time positions for employees who actually work full time².

3 Supporting the transition from informal to formal economy

As mentioned above, Eurofound (2017) notes that undeclared work remains high in Greece (in the region of 25% of GDP), despite measures that have been taken in recent years to address the issue. These include stricter sanctions, the reduction of non-wage

¹ www.adilotiergusia.gr; Eurofound

² See for example article on increase of under-reported employment, 27 April 2017 <https://www.dikaiologitika.gr/eidhseis/ergasiaka/151582/meiothike-sta-xartia-i-anasfalisti-ergasia-thraysi-tis-kryfis-merikis-apasxolisis>

costs and efforts to limit bureaucratic obligations and the administrative burden on employers. Measures taken in recent years also include the introduction of an operational plan to combat undeclared work (ARTEMIS), and the development of the ERGANI system which has made reporting of hiring and dismissals mandatory.

In terms of public authorities cooperating with the social partners to protect whistleblowers and reveal work related crime and other breaches of law and wrongdoings at the workplace, there is currently an ongoing discussion between the government and the social partners (especially the employee representatives GSEE³ and GSEVEE⁴). The dialogue takes place within the context of the Supreme Labour Council of the Labour Market Diagnosis Mechanism, composed by high level government officials and social partner representatives. The aim is to increase cooperation and, during 2019, to arrive at a roadmap for supporting whistleblowers and, in particular, remote employees when they need to report wrongdoings related to their work.

The ILO, in close collaboration with the Greek government and the social partners, set up a European Commission-funded project which will run from 2017 until December 2019. The programme, entitled 'Supporting the transition from informal to formal economy and addressing undeclared work in Greece: Identifying drivers and ensuring effective compliance'⁵ aims to map undeclared work, exploring its causes and forms while simultaneously engaging the social partners in the process⁶.

The following elements of the programme have been agreed after a series of tripartite consultations:

- a diagnostic report on undeclared work in Greece (July 2016);
- a three-year road map for the implementation of a holistic strategic approach to tackle undeclared work in Greece, validated by the ILO, Greek government and social partner representatives in October 2016;
- a series of social dialogue processes, both internally within national social partner organisations through targeted workshops by the General Confederation of Greek Workers (GSEE), the Hellenic Federation of Enterprises (SEV) and the National Confederation of Hellenic Commerce (ESEE), and through trilateral decision-making meetings.
- planning and implementing a new Labour Inspectorate (SEPE) strategy;
- enhancing the skills and knowledge of inspectors and social partners through training programmes for inspectors from all the bodies involved in the project (SEPE, EFKA, SDOE, Financial Police), focusing on the process and methodology of the inspections to be carried out;
- implementing communication policies/campaigns and awareness-raising campaigns targeting the social partners, employers, employees and the general public in the capital Region of Attica.

Already, a pilot project⁷ implemented in this context with support from the ILO, OECD and the Greek Labour Inspectorate (SEPE) to expose work-related crime and other wrongdoings in the workplace is showing promising results. The project runs from January 2017 until December 2019 and aims to strengthen employment monitoring and inspection, improve tax collection, and educate employers and workers about the benefits of formal work. Complaints and reports made to a selection of public bodies, including the Labour Inspectorate, the Consumer's Ombudsman, the Citizen's

³ General Confederation of Greek Workers (GSEE)

⁴ Hellenic Confederation of Professionals, Craftsmen & Merchants (GSEVEE)

⁵ ILO, http://www.ilo.org/employment/units/emp-invest/WCMS_481007/lang--en/index.htm

⁶ Eurofound (2017)

⁷ https://adilotiorgasia.org/wp-content/uploads/2017/02/FINAL_EN_PILOT-1.pdf

Ombudsman were collected and examined. The Labour Inspectorate Information System, collected the data of the various complaints and whistleblowing reports made to a number of institutions. The information was: (a) collected, (b) classified, (c) processed and (d) assessed in the information system in order to target and organise the inspections. A meeting of the Head of the labour inspectorate and the heads of other inspection and control bodies followed, where it was decided which sectors and professions inspections had to focus on.

Four organisations have been involved in the implementation of the program: the Labour Inspectorate (SEPE), the Unified Social Insurance Institution (EFKA), the Financial Police and the Financial and Economic Crime Unit (SDOE). Mixed teams from these four agencies carried out joint inspections to the employers of these 'unofficial' whistleblowers (given that they have not been given the status of 'witness of public interest'), with the following results⁸:

1. Targeted inspections for undeclared work in Attica have resulted in the imposition of 508 fines, amounting to EUR 4 187 726. The Ministry of Labour data on the pilot project show that 1 667 audits were carried out in enterprises and offences were detected in 452 of these.
2. The audits concerned 9 025 employees and a breach was identified for 920 (or 10.19 %) of them. Some 282 workers were found to be undeclared while 638 were under-declared, of whom 535 worked in part-time or rotation work. The audits were carried out in two periods, during May/June and September 2017. During the first period (1 May to 15 June 2017) there were 1 251 inspections and in the second period (1 to 30 September), there were another 416 inspections, of which 232 were re-inspections. During the re-inspection, it was found that 68.97 % of enterprises showed compliance, 5.17 % partial compliance and 25.86 % non-compliance.
3. The targeting of the inspections was done in the sectors with the highest level of risk, using the risk analysis of the Integrated Information System of SEPE.

The Ministry of Labour drew the following conclusions from the initial data processing:

- Risk analysis greatly improves the effectiveness of controls and tracing offending businesses. At the same time, re-inspection appears to be increasing compliance.
- The publicity received by the program and the involvement of the social partners have contributed to the compliance by businesses.
- The findings confirm the trend of a shift from undeclared work to under-declared work, with a significant element of falsely declared part-time work within under-declared work.

During 2019, the pilot project will be evaluated through a tripartite procedure within the Supreme Labour Council's Department for Undeclared Work (Article 15 of Law 4468/2017). The results of the evaluation will be taken into account into the overall design of workplace inspections for undeclared work.

3.1 Similarities and differences with the host country example

In Greece, legislation was introduced in 2014⁹ to protect Civil Servants that report wrongdoings, in an attempt to curb corruption in public institutes. This law protects public sector employees from retaliation in case they report instances of bribery but does not cover private sector employees. Private Sector employees have to derive

⁸ Source: Interview with Ministry of Labour

⁹ Law 4254/2014 (only available in Greek)

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100579/120708/F-1081253648/GRC100579%20Grk.pdf>

protection from labour legislation. The Civil Code does include protection for employees from unfair dismissal, but the law lacks specific provisions for whistleblowers. Hence, it could be said that protection of whistleblowers in Greece focuses more on the effectiveness perspective, given the focus on bribery and economic wrong-doing and probably less on the democracy or welfare perspective, in contrast to legislation in Norway, which focuses relatively less on the effectiveness perspective and more on the other two aspects. In relation to the availability of research around whistleblowing, there are no studies, evaluations or regulatory impact assessments assessing the effect of whistleblower protection provisions in Greece to date. This is an area where Norway's experience with surveys assessing whistleblower protection since 2010, can be useful for Greece in setting up such surveys.

As regards Vandekerckhove's three-tiered model of whistleblowing, the second (external agency) and third tiers (public) are not covered by Greek legislation. There is currently no single anti-corruption agency existing in Greece to receive whistleblowing reports. A number of public agencies are currently at the receiving end of complaints of wrongdoing, including the Labour Inspectorate, the Citizen's Ombudsman and other agencies.

As already mentioned above, no data on the number of whistleblowing cases are available. One high profile case of a 'witness of public interest' was the focus of public debate at the end of 2018. The whistleblower related to alleged bribery from a pharmaceutical company, was granted the status of 'witness of public interest' but he then lost the status when he was charged in relation to the case. There are records of one person being granted the status of 'Witness of public interest' while the case of a second witness of public interest related to alleged bribery and corruption involving the NOVARTIS pharmaceutical company became notorious in Greece at the end of 2018. The reason was that the Attorney removed the status of 'Witness of Public Interest' when the whistleblower was charged in relation to the case. The case became political as the case is used in arguments from different political parties, the identity of the whistleblower became known throughout Greece, while the fact that he is now a defendant in the case is considered by some to be retaliation. This case demonstrated the point made in the Host Country Paper, that all three levels (including going public) need to be covered by the provisions protecting whistleblowers for them to have adequate protection. Protection at the third level is not currently foreseen in Greek legislation.

4 Assessment of public policy implications and success factors

4.1 Success factors and challenges in Greece's policies/measures

One success factor related to the policy emphasis given to fighting undeclared work in Greece will be the ability of the government and the social partners to agree on the adoption of practical policy measures. The social partners believe that government policies that impose heavy taxes and social insurance burdens encourage illegal practices in the labour market. The results of tripartite cooperation in the fight against undeclared work so far are promising. The establishment of a roadmap for combating undeclared work is one of the few cases where the social partners together with the government have been able to adopt a common strategy on an issue in Greece, especially at a time when social dialogue faces challenges.

Turning to the legal provisions for whistleblowers, several improvements can be made. Namely, the law in Greece should include a wider range of wrongdoings. The preconditions foreseen by the law about who can be labelled a witness of public interest (and thus be protected) currently narrow down the protected disclosures, these should be expanded to avoid confusion and an insecure environment for whistleblowers.

While the current Greek legislation in the area of whistleblower protection has the advantage that it shows political will to address this area, existing legislation could be enhanced in several areas. As already mentioned above, Law 4254/2014, introduced in 2014 to protect public sector employees reporting bribery, is the only law specifically protecting whistleblowers in Greece. The main shortcoming of the law is that it only covers public sector employees. Private sector whistleblowers have to derive protection from general labour legislation.

Another shortcoming is that the whistleblower cannot be sure, that they will be proclaimed as a "public interest witness", given that the criterion of public interest is indeed very vague and subjective. On the contrary, they risk suffering retaliation if the status of witness of public interest is not granted. But even if this status is granted, the whistleblower is not fully protected, because their protection concerns penal prosecution and does not apply to claims for civil damages due e.g. to alleged slander (there is no complete waiver of liability for the whistleblower). Moreover, the disciplinary protection is offered to civil servants in their status of "public interest witness", according to the law, only for a definite time, i.e. only during the time which is necessary for the investigations by the competent judges to be completed. Therefore, unfavourable treatment of the civil servant cannot be excluded once the period during which they are considered a 'public interest witness' ends.

Other shortcomings of the legislative provisions include that the legislation offers no a priori protection and does not outline the details of a system of support, and how this support will be disbursed. Due to a lack of oversight, distinguishing whistleblower cases from unfair dismissal in other sectors than the public is difficult. There is a tendency for authorities as well as companies to set up internal systems for whistleblowing, but these are not regulated.

Lastly, and similar to Norway, more information and awareness raising about the legislative provisions already in place would also be beneficial in Greece.

5 Questions

- Greece would be interested to find out more details on the methodologies of the surveys carried out in 2010, 2013, 2016 and 2018 exploring the whistleblowing process. For example, is the survey based on questionnaires or qualitative interviews? Are statistical validity checks carried out, how is the validity/reliability of responses ensured?
- Some questions regarding the sample: How are the respondents selected to make up a representative sample of employees across sectors and industries? Is it the same companies/employees surveyed or similar? What is the sample size? Is the sample geographically representative or are respondents concentrated in specific geographical areas? What about the age groups represented?
- Are there any specific provisions foreseen in Norway for the protection of whistleblowers who work remotely and for whistleblowing in new forms of work, work-related crime for platform workers and remote workers? Has Norway established any schemes / working groups or surveys for monitoring this segment of the labour market? Does Norway have relevant data for work-related crimes in the areas of platform working, remote working, portfolio work etc.?

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Annex 1 Summary table

The main points covered by the paper are summarised below.

Overview of labour market trends

- After eight years of recession, the Greek economy started showing signs of recovery in 2018 and is projected to grow over the next two years.
- A SEPE study from 2012 assessed the rate of undeclared work to be over 30%, and even higher in sectors with seasonal employment (e.g. agriculture and tourism). The percentage of undeclared work reported/estimated by entrepreneurs themselves is also high at 26%.
- Employers' assessment of wrongdoing is associated with uninsured work (59%), followed by non-issuance of a social insurance voucher (10%), non-notification of overtime (6%), not respecting the 5-day week (8%), exceeding the hours of part-time work (9%), working outside the registered working hours (6%).
- Undeclared work remains a significant feature of the economy, despite measures taken in recent years to address the issue. The size of the undeclared economy in Greece is estimated to be equivalent to 25% of GDP.

National policy / measures

- The ILO, in close collaboration with the Greek government and the social partners, set up a European Commission-funded project which will run until December 2019.
- The programme 'Supporting the transition from informal to formal economy and addressing undeclared work in Greece: Identifying drivers and ensuring effective compliance' aims to map undeclared work, exploring its causes and forms while simultaneously engaging the social partners
- A pilot project of joint inspections (carried out in the context of the three-year road map for the implementation of a holistic strategic approach to tackle undeclared work in Greece) has offered promising results so far and will be fully evaluated during 2019.

Assessment of public policy implications and success factors

- One success factor related to the policy emphasis given to fighting undeclared work in Greece is the existence of tripartite commitment to the cause and the ability of the government and the social partners to agree on the adoption of practical policy measures.
- The results so far are promising and the establishment of a roadmap for combating undeclared work is one of the few cases of tripartite agreement at a time when social dialogue faces several challenges in Greece.

Questions

- Greece would be interested to find out more details on the methodologies of the surveys carried out in 2010, 2013, 2016 and 2018 exploring the whistleblowing process. For example, is the survey based on questionnaires or qualitative interviews? Are statistical validity checks carried out, how is the validity/reliability of responses ensured?

- Some questions regarding the sample: How are the respondents selected to make up a representative sample of employees across sectors and industries? Is it the same companies/employees surveyed or similar? What is the sample size? Is the sample geographically representative or are respondents concentrated in specific geographical areas? What about the age groups represented?
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Annex 2 Example of relevant practice

Name of the practice:	Pilot program of targeted inspections, with joint inspection teams, under the three-year plan - roadmap for combating undeclared work 2017-2019
Year of implementation:	January 2017 – December 2019
Coordinating authority:	Greek government and social partners, supported by the ILO
Objectives:	The project aims to establish good practice for effective inspections to tackle undeclared work in Greece.
Main activities:	<p>The Labour Inspectorate Information System, collected the data of the various complaints and 'unofficial' whistleblowing reports (given that the whistleblowers have not been given the status of 'witness of public interest') made to a number of institutions. The information was: (a) collected, (b) classified, (c) processed and (d) assessed in the information system in order to target and organise the inspections.</p> <p>During 2019, the pilot project will be evaluated through a tripartite procedure within the Supreme Labour Council's Department for Undeclared Work (Article 15 of Law 4468/2017). The results of the evaluation will be taken into account into the overall design of workplace inspections for undeclared work.</p>
Results so far:	<p>Four organisations have been involved in the implementation of the program: the Labour Inspectorate (SEPE), the Unified Social Insurance Institution (EFKA), the Financial Police and the Financial and Economic Crime Unit (SDOE). Mixed teams from these four agencies carried out joint inspections to the employers of these 'unofficial' whistleblowers, with the following results¹⁰:</p> <ol style="list-style-type: none"> 1. Targeted inspections for undeclared work in Attica have resulted in the imposition of 508 fines, amounting to EUR 4 187 726. The Ministry of Labour data on the pilot project show that 1 667 audits were carried out in enterprises and offences were detected in 452 of these. 2. The audits concerned 9 025 employees and a breach was identified for 920 (or 10.19 %) of them. Some 282 workers were found to be undeclared while 638 were under-declared, of whom 535 worked in part-time or rotation work. The audits were carried out in two periods, during May/June and September 2017. During the first period (1 May to 15 June 2017) there were 1 251 inspections and in the second period (1 to 30 September), there were another 416 inspections, of which 232 were re-inspections. During the re-inspection, it was found that 68.97 % of enterprises showed

¹⁰ Source: Interview with Ministry of Labour

	<p>compliance, 5.17 % partial compliance and 25.86 % non-compliance.</p> <p>3. The targeting of the inspections was done in the sectors with the highest level of risk, using the risk analysis of the Integrated Information System of SEPE.</p>
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Source: Interview with Ministry of Labour and https://adilotiergasia.org/wp-content/uploads/2017/02/FINAL_EN_PILOT-1.pdf

