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**EU-ILO Project
ENHANCING THE LABOUR ADMINISTRATION CAPACITY
TO IMPROVE WORKING CONDITIONS AND TACKLE UNDECLARED WORK**



Training for trainers

**“INSPECTION TECHNIQUES
AND SOFT SKILLS TO DETECT
AND DETER UNDECLARED WORK”**

Labour inspection techniques

Distribution materials

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LABOUR INSPECTION TECHNIQUES TO DETECT AND DETER UNDECLARED WORK

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What is the Informal Economy

The informal economy refers to « all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. »

Article 2 (a) of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No.204)



“Any paid activities that are lawful as regards their nature but not declared to the public authorities, bearing in mind that differences in the regulatory system of Member States must be taken into account.”

*Definition used by the European Commission
Communication of the Commission on Undeclared Work, COM (98) – 219.*

Undeclared work is a compliance problem with multiple layers and expressions

Specificity of the features, actors involved (who contribute to the problem), and main drivers to be considered

What are the most common types of undeclared work?



Fully undeclared work

any lawful activity under the characteristics defined by national law that legal or contractually should be remunerated, in cash and/or in kind, but whose remuneration and exercise, although there is a legally binding duty has not been informed to the Labour Administration, to Tax Authority and to Social Security Authority.

Partially undeclared work can be defined as *the exercise of any lawful activity, which legally or contractually should be remunerated, in cash and/or in kind, but whose remuneration, although there is a legally binding duty of declaration, has only been partially declared to the Labour Administration, the Tax Authority and/or Social Security or has been declared to just only one of these entities.*



➤ Informal employment in informal enterprises

- individuals or small enterprises in households, warehouse, garages...
- labour brokers
- subcontractors in large contracting chains
- enterprises disguised under other type of legal persons (NGO, cooperatives, volunteer association...)

Huge diversity
of cases

➤ Informal employment in registered enterprises

- letterbox companies
- enterprises with appearance of normality
- enterprises with erroneous activity
- no asset enterprises/ registered by straw men
- enterprises that declare a minor part of workforce
- ghost workers (ex: 24/7 reception)
- Enterprises with Workers with a presence out of regular working hours
- Rotating workers (carroussel tactict)
- On-call businesses
- Home based businesses
- Gig economy

○ (...)



- False occupational status
 - - bogus self-employed
 - - bogus companies
 - - false internships
 - - false volunteers
- Under declaration of work
 - Only part of the wage is declared
 - Overtime, false part-time, night work, weekend work
 - bonuses, fringe benefits, false “per diem”

Huge diversity
of cases...

Regularly established enterprises using undeclared workers from subcontractors or suppliers but under their subordination (specialized companies for “marchandage”)

Network enterprises where the risks on the workers are transferred
to smaller subsidiaries which easily disappear
Unregistered temporary work companies

...some very complex



- Article 21 of Labour Code of Ukraine
- Question: what are the defining elements of an employment contract?
- How do you recognize an employment contract in practice?
- What do you do if the contract is called something else?



Employment Relationship Recommendation, 2006 (No. 198)

- The guiding principle for inspectors: the **primacy of the facts**
- Look into the main elements of commercial, civil and labour contracts
- Ascertain the real nature of the contract by collecting evidence on the defining legal elements and sets of indicators
- Legal elements: subordination and/or economic dependency



Indicators suggested to define the existence of an employment relationship

- Work is carried out according to the instructions and under the control of the beneficiary of the activity;
- Availability of someone to provide his/her work according to defined instructions;
- integration of the worker in the organization of the enterprise;
- Work is performed solely or mainly for the benefit of another person;
- Work must be carried out personally by the worker;
- Work is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work;
- Work is of a particular duration and has a certain continuity
- Provider of services is not liable for commercial failures
- It involves the provision of tools, materials and machinery by the party requesting the work
- Fixed or pre-determined pay at given intervals of time not depending on outcomes of the work performed



Triangular relationships - to whom is the worker subordinated?

The work or services of the workers are provided to a third party (the user) by a private temporary employment agency or a labour broker

Often associated with labour exploitation

Often uncertified private employment agencies

Often using irregular migrant workforce or without legal requirements

Questions for inspectors

who is the employer?

what rights has the worker?

who is responsible to comply?



Undeclared work often associated with the most vulnerable workers

- **Migrant workers:** role of labour inspectors vs immigration authorities
- **Child labour:** minimum age, compulsory education, hazardous work, worst forms
- **Human trafficking**
- **Forced labour:** the UN indicators and recognition techniques
- Gender discrimination

Undeclared work and social fraud

- Fictitious cycles of termination of employment
- workers receiving social benefits
- companies receiving public funds (bogus staff)



Challenges for labour inspectors...

- Undeclared workers are invisible and easily disappear
- there is no documental evidence
- often both employers and workers are uncooperative
- suspicion of public authorities
- sometimes no ID in the workplace
- undefined employer



How smart inspectors go about it

- employers need to keep a record for their own organization
- what possible registers are usual in the sector? Ex: receipts, orders, cash registers, accounting logs
- map and interview anyone that may assist you. Keep the records
- observe the workplace, analyze the business - how many workers are needed?
- who can be your ally? Unions, whistleblowers?
- look for the Easter egg (or Wally)
- be fast and surgical
- Do not announce your visit
- control access to workplaces
- if it's a large workplace such as a construction site use a « tagging system »



Be proactive and define priorities

How to select the targets

- use internal and external data (inspection and compliance data)
- Complaints, reports from unions or employers (unfair competition)
- cross-check with data from social security, tax office, sectorial registration bodies...
- Media
- think of the wild card ...
- meet with social partners and any other relevant stakeholder to discuss
- if there are indicators but no evidence a sector is problematic do sample random visits
- use predictive models
- use the information you have as a client
- become a client, observe movement in the establishment and required workforce
- do a blitz in a neighborhood, street where you estimate there is undeclared work



Some indicators you may use to select your target

- sectors and enterprises with previous detected cases
- sectors and enterprises with an historic of other violations
- abnormal variation in the workforce
- phases of production process that need an increase of staff (ex: maintenance works, harvest, security...)
- production levels that do not match with declared workforce
- enterprises that only declare part-time
- enterprises that declare wages at the legal minimum but below the average of the sector
- enterprises that outsource most of production
- electricity, water consumption (good indicator for home based work)



The preparatory work

- know the universe of your intervention (production process, commercial practices, how sales are processed or services rendered)
- you don't know it? Ask who knows
- ideally identify partners and prepare the interventions with them - other authorities, ministries, technical agencies, industrial associations, technical schools
- think if you need police support
- study the legislation, collective bargaining agreements
- prepare your inspection tools (checklists, questionnaires...)
- know exactly where you are going, when, how, with whom
- Is it a joint inspection with social security or the tax office? If you're going with another agency know how they operate beforehand
- If there is a team of inspectors roles need to be assigned/ How leads the visit? Who goes where at the visited workplace?



The preparatory work – what you need

- Organize the data (collect and bring information on the enterprise – workforce, existence of unions, complaints, referrals from other public authorities, subcontractors...)
- Organize your tools (checklists, scripts for interviews, questionnaires, legal procedures such as notifications...)
- Plan how you will conduct the visit, what to expect and how to react in case of difficulties
- Think of the best moment to conduct the visit



One example of how a labour inspectorate prepared visits in vineyards



CASTILLA LA MANCHA GRAPE HARVEST

Area: 79.226 Km²

- » Cultivated surface: 563.963 Ha.
 - » Production: 2.689.833 Tm
 - » Season: September-October
 - » No. of employees: 159.809
 - » Mechanization: Rare
 - » Farms size: variable
- » Business organization: multiform





CASTILLA LA MANCHA GRAPE HARVEST

- Lack of native manpower
 - Low qualification
- Short period OF WORKING: 2 to 3 weeks
- Relatives and friends collaboration
- Recruitment “immigrants” in situ” networks





CASTILLA LA MANCHA GRAPE HARVEST

- Isolated farms: difficult to locate
 - Difficult access: rural roads
- To support and control required: cooperation of security bodies
- Problems in order to obtain and keep secret the information: visit' forewarning





CASTILLA LA MANCHA GRAPE HARVEST

Cultivated surface: land registry

Production: Grape' kilo or wine cellar
invoicing

No. day's work needed for harvest
work: Agricultural Regional
Department

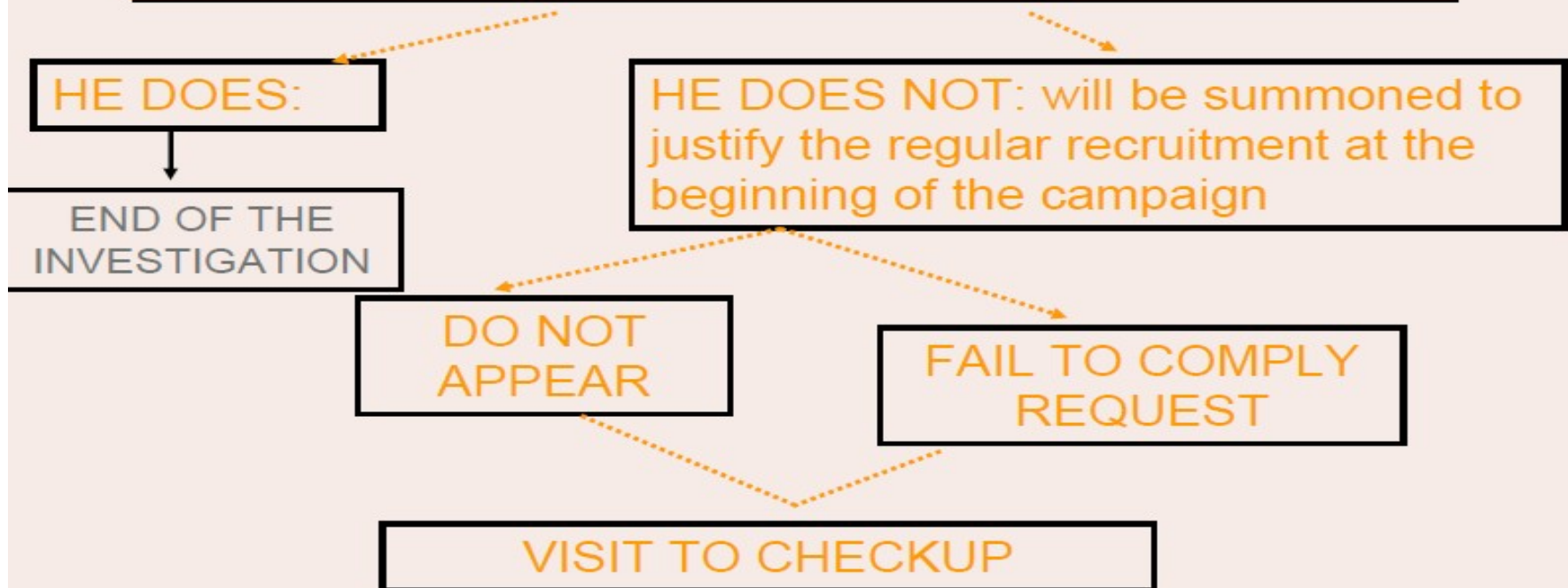
Declared employees and day's work
fees: Social Security data bases





CASTILLA LA MANCHA GRAPE HARVEST

FARMER SUMMONS TO JUSTIFY CONTRADICTIONS





CASTILLA LA MANCHA GRAPE HARVEST

INSPECTION VISIT

Farms finding out: “Google maps”

Joint visits with the police

Employees identification

Increased penalty because of failure to
comply with requirement





CONDUCTING THE VISIT

You arrive in the workplace

- can you enter? Security guards may not let you in. Explain your mandate and prerogatives. Demand to talk with management and explain again
- you are not let in? Does the law allow you to go in anyway? Alert the police and do it
- the law does not allow you? Can you return with the police?
- When you meet management inform that the law provides you the prerogative of access. If there are sanctions for obstruction inform immediately these will be imposed
- do not visit the workplace with the employer. The risk is that workers will feel intimidated
- if you are in a team, one inspector may stay in the office



You are in the workplace : YOU LEAD THE VISIT!!!

- cover the premises as fast as you can. Bring a team
- look everywhere. Don't forget parkings, storage rooms, even look inside the cabinets...
- interview workers, use questionnaires but be flexible. Use interview techniques. Take notes. If legally possible ask the worker to sign
- interview managers and supervisors
- ask, ask, ask, ask
- collect all evidence you need to build a legal case
- look into signs that someone left in a hurry - burning cigars, coats hanging, computers on...
- if there is a union, consult the representative



What do you ask to the worker?

- complete identification, including official ID, social security and fiscal number - ask to see it. Not available = red light
- address
- date of birth
- start of work
- exact functions and section where work is performed
- who is the employer (may not be evident)
- name of supervisor, who gives orders, who controls the work
- hours of work, start and end
- remuneration - amount, type, periodicity, form of payment
- what else?
- what if it is a false independent worker?



How do you use your soft skills?

- explain to the employer and workers why you are there, explain your mandate, inform of your expectations
- be assertive, but firm
- do not be intimidated, you have a legal mandate to be there, you are working for the common good, you know the law, you represent the rule of law
- keep attention to your ethical standards. Do not abuse your power
- use a colloquial tone with workers if these are less qualified
- avoid technical jargons people don't understand
- when interviewing ask the same question in different ways in different moments. If the answer is always exactly the same = red light
- pay attention to non-verbal communication



What do you cross-check?

- How the enterprise is organized. Are there subcontractors? Serviced providers? Temporary workers? Interns?
- Ask for the updated list of staff with date of appointment, age, function, pay, and proof of declaration to social security
 - Ask for employment contracts, service contracts, contracts with temporary work agencies, internship agreements
 - Check the HR files
- Check pay slips, pay logs – what type of payments are being done? Check the value of hours of work
- Check working schedules, shifts, overtime, night work, part-time
- Check individual records of workers and confirm with them - if you have doubts
- Check accounting documents (volume of sales...), production...
- what else?

QUESTION: Why do you cross-check all of these?



How do you finish the visit?

- You gathered all the evidence you needed?
- There is no undeclared work or under-declared work? Good
- There is? **Take action**
 1. Demand the immediate registration of the worker from the start
 2. Demand the recognition of the employment relationship if need be
 3. Demand back payment of contributions
 4. Demand back payment of any entitlement to the worker
 5. Apply the adequate sanctions
 6. Refer what you need to refer to the appropriate authorities
 7. Follow-up – **you want effective results**



Group exercises 1

Preparation, conduction and follow-up of inspection visits

After hearing about comparative practice on the preparation, conduction and follow-up of inspection visits for control of undeclared work, please draft a short set of guidelines to be used in Ukraine as a reference for all labour inspectors.

GROUPS A and B: Selection of targets and preparation of visits

GROUPS C and D: Conduction of visit and follow-up



Group exercises 2

Legal tools and prerogatives

Based on the examples you heard on the practices from other countries and considering your knowledge of national legislation, think in your groups on the following questions:

1. How can you put to the best use the prerogatives and possibilities given to you by national legislation?
2. What do you think needs to be addressed in law in order for you to be more effective in your inspection of undeclared work?

Be precise.



Group exercises 3

Operational tools: checklists, scripts and reports

In your groups, please adapt the examples provided to your national practice.

GROUP 1: Questionnaire for the employer

GROUP 2: Identification of workers and subcontractors

GROUP 3: Questionnaire for determination of the employment relationship

GROUP 4: Summary report