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SHIFTING EMPLOYMENT REVISITED

In recent years several studies have been dedicated to the phenomenon of undeclared or illicit labour. In most EU member states the item is high on the political agenda, and the EU has commissioned over the years a series of surveys and analysis that deal with the item. Early 2014 the European Commission formulated a proposal for the installation of a platform on undeclared work (see the article of Alessia Gramuglia). One of the key sectors always associated with undeclared work is the construction sector. However, detailed studies that focus on the size, the features and the consequences of undeclared labour in the construction sector are still rather scarce.

The CLR-network examined in 2006 the phenomenon of undeclared labour, with specific regard to the construction sector. The resulting study, *Shifting Employment: undeclared labour in construction (Shifting-study hereafter)*, gave evidence that this is an area particularly affected by undeclared activities with one of the highest incidence of informal labour. The sector is, in general, strongly sensitive to social dumping and unfair competition; undeclared labour is one of the irregular forms of employment that appear on the construction market². In this contribution we want to update some of the findings of the study, based on a small survey that was undertaken in the summer of 2014. The update is based on the national input from four countries, and therefore the conclusions are necessarily of a modest character.

The approach of the Shifting-study

Although undeclared work is seen as a widespread problem, it is not possible to delineate a homogeneous concept, since there are many variations in the way of performing the same

1. Alessia Gramuglia stayed as a trainee at the Amsterdam Institute of Advanced Labour Studies.
2. Cremers J (2006) *Shifting Employment: undeclared labour in construction*, CLR-Studies 5, i-books/CLR.

phenomenon in different countries. Nonetheless, it is possible to track down some common features among dissimilarities. Reference is often made to any work not declared to tax and social security authorities. The definition used by EU Institutions states that 'undeclared work can be defined as any paid activities that are lawful as regards their nature, but not declared to the public authorities'. The European Commission adopted this definition with its Communication on undeclared work of 7 April 1998. But this designation was criticised as it was too much focusing on the legislative side of the problem. With their latest publications, the European institutions have complemented the earlier definition by adding 'taking into account the differences in the regulatory systems between Member States'. Generally, when a broader definition of undeclared labour is formulated, one of the main problems is how to differentiate between forms of casual or a -typical labour relations and, for instance, how to deal with the so-called 'bogus' self-employment.

The reasons for the existence of a hidden economy can be several; as a result different patterns performed by workers in different countries can be recorded. In a cross-border context one also has to analyse the impact of migrants. In many cases the main drivers come from the tax and social security system and undeclared work is closely connected to ways to circumvent tax and social security payments. Related to labour migration, undeclared labour also can be connected to the evasion of working conditions and workers' rights. Thus, several configurations of undeclared labour can be traced, and the attempt to establish a unique strategy appears a wasted effort.

The *Shifting*-study referred to a distinction made by the OECD between underground and informal production. This demarcation distinguishes the deliberate concealment of legal activities to avoid payment of tax related profits, from non-registration of employees and unreported income from the production of legal goods or services. The research described

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four patterns of undeclared labour: informal individual - own account; moonlighting (irregular work next to a regular one); informal undertakings and pyramid of subcontracting. In the study different perspectives were provided, using different dimensions:

- a differentiation between activities that result from autonomous and independent (individual) action and activities belonging to organised dependent undeclared work or undeclared activities by undertakings;
- work that is completely informal and unregistered (as a part of the underground economy) and undeclared labour that is part of registered work in a formal context (but under-registered);
- the role and dynamic between the main actors (employee, employer and the user);
- the character of the performed work (additional, small scale or a substitution for work that belongs to the hard core of the construction business);
- the position of the actors on the labour market and other labour market dynamics.

The first category, informal individual - own account, stood for a type of undeclared work based on manual labour (repair, maintenance and small installation) with private households as the main customer. This informal part of construction is basically undertaken by individual craftsmen and 'bogus' self-employed; payment is cash-in-hand and completely undercover.

Moonlighting is a type of undeclared activity that flanks a normal occupation; as such it can also be the undeclared part of work in a normal labour relationship (with a regular contract and the presence of an employer). The irregular activity is own account executed next to the ordinary work, performed for the own employer as well as for the customer. In this last case, mutual trust is needed between the worker and his employer, as in some cases the customer is not even aware of the undeclared character.

A third pattern, informal undertakings, differs from the previous models as it is organised in a collective way: groups of undeclared workers work underground via an agency, a gang master or an informal employer. The product's liability is guaranteed only by a gentleman's agreement, this type of work is usually performed by low-skilled and illegal foreign workers.

The last described pattern was the pyramid of subcontracting, with a client that is completely out of sight. The work is split in a chain of subcontracting ending up in a grey zone, with the result that part of the site becomes undeclared. Not all the performed work is irregular, in fact, on top of the pyramid of subcontracting, there are regular and completely legal undertakings and contractors.

Undeclared workers at the lower stratum are recruited via advertising and informal networking. Alongside this classification of different ways to perform undeclared labour, the outcome of the *Shifting*-study underlined several national policy approaches to face and prevent undeclared labour in the construction sector. This policy was classified in three categories: the integrative policy that is regulation-oriented; the enforcement policy that is based on control and sanctions and the promotional policy that aims to highlight the positive effects of regular work.

Summarising the research findings, it is possible to provide some outcomes about the nature and size of the undeclared labour in construction sector. The *Shifting*-study underlined the existence of different categories of workers involved in undeclared labour in construction: regular wagedworkers, 'bogus' self-employed workers and non-registered workers. Most of the existing measures to tackle the shadow economy (for instance the 'service cheques' introduced in some countries) were qualified as not tailor-made for the construction sector; as a consequence these measures were often not effective. Indeed, different categories of undeclared workers require different measures. As their status on the labour market

differs, differentiated treatment and measures need to be designed. Another problematic issue concerned the self-employment status. This status can lead to an extreme abuse, e.g. to circumvent payment of social security taxes and other social contributions. It was recommended to provide genuine self-employed with possibilities to enter into labour market organisations and must have better opportunities to be represented. In generic terms, an improvement was recommended in the overall coordination and in the cooperation of the labour inspectorate and other inspection services.

Within Member States, a number of measures have been taken. In 2006, some measures were still in their initial phase, and therefore it was difficult to assess their effectiveness and importance. In the next section an update in the field of prevention and deterrence is given. The measures adopted are different, as well as the impact they had on the affected economies.

Belgium: from own account to fraud

In Belgium the law of 6 July 1976 to suppress illicit work of a commercial or craftsman nature provided a legal definition of illicit work, only referring to the informal individual work for own account. It did not contain measures against other appearances of undeclared labour. With regard to the main actors involved in the shadow economy, young households and low-skilled workers were said to belong to the core categories involved.

Currently, the authorities use the notion of the 'underground economy', divided into black activities, illegal activities, informal work, unpaid domestic work and a rest category of non-observed economy. According to the description given, the black activities fit in the commonly used definition of undeclared labour (evasion of taxes and social security payments, circumvention of labour law and other mandatory provisions). Applied to the effect on the labour market, undeclared work is either work that is not registered or under-registered. However, the demarcation with the other forms is not very clear.

For instance, the non-observed activities are not registered by the authorities, but might easily fit in the category undeclared³.

The official website provides an overview of the current policy.

Statistical level	In compliance with European directives concerning the implementation of the European System of Account, the GDP is computed in an exhaustively way, that takes into account an estimate of the income from shadow economy's activities.
Political level	In 1999 the <i>Secrétariat d'Etat à la Lutte contre la Fraude Fiscale</i> was introduced, with the purpose to drive the fight against social fraud, but it was deleted in 2007. In the same year, on the occasion of governmental talks, a debate was opened about the introduction of a coordinating agency against social and fiscal fraud.
Administrative level	A number of measures have been adopted. Particularly important is the establishment of scientific research projects focusing on the underground economy and illegal work including a feasibility study for a permanent observatory to measure the extent of the underground economy and the organisation of national surveys of the population regarding moonlighting in 2008 and 2009.

It has been calculated that one fifth of the population at working age performs undeclared labour full time, part-time or occasionally. The nationality of undeclared workers is in the first place Belgian. In a given ranking of other nationalities involved, Eastern Europeans are placed on top, with a second and third position for respectively Portuguese and non-EEA workers. Workers are low to average skilled and specially smaller and medium sized enterprises are said to be more involved than bigger companies (it is stated that 90% of the bigger companies are clean).

3. https://www.socialsecurity.be/CMS/fr/about/displayThema/about/ABOUT_6/ABOUT_6_1/ABOUT_6_1_1.xml

Concerning the legislative measures, a very important step has been undertaken with the modification of the so-called 'withholding obligation' (or the Article 30bis-procedure), whereby every contractor in a chain is jointly liable for the payment of the social debts of every contractor who is not registered and is involved in the execution of the undeclared work. The procedure was modified in 2012 with an addition of an article 30ter that strengthens the responsibility between a client, a main contractor and eventual subcontractors.

The Danish case: it is all about taxation

The appearance of undeclared labour is always 'explained' by the very high tax level in Denmark and a mutual feeling among customers and service providers that, from time to time, it is acceptable to carry out small services without involving the tax authorities. This problem generally concerns the comparatively innocent occasional activities of households. However, a more serious problem is conscious social fraud combined with doing undeclared work – in other words, when a person works in a company or shop without paying tax and at the same time receives unemployment benefits. These types of activities were detected in the hotel cleaning industry, where women from outside Europe – mainly Asia – were forced to work for a low wage while receiving supplementary benefits or full benefits at the same time. The *Shifting*-study stated that the main matter of undeclared work in construction was bogus self-employment. The volume of undeclared work had in general declined in the period 2001 to 2005. In 2005, workers performed 153 million 'undeclared' hours compared with 207 million hours in 2001. EU enlargement in 2004 resulted in an unexpected and relatively high influx of eastern European labour migrants. The fair play programme developed some special control and co-operation initiatives among the social partners, tax authorities, Danish migration service and the police with the aim of reducing illegal work activities. But, tax system-related measures were still seen as indispensable.

Home-Job Plan	It involves a tax deduction of 15% for each person of the household above 18 years of age for work done at home. The measure is targeted especially at micro and small companies in construction, such as plumbing and heating, electricity and building. The administrative solution ensures that payment is perceived as simple and safe. The scheme is thus 'self-monitoring', because too high a deduction for the purchase will result in too high a tax on the person who does the work. The tax value of those deductions is around €121 million (DKK 900 million) ⁴ .
New inspection rules against undeclared work	From July 2012, all services amounting to €1,345 (DKK 10,000) and more had to be paid digitally. Furthermore, the Ministry of Taxation is able to inspect private property if outdoor work of a professional nature is being done and all service providers will be asked to show ID. From 2013 it is also obligatory to have visible signs and logos on the construction site and on company cars. Light domestic work for young people under 16 years of age, as well as helping out friends and neighbours, are tax free, and pensioners are allowed to earn up to DKK 10,000 a year through domestic work without paying tax ⁵ .

The government has developed two specific actions in recent years. The first is the tax regulation system, the second concerns inspection and measures to be adopted in the working place (see scheme).

Finland: monitoring sites and liability

Earlier studies always placed Finland in the category of countries with a rather modest level of undeclared activities, with the share of the black economy remaining at the 1990s level. After the EU enlargement, an increase activity of Finnish companies established in Estonia and an increasing activity of temporary agency workers can be observed. In recent years, the protection of posted and/or migrant workers has become an important issue. Currently, undeclared work is responsible for a significant proportion of total output in the economy,

4. Eurofound: Home-Job Plan, Denmark, 2013 - <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/dk015.htm>

5. Eurofound: New Tax Rules against Undeclared Work, 2013 - <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/dk016.htm>

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particularly in certain economic sectors such as construction, hotels and restaurants, or personal services.

<p>Tax refund system</p>	<p>Finland decided to introduce a tax refund system to help legalise simple maintenance and repair and curtail the level of undeclared work in small household repair activities. Households are eligible for a tax refund when they show an official receipt provided by the company completing the renovation work⁶.</p>
<p>The contractor's obligations and liability when work is contracted out</p>	<p>This measure requires the party responsible for a construction project to obtain the necessary guarantees that subcontractors will fulfil their various obligations. It places the responsibility on users of subcontractors to determine that employers meet their obligations. Contracting parties are required to ask for and obtain documents that verify certain registrations and payment of taxes as well as a reference to an applicable collective bargaining agreement or corresponding conditions. Depending on the results of the background check, contracting may be subject to penalty. The contracting party must inform its employee representatives of subcontracting or the use of employment agency workers⁷.</p>
<p>Reverse VAT in construction</p>	<p>Reverse VAT is a system used in the construction sector in which VAT is paid by the buyer (main contractor) as opposed to the seller (subcontractors), as is usually the case. The purpose is to ensure the due collection of VAT and discourage the use of undeclared work. The reverse VAT system turns around the normal way in which VAT is collected. As it is applied to construction services, the party that is mainly responsible for a construction project disburses the taxes to the tax administration. Subcontractors do not charge VAT in their invoices to the main responsible party. If there is a chain of subcontracting, as is typical, all invoicing excludes VAT, which is only disbursed at the top of the chain. The reverse system only applies to services, not materials, and private individuals as clients are excluded⁸.</p>
<p>Obligatory personal ID in construction</p>	<p>An additional measure to limit the functioning of the underground economy is the compulsory use of an identification (ID) access pass system for workers on construction sites, which can be used to monitor the shadow economy and illegal labour. It can also serve to promote industrial safety⁹.</p>

The Netherlands: a more integrative approach is needed

Recent legislative measures undertaken by the government to tackle undeclared labour focus on the issue of migrant labour; in most cases these workers are even paid less than Dutch undeclared workers. As the provision of services is free for all EU citizens, every self-employed within the EU borders (also Bulgarian, Romanian and 3rd country nationals) can enter the labour market without a work permit. Notification of service provision with posted workers or self-employed is mandatory, but is limited to the type of work, the location and duration and the client or user undertaking, not the size of the workforce. Bogus self-employed are often recruited in the home country and then sent to the Netherlands without any knowledge about their rights, working conditions and wages. They often do not know that they are registered as self-employed in their home country. Bettin has documented the use of self-employment as a means of avoiding the temporary transitional measures. Own-account EU2 self-employment in the Netherlands and Belgium had a share of up to four times higher than nationals¹⁰. The subsequent effect was underpayment and a downward pressure to working conditions. However, reliable data are scarce (as next figures show). In a study delivered to the parliament in 2011 the estimation is made that at least one third of the self-employed is not registered at all in the statistics (for Romanian and Bulgarian up to 50%)¹¹.

6. Eurofound: Tax allowance for household services, Finland, 2009 - <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/fi003.htm>
7. Eurofound: Contractor's obligations and liability act, Finland, 2013 - <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/fi017.htm>
8. Eurofound: Reverse VAT in construction, Finland, 2013 - <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/fi016.htm>
9. Eurofound: Obligatory personal ID in construction, Finland, 2009 - <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/fi001.htm>
10. Giulia Bettin in Béla Galgóczi, Janine Leschke and Andrew Watt (eds.), EU Labour Migration in Troubled Times - Skills Mismatch, Return and Policy Responses(2012) Ashgate.
11. Arbeidsmigratie in goede banen (2011) Parlementair onderzoek tijdelijke commissie Lessen uit recente arbeidsmigratie, Tweede Kamer der Staten-Generaal, The Hague.

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Total number of self-employed workers	In total 73,000 to 100,000 self-employed are active in construction (with an estimated 2,000 from CEE-countries) ¹² .
Number of cases of false self-employment	No reliable figures (estimates vary from 20-70%, this includes the Dutch self-employed) ¹³ .

Posted workers often lack information about their residence or work status, and their rights or obligations. They rarely know their employer and their jobs hang in the balance from one day to the next. The main item is non-payment of applicable wages and problems with working hours/non-respect of overwork. Third item is the skills-job mismatch. Finally, the impression from recent cases is that there is to a certain extent an abuse of the social security legislation. Workers from Eastern Europe mainly find employment in the construction and steel industries, although they also work in sectors such as agriculture, horticulture, and cleaning. Illegal employment practices in the horticultural sector feature regularly in the news. A large number of posted workers can be found in the construction industry. Union representatives often picket large-scale building projects to tell foreign colleagues of their rights and of the applicable collective agreements.

Until recently, the key problem was the lack of enforcement and of coordination between the different inspections and competent authorities. The enforcement methods were fragmented and essential tools were missing (registration of workers, decent notification of posting and regular check of respect for the social security obligations). The Labour Inspectorate can prosecute an employer when there is a question of underpayment, no holiday allowance paid or the employer fails to present information about the sort of work or terms of employment and/or number of hours.

12. In 2012, estimations by Regioplan (2012) in Arbeidsmigratie vanuit Midden- en Oosteuropese landen.
13. EIB (2012) Verwachtingen bouwproductie en werkgelegenheid 2012, Amsterdam. The percentage is from Zwartboek schijnzelfstandigen (2012); however, the underlying data cannot be verified.

Final remarks

The reasons for the presence and development of the hidden economy essentially are in general clusters into two groups of motives: 1) market entry costs (e.g. registration fees, bribes, permits and licences, ensuring utility access, hiring workers) and 2) costs of market operations in full compliance with all legal requirements (payment of taxes and social security contributions, conformity to labour legislation and the various sector-specific regulations). The main literature links the bulk of the shadow economy to the circumvention of barriers to the market entry, and a smaller part to market operation costs. Consequently, control and law-enforcement systems should ensure a high level of compliance with legal regulations of the companies in the official economy and present a real threat to business operating in the underground economy. The country reports show different measures that European States have adopted to tackle undeclared work. The most dominant measures are to monitor and sanction illicit migrant labour.

Looking at the list of proposals and measures implemented, it is possible to trace the patterns of undeclared labour that are seen as the most problematic (or political sensitive). At the same time, some questions arise: which of the measures have proven successful elsewhere or in the past? How will their effectiveness be monitored? Good practises suggest that there is no universal solution to uncovering the hidden economy, since what has worked in some countries, has proven ineffective in others. Thus, when developing a sound policy system, it is necessary to take into account the national specifics as well, both economic and sociological ones. Among the countries treated here, we can distinguish several solutions that respond to the models previously described. In the Shifting-study three approaches were defined in the policy against undeclared labour. Some of the new instruments are strictly related to economic features and problems. For instance, in Finland and Denmark, where the undeclared work is mostly caused by the tax-regulation system, the integrative approach

is dominant. The Home-Job Plan in Denmark and the tax refund system and reverse VAT in construction, implemented in Finland, have as objective to foster the transfer of certain types of undeclared labour into the official labour market, by offering to the actors involved better outcomes as they would gain performing hidden economy. Additionally, in Denmark it is possible to highlight a mixed approach, since measures of the enforcement approach are also implemented, like the inspection rules against undeclared work, that entail the enforcement and the improvement of inspection and control of service providers. The use of an enforcement approach is visible also in Belgium, where a number of initiatives have been settled to improve the coordination against social and fiscal fraud and to obtain a clear estimate of the extent of underground economy. In the Netherlands, the legislation to fight undeclared labour has been oriented to the issue of abusive migrant labour. One can question this approach¹⁴.

From this update, it is possible to formulate some conclusions about the dominant measures and their effectiveness. Control and sanctions are the most introduced tools by governments, but from some national experiences, we can affirm that tight control often only have a short-lived effect in terms of curbing the hidden economy. It is necessary to develop initiatives to enhance the effectiveness and to ensure voluntary compliance on the part of business. A key factor for the achievement of results could be concerted action of control authorities on major offenders. In this sense, the authorities would need to coordinate actions (and sanctions) against notorious offenders. At the same time, it is necessary to seek a permanent change in the perception of the shadow economy in terms of costs and benefits by the citizens and businesses. In this respect, control authorities should adopt standard systems of monitoring and assessment of implemented policies and control measures, including those aimed at reducing hidden economy. The assessment of the impact of a given measure

14. See: Cremers J. and J. Janssen (2008) Undeclared labour: don't blame the migrants, Transfer, Brussel, 4/08

could be structured around two pillars: implementation process efficiency, i.e. the rational use of resources for the achievement of optimal results, and output effectiveness, i.e. the broadest possible scope and effect of the result achieved in terms of clearly set goals. The main purpose of such a system would be to reduce resource expenditure, particularly in control and sanctioning activities.

Looking at measures adopted by the countries analysed, it is possible to evaluate instruments' effectiveness and obstacles. Among the instruments previously examined, the most envisaged in current debates are the use of an identification (ID) access pass system, especially in the construction sector; and reforms of tax-system regulations. Regarding tax-system regulations, different measures have been implemented. The reduction of VAT can be particularly attractive for smaller businesses. In the Danish case, the Home job Plane has been a success. 270,000 people used the deduction in 2011 and by far most of the deducted wages took place in construction. Furthermore, the initiative of a tax deduction for home services – also called the 'craftsman deduction' – was very well received by the trade association, the Danish Federation of Small and Medium-Sized Enterprises (Håndværksrådet), which is an important political force for small craftsman enterprises. The Finnish Tax refund system brought enterprises that previously operated on an entirely informal basis to the advance tax register and consequently under the scope of the taxation system.

The measures that are considered or introduced are not necessarily self-evident. Concerning the ID-card, significant differences can be observed in the use of personal IDs and it is possible that subcontractors might not comply with the contractor's guidelines if the contractor does not have sufficient resources to monitor the situation. The potential gain from criminal activities still outweighs any eventual fine. And work conducted without an official receipt is still very common, even though the reforms of tax regulation system have

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changed the situation somewhat.

In general, the experience with most measures shows that a common instrument to fight shadow economy is not realistic, rather tailor-made measures are required to face this phenomenon and measures that have been found productive in one place need adaptation elsewhere to the local market. When a measure against undeclared work has to be implemented, some features of the economic and sociological structure have to be borne in mind, such as the size of companies, the level of trust in the institutions on the part of the public and the business, the enforcement of sanctions, the quality of public services and the capacity of controlling institutions, to mention just a few.