



**ILO PROJECT
THE EFFECTIVENESS OF THE LABOUR
INSPECTION SYSTEM AND OF SOCIAL
DIALOGUE MECHANISMS IS STRENGTHENED**



International
Labour
Organization



**SEMINAR FOR LABOUR INSPECTORS
DISCUSSION OF LABOUR INSPECTION CAMPAIGN TO
TACKLE UNDECLARED WORK**

DISTRIBUTION MATERIALS



14-16 March 2017

www.ilo.org/ukraine



LABADMIN/OSH

Labour Administration, Labour Inspection and Occupational Safety and Health Branch



International
Labour
Organization

Project

“The Effectiveness of the Labour Inspection System and of Social Dialogue mechanisms is strengthened”

Workshop

Preparation of the pilot inspection campaign on Undeclared Work

Kyiv-Ukraine, 14-15 March 2017

Arsenio Fernández Rodríguez
Technical Specialist on Labour Inspection,
Labour Administration and OSH

- The ILO views undeclared work through the lens of the informal economy

All economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements

Recommendation No. 204

“[Employment]...which, while not illegal in itself, has not been declared to one or more administrative authorities...”

OECD Employment Outlook 1986

“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.”

Communication of the Commission on Undeclared Work, COM (98) – 219.

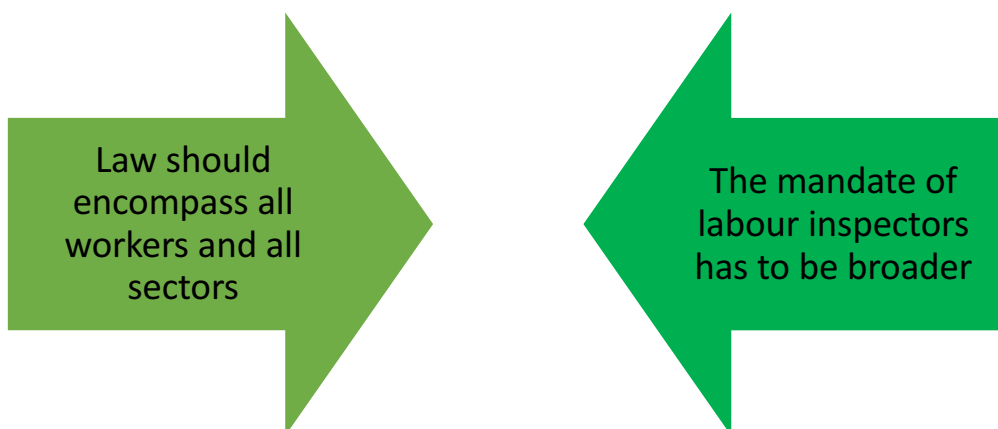
Enforcement in Recommendation 204

Preventive and appropriate corrective measures:

- Effective provision of information;
- Provide incentives;
- Appropriate system of inspection;
- Mechanisms for ensuring compliance with laws and regulations to facilitate transition to formality;
- Efficient and accessible complaint and appeal procedures;
- Effective sanctions.

Pre-Conditions for Labour Inspection in the informal economy I

An adequate Legal Framework



Pre-Conditions for Labour Inspection in the Informal economy II

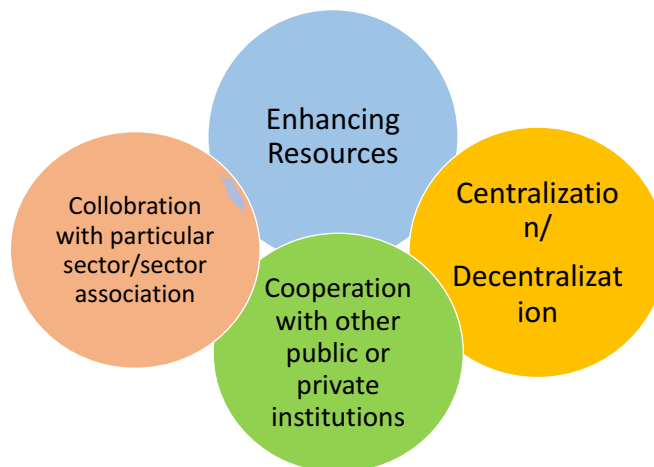
Legal framework aligned with ILS, in particular regarding the conditions of service of labour inspectors

Powers of labour inspectors

- ✓ **Supervision:** including its right of **free entry to establishments** and the **right of free inspection**
- ✓ **Injunction: ordering** the enterprise to adopt necessary measures to remedy defects in accordance to the labour legislation

Pre-Conditions for Labour Inspection in the Informal Economy III

Institutional Framework



Challenges for Labour Inspection on UDW

Special difficulties in the inspection visits, due to the characteristics of undeclared work

How to legalise the situations of noncompliance that have been found and indemnify those whose interests have been prejudiced.

Sectorial problems

Role of Labour Inspection on UDW

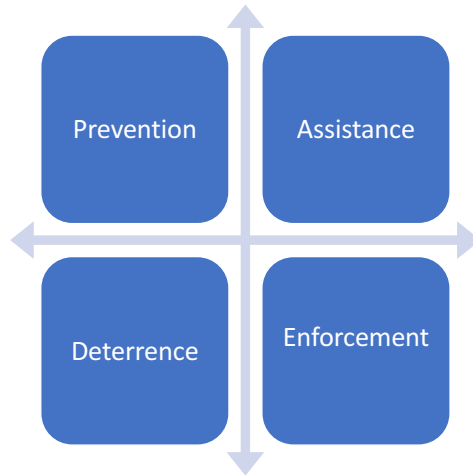
No worker should be excluded from protection on account of an irregular employment status and that the functions of labour inspectorates are to secure conditions of work in accordance with relevant legal requirements and not the lawful nature of their employment.

The mandate of labour inspectors should be distinguished from other bodies in order to maintain a climate of confidence between labour inspectors and workers, including the ones undeclared.

(2006 General Survey on Labour Inspection (§ 150)

COMPLIANCE

Most commonly
a good strategy
involves all four
vectors



Where do
We want to go

Where do
we come from

How to get
there?

Defining vectors for a strategy

NON-COMPLIANCE

Draft - Pilot LI Campaign to tackle undeclared work in Ukraine

Kyiv - Ukraine,
March 2017



Maria de Fátima Pisco
Labour Inspection, Portugal

"Undeclared work deprives workers of social protection, puts their health and safety at risk and lowers labour standards. It also undermines fair competition for businesses and endangers the sustainability of public finances and social security systems. In the end, everybody loses."

László Andor, European Commissioner for Employment, Social Affairs and Inclusion

Remembering some ideas from the Portuguese experience



□ Why a national campaign against UDW

UDW has negative repercussions on full employment, quality and productivity at work and social cohesion;

UDW has economic and social effects that have an impact on the national economy because it makes tax and social security revenues decrease;

UDW tends to distort competition between companies paving the way for social dumping;



Remembering some ideas from the Portuguese experience



□ Why a national campaign against UDW

The consequences of UDW impose the need to raise public awareness in general and workers and employers in particular of their risks and the positive effects of declaring all contracts and payment of contributions in full, in order to create a social conscience contrary to UDW.



Remembering some ideas from the Portuguese experience



□ Why a national campaign against UDW

To bring together wills and synergies with social and institutional partners, generating a multiplier effect in the fight against UDW, since LI recognizes that through its action alone, the effectiveness of this fight is far from desirable.

At the same time PT LI intended to identify the various forms of UDW, by creating adequate and sufficiently dissuasive strategies for inspective action, aiming not only to control UDW but also to increase the multiplier effect, thus contributing to strengthen its regulatory role.

Remembering some ideas from the Portuguese experience



□ Reminder

The concept of undeclared work (UDW): ***any paid activity lawful in nature, but not declared to public authorities (taking into account the legislative differences existing between Member States).***

Concept adopted by the European Commission in both its Communications about undeclared work [COM(98) 219, p. 4 and COM(2007) 628 final, p. 1]

This definition links UDW with tax and/or social security fraud and covers diverse activities ranging from informal households services to clandestine work by illegal residents, but **excludes criminal activities.**

Remembering some ideas from the Portuguese experience



□ Reminder

In Portugal there is **no legal definition** of the concept of UDW.

The Portuguese **legal system does not typify UDW** as a misdemeanour or crime.

The **sanctioning of UDW** tends to occur **indirectly** through the sanctions applied to the practice of other administrative offences and/or other crimes (foreseen in the national legislation applicable to employment, OSH, taxation, social security, immigration).

Remembering some ideas from the Portuguese experience



□ Reminder

The main legislation applicable to UDW

Statute of Portuguese LI, based on fully consolidated powers and rights of LI according to **ILO Convention 81**

Labour and OSH law: Labour Code and other laws

Social security legislation: Code of the Contributory Schemes of the Social Security Contributions System and other

Tax law: General Tax Law and other Codes

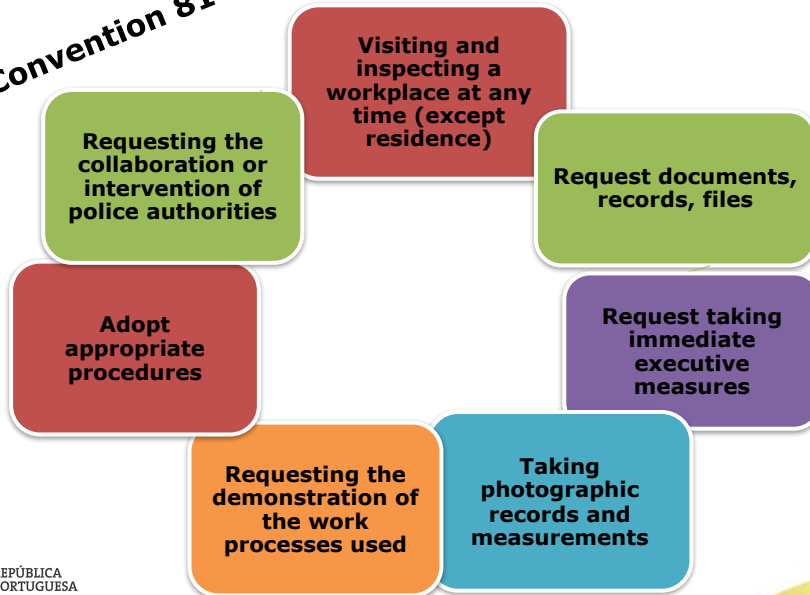
Foreign and Immigration legislation: legal framework of entry, permanence, exit and removal of foreigners into and out of national territory

Criminal legislation: Penal Code

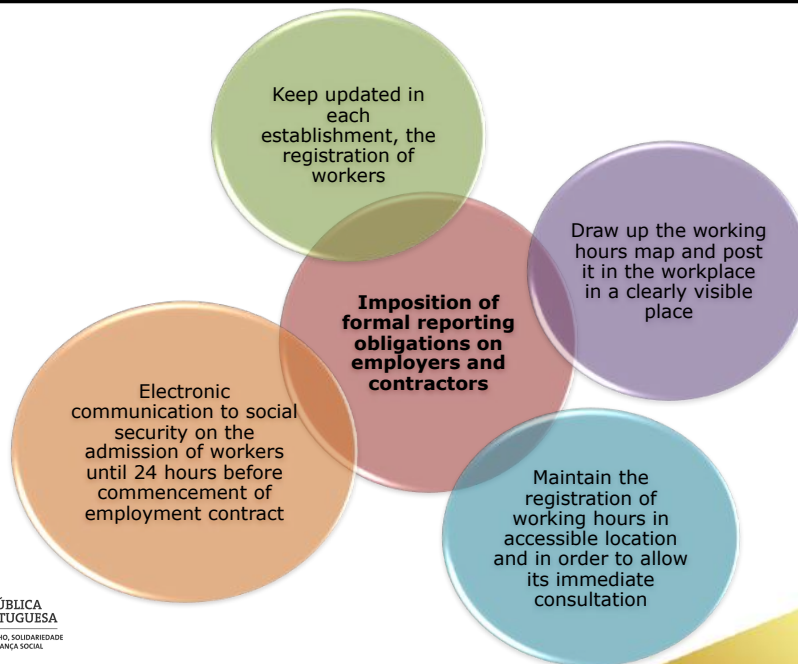
Portugal - LI powers (reminder)



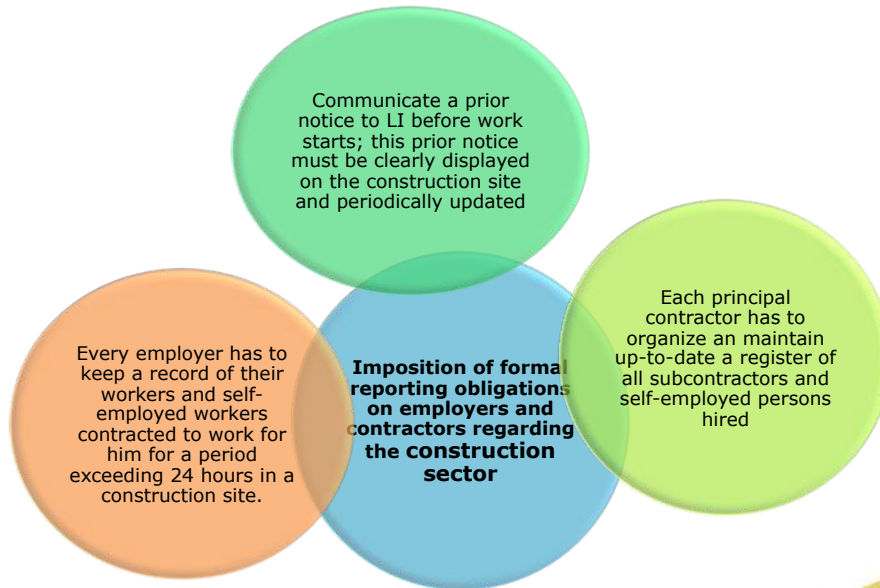
ILO Convention 81



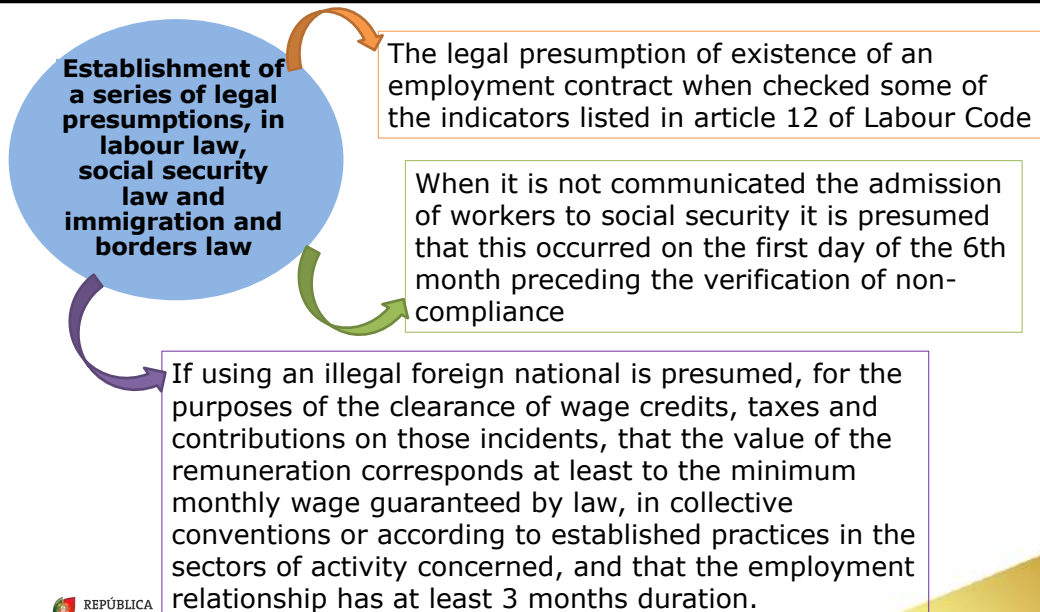
Portugal - example of measures to facilitate detection, sanction and dissuasion of UDW practices



Portugal - example of measures to facilitate detection, sanction and dissuasion of UDW practices



Portugal - example of measures to facilitate detection, sanction and dissuasion of UDW practices



□ **Reminder
Portuguese LI campaign 2014 to tackle UDW**



The Campaign was structured in two lines of action:

(1) Information / Awareness

(2) Enforcement (inspection visits by LI)

LI and institutional partners with inspective powers have developed actions within 1) and 2).

Social partners and other institutional partners with no inspective powers participated only in 1) - Information/Awareness.



□ **Reminder
Portuguese LI campaign 2014 to tackle UDW**



• **Information/ Awareness - target groups and support tools**

- ✓Citizens in general: national advertising campaign (written press advertisements and radio, posters, flyers)
- ✓Employers and workers: posters, flyers, telephone helpline, FAQ with answers on LI website, micro site for the campaign
- ✓Children and young people: sessions of awareness and information in schools (elementary and high school)



Ativos de sensibilização

Atividade de sensibilização

Atividade de sensibilização

Atividade de sensibilização	Data de realização	Local de realização	Valor (€)	Programa
Seminário "Atividade de sensibilização"	19 de Junho de 2014	Associação de Empresas de Portugal	10000000	Associação de Empresas de Portugal
Seminário "Atividade de sensibilização"	19 de Junho de 2014	Associação de Empresas de Portugal	10000000	Associação de Empresas de Portugal
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Seminário "Atividade de sensibilização"	19 de Junho de 2014	Associação de Empresas de Portugal	10000000	Associação de Empresas de Portugal



□ Reminder
Portuguese LI campaign 2014 to tackle UDW



Information / Awareness - Tools

Information available on our website

Disclosure Press
Electronic flyers
Social networks
Radio spots
Partners

□ Reminder
Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits - preparatory stage

Sectors

All sectors were considered, but a special priority was given to:

- Construction
- Hotels and catering
- Commerce
- Agriculture

(sectors that traditionally use UDW)

☐ Reminder
Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits - preparatory stage

Data available

- ✓LI database
- ✓Social Security database
- ✓Annual report on the activity of the company (LI also have e-access to this database)
- ✓LI database on collective bargaining
- ✓Internet portal of the Ministry of Justice
- ✓Internet
- ✓Other: complaints

☐ Reminder
Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits - preparatory stage

Central guidance from Head Office in Lisbon:

- ✓Determines to local services of LI the minimum number of inspection visits and the dates they should be carried out;
- ✓Defines a deadline to present a brief report (available on our intranet);
- ✓Sometimes decides on the sector of activity;

□ **Reminder**
Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits - preparatory stage

Central guidance from Head Office in Lisbon (cont.):

- ✓ Other times leaves the decision to select the sector to the local directors, who should take regional reality into account and use the knowledge they have to select it as well as the companies which are going to be inspected;
- ✓ Local directors decide if it is necessary to involve other Authorities (Social Security, Tax Authority, Immigration Service, Police).

□ **Reminder**
Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits – preparatory stage

How to prepare the inspection visit

- Define the intervention strategy: objectives, resources;
- Define and contact other Authorities (Social Security, Tax, Immigration Service, Police);
- Consult the available and appropriate databases;
- Print, if necessary, the information you find useful, namely the list of workers and contributions paid to Social Security.

□ **Reminder**
Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits

How to conduct an inspection visit

**Quick intervention;
Use Police if
necessary to
guarantee
effectiveness/safety;
Inquire about other
workers not seen on
site.**

Follow the LI internal guidelines on how to conduct an inspection visit;

Proceed to the identification of the workers and employer (gather the ID information, address, phone number, e-mail);

Identify the subcontracting chain;

Use checklists;

Request documents or grant a deadline to their submission.

□ **Reminder**
Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits
Analysis of documentation

Topics do check:

Declaration to Social Security
Work accident insurance
Legal salary
Others,...

Consult:

- ✓LI database
- ✓Social Security database
- ✓Annual report on the activity of the company (LI also have e-access to this database)
- ✓LI database on collective bargaining
- ✓Internet portal of the Ministry of Justice
- ✓Internet
- ✓Other

Reminder Portuguese LI campaign 2014 to tackle UDW



Enforcement/inspection visits

After the inspection visit and the analysis

Adopt the **appropriate procedures** to correct the situation of the workers according to the law:

- Notice of infringement;
- Communication of irregularities to be controlled by other entities (Social Security, Immigration);
- Notice to present documents to prove that the situation has been amended;
- Consult SS database to verify if the worker is enrolled and declared since the inspection visit;
- Consider making a second inspection visit (if necessary);
- ...

Draft of pilot LI Campaign to reduce UDW in Ukraine



Summary

- Sectors / regions
- Expected impact of the plan
 - Qualitative objectives
 - Quantitative objectives
- Criteria to identify targets for inspection
- Preparatory activities/ Lines of action/ Responsibilities/ Strategy/ Tools to use/ Timeline and implementation/ Reporting cycles

Draft of pilot LI Campaign to reduce UDW in Ukraine



Informal employment according to State Statistics Service

- In formal sector – the highest rate in Odessa, Ivano-Frankivsk, Volyn, Cherkassy, Zaporizhia, Kharkiv, Dnipropetrovsk, Lviv regions
- Employment in informal sector – the highest rate in Zakarpattia, Kherson Regions



Pilot LI Campaign to reduce UDW in Ukraine

□ Sectors / regions



Pilot regions: Kherson, Odessa, Ivano-Frankivsk, Lviv, Cherkassy regions Sectors and types of UW

Type of UW/Sector	Agriculture	Construction	Accommodation and catering	Trade
Formal – A) unregistered workers in registered enterprises AND B) civil contracts and bogus self-employment	Odessa	Lviv	Odessa	Lviv
	Cherkassy – SECTORS ???			
Employment in informal sector	Kherson	Kherson	Kherson	Kherson

Pilot LI Campaign to reduce UDW in Ukraine

☐ Qualitative objectives



Detect and combat UDW promoting the transformation of undeclared work into regular employment;

Promote a culture of compliance with employment obligations;

Contribute to fair competition between employers;

Raise awareness of the need and advantages of declared work and the negative consequences of its non-declaration.

Pilot LI Campaign to reduce UDW in Ukraine

☐ Quantitative objectives



For example (?)

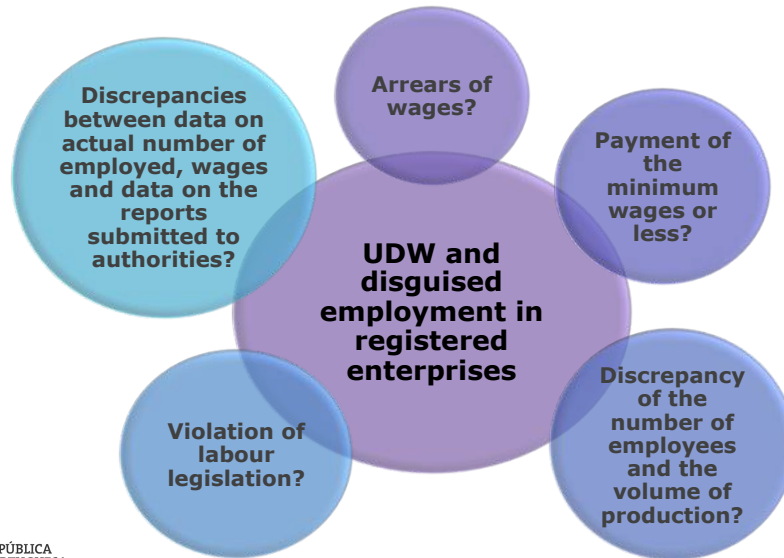
Information/awareness

- No. of official letters
- No. of information e-documents produced by SLS
- ?

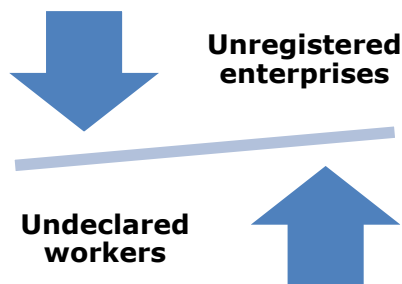
Enforcement

- No. of inspection visits
- No. of joint inspections
- No. of companies inspected
- No. of LI involved

Define how to select the companies to inspect



Define how to select the companies to inspect **Much more difficult in "informal sector"**



Difficulties

The enterprises are not in the system so officially authorities are not informed;
Many of them work as unregistered self-employed or micro companies;
It's difficult to know where they are.

Define how to select the companies to inspect
“informal sector”

How can SLS select these enterprises?

Find out **where**: we are talking about workplaces so people are working there – it’s likely the neighbours and even local authorities know or suspect where they are. Or maybe LI received complaints referring to such places...

The heads of territorial LI (or someone from Headquarters in Kyiv) should have **informal meetings**: with the local authorities, the police, employers’ associations and trade unions to get information about the sector, possible location and other known features about unregistered business in the region.

Assistance from the **police** is essential!

Activities	2017										Participants
	3	4	5	6	7	8	9	10	11		
Workshop to present draft pilot LI campaign. Finalization of the pilot LI campaign.											SLS/ILO
Preparation of information tools (SLS hotline for consultation on declaration of workers, official letters to employers, ...)											SLS/ILO
Announce of LI campaign (second half of April).											SLS
Information and awareness.											SLS/TU/ Employers organizations/State Fiscal Service/Pension Fund
Training of LI inspectors from pilot regions.											SLS/ILO/partner institutions
Inspection visits.											SLS
Evaluation of campaign results.											SLS/ILO
Workshop to present LI campaign results.											SLS/ILO

Pilot LI Campaign to reduce UDW in Ukraine

□ Preparatory activities/ Lines of action/ Responsibilities/ Strategy/
Tools to use/ Timeline and implementation/ Reporting cycles



**Workshop to present draft pilot LI campaign/
Finalization of the pilot LI campaign – march 2017**

- Presentation of draft pilot LI campaign by international consultant (Portugal) to SLS;
- SLS group discussion.

- Submit to ILO and SLS a final pilot labour inspection action plan reflecting feedback and comments from the meeting, that must include:
 - Measurement and reporting templates;
 - Tools created for plan implementation and evaluation.

Pilot LI Campaign to reduce UDW in Ukraine

□ Preparatory activities/ Lines of action/ Responsibilities/ Strategy/
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Announce of LI campaign - second half of April (?)

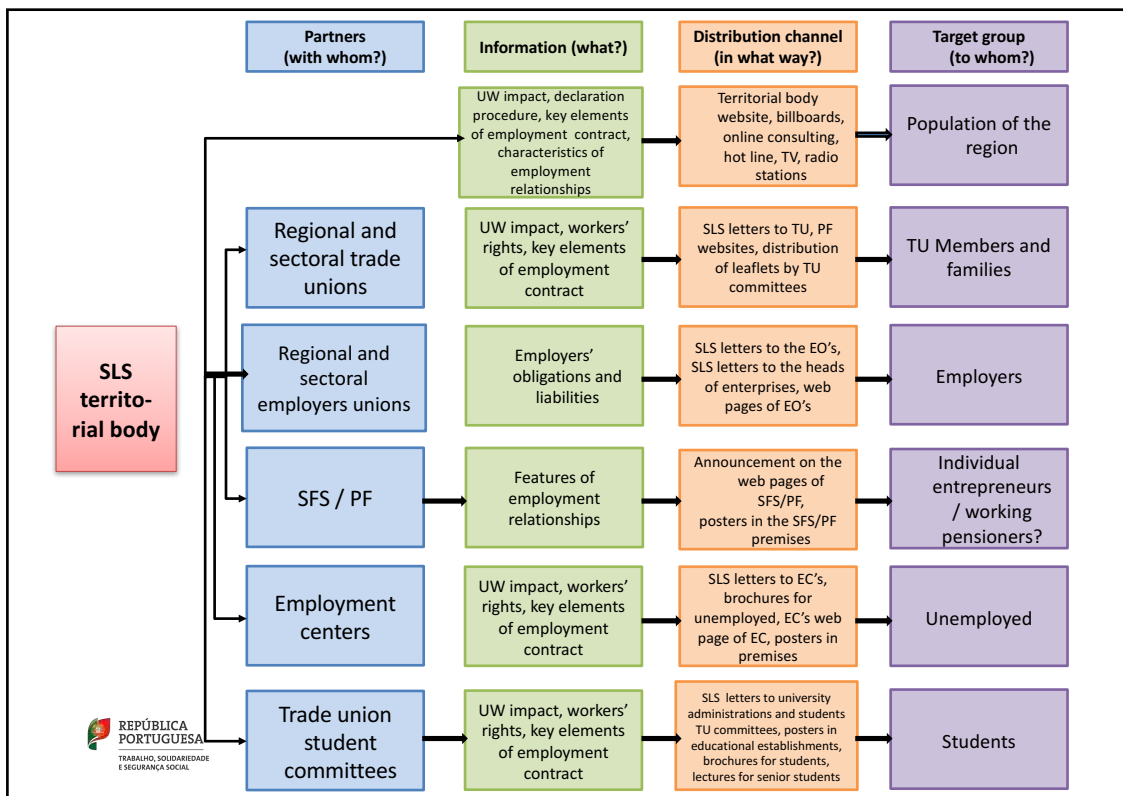
SLS central body and Territorial department of SLS widely **announce about labour inspection campaign 2 months in advance**

SLS invites employers and workers to take measure for declaration of work.

SLS explains the legal responsibility for employers for non-declaration of workers to motivate them to declare workers before the LI campaign will start.

* To monitor the situation SLS should have information about No. of declared workers before announcement, to monitor how it will be changed during the next two months. **Is it possible to do?**

Information and awareness April and May



Pilot LI Campaign to reduce UDW in Ukraine

□ Preparatory activities/ Lines of action/ Responsibilities/ Strategy/ Tools to use/ Timeline and implementation/ Reporting cycles



Training of LI inspectors from pilot regions

Two days training on implementation of pilot LI campaign:

- For labour inspectors from selected regions
- Other parties involved (?)

Conducted by (?)
International consultant
ILO
SLS representatives

Pilot LI Campaign to reduce UDW in Ukraine

□ Preparatory activities/ Lines of action/ Responsibilities/ Strategy/ Tools to use/ Timeline and implementation/ Reporting cycles

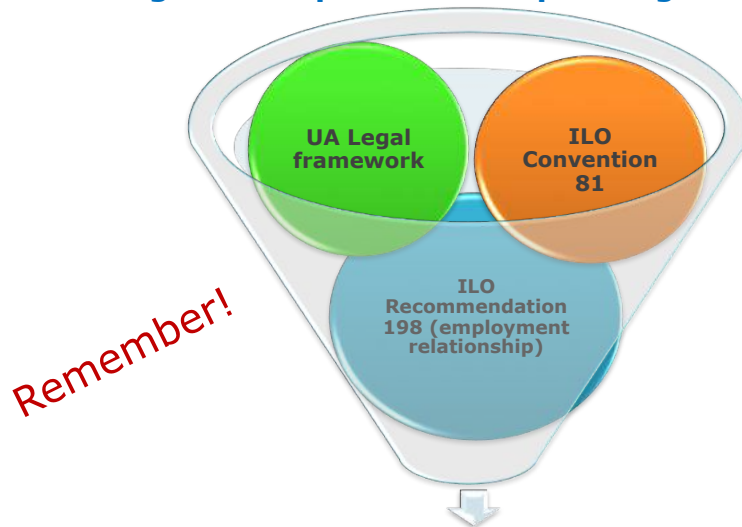


Training of LI inspectors from pilot regions (cont.)

Two days training on implementation of pilot LI campaign:

- Practical example from PT LI actions on UDW
- Legal tools
- Other tools to help LI clarify employment situations

Training of LI inspectors from pilot regions (cont.)



Training of LI inspectors from pilot regions (cont.)

Other tools for LI to use

- Create / adapt templates to be used by LI for questioning workers
- Create / adapt templates to use in employers and collect the necessary information,
- Type of documents to analyze/request during the inspection visits

Some examples:

- Template report for inspection visit
- Template list of questions (general)
- Template list of questions for disguised employment (civil contracts/ bogus self employed)

Pilot LI Campaign to reduce UDW in Ukraine

□ Preparatory activities/ Lines of action/ Responsibilities/ Strategy/
Tools to use/ Timeline and implementation/ Reporting cycles



Evaluation of campaign results

- No. of inspection visits
- No. of companies inspected
- No. of companies with UDW
- No. of companies with disguised employment:
 - Fake civil contracts
 - Fake self-employed
- No. of registered workers
- No. of UDW identified
- No. of fake civil contracts/self-employed identified
- No. of irregular workers integrated

Also ?

No. of LI involved

No. of joint inspections



Pilot LI Campaign to reduce UDW in Ukraine

□ Preparatory activities/ Lines of action/ Responsibilities/ Strategy/
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Evaluation of campaign results Other indicators ?

For information phase

- A satisfaction survey?

About the quality of the hotline - The waiting time? The clarity of responses given? If people find it useful?

About the information made available on the websites? Easily understood? Useful?...

For enforcement phase

Time elapsed between the inspection visit and the final report?

...?



Evaluation of campaign results

UNDECLARED WORKERS AND PARTIALLY UNDECLARED WORKERS AT REGISTERED ENTERPRISES					
Sectors/indicators	Agriculture	Construction	Accommodation/ catering	Trade	TOTAL
Inspection visits					0
Enterprises inspected					0
Unregistered workers					
Enterprises with UDW					0
Registered workers					0
No. UDW identified					0
No. of UDW integrated as a result of inspection visit					0
Total	0	0	0	0	0
Civil contracts for the substitution of LA					
No. of enterprises with detected substitution of LA by civil contracts					0
No. of workers, who work on the basis of civil contracts					0
No. of workers, integrated to work on LA basis					0
Total	0	0	0	0	0
Individual entrepreneur to substitute LA					
Number of enterprises with detected individual entrepreneurs instead of LA					0
Number of identified individual entrepreneurs, who substitute LA					0
Number of individual entrepreneurs, integrated to work on LA basis					0
TOTAL	0	0	0	0	0
Sectors/cleared amounts	Agriculture	Construction	Accommodation / catering	Trade	TOTAL
Due to workers					0
Due to SS					0
Fines charged (UAH)					0
TOTAL	0	0	0	0	0

Sector / LI procedures	Agriculture	Construction	Accommodation / catering	Trade	Total
Act					0
Instruction					0
Other action					0
Relevant law					
TOTAL	0	0	0	0	0

Facts of abuses, not covered by legal provisions and Propositions to eliminate the gaps in legislation

Reasons of UDW						
Reasons of undeclaring the labour relations by employers	High taxes of legislature	Lack of knowledge of the requirements of legislation	Economically profitable	By the proposition of employee		
Total	0	0	0	0		
Reasons of undeclaring the labour relations by workers	Insisted by the employer	Didn't know the requirements of legislation	To save the right for benefits on unemployment	To save the right for subsidies	To save the right for a pension in full amount	Secondary employment
Total	0	0	0	0	0	0

Employment in informal sector					
Sectors / indicators	Agriculture	Construction	Accommodation / catering	Trade	Total
Inspection visits					0
Enterprises inspected					0
UDW					
Enterprises with UDW					0
No. of UDW identified					0
No. of UDW integrated					0
Total	0	0	0	0	
Sector / cleared amounts	Agriculture	Construction	Accommodation / catering	Trade	Total
Due to workers					0
Due to SS					0
Fines charged (UAH)					0
TOTAL	0	0	0	0	

Sector / LI procedures	Agriculture	Construction	Accommodation / catering	Trade	Total
Act					0
Instruction					0
Other action					0
Relevant law					
TOTAL	0	0	0	0	

Facts of abuses, not covered by legal provisions and Propositions to eliminate the gaps in legislation

Reasons of UDW						
Reasons of undeclaring the labour relations by employers	High taxes	Lack of knowledge of the requirements of legislature	Economically profitable	By the proposition of employee		
Total	0	0	0	0		
Reasons of undeclaring the labour relations by workers	Insisted by the employer	Didn't know the requirements of legislation	To save the right for benefits on unemployment	To save the right for subsidies	To save the right for a pension in full amount	Secondary employment
Total	0	0	0	0	0	0

Evaluation of campaign results.

Report_SLS Inspection Campaign to reduce UDW 2017					
Results / Sectors	Agriculture	Construction	Accomod& catering	Trade	Total
No. Companies inspected					0
No. Inspection visits					0
No. Companies with UDW					0
No. Totally UD workers					0
No. Partially UDW					0
No. Fake civil contracts					0
No. Bogus self-employed					0
No. workers declared after inspection					0
Amounts due to workers					0
Amounts due to SS					0
Fines (UAH)					0
LI procedures					
Written advice					0
Improvement notice					0
Notice to suspend work					0
Notice of infringement					0
Other?					0
Reasons of undeclaring the labour relations by employers					
Reasons of undeclaring the labour relations by workers					
Facts of abuses, not covered by legal provisions and propositions to eliminate the gaps in legislation					

Pilot LI Campaign to reduce UDW in Ukraine
 Preparatory activities/ Lines of action/ Responsibilities/ Strategy/
 Tools to use/ Timeline and implementation/ Reporting cycles



Workshop to present LI campaign results

- Presentation of LI campaign results
- SLS experience from this campaign:
 - Obstacles for detecting undeclared workers
 - Obstacles for taking relevant measures by labour inspectors
 - Factors of success
- Further steps

Don't forget!



The negative effects of undeclared work are felt by **workers, businesses and governments.**

For **workers**, undeclared work translates into:

- lower pension rights
- less access to healthcare
- poor working conditions
- potential **breach of employment rights**

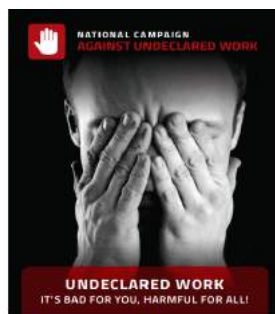
For **businesses** it creates **unfair competition** since companies that do not declare their workers gain an unfair advantage.

For **governments**, it means **lost tax and social security revenue.**

Source: <http://www.consilium.europa.eu/en/policies/labour-mobility/platform-against-undeclared-work/>



Don't forget!



What's UNDECLARED WORK?

These are the attributes of undeclared work:

- Lack of contribution from workers to Social Security
- Partial or total non-declaration of the compensation paid to workers to Social Security
- No declaration and no tax to the Authority
- No legal statements regarding employment

Undeclared work can be the same as:

- Inadequate working conditions
- Discrimination and social exclusion

Consequences

Undeclared work is a criminal offence. It is a crime under the Labour Code and the Criminal Code. It is also a crime under the Social Security Code. The employer and the worker are both liable for this crime. The employer is liable for the undeclared work and the worker is liable for not declaring the work. The employer is liable for the undeclared work and the worker is liable for not declaring the work. The employer is liable for the undeclared work and the worker is liable for not declaring the work.

The National Campaign against UNDECLARED WORK aims to:

- Raise a culture of tolerance and knowledge of the rights and obligations concerning employment
- Alert the society, employers and workers for the advantages of declared work and also for the negative aspects of the non-declaration
- Alert, inform and prevent the transformation of full or partially undeclared work into regular work



What are the risks for the employer with UNDECLARED WORK?

- Undeclared workers are not covered by Social Security
- Undeclared workers are not covered by the employer's liability insurance
- Undeclared workers are not covered by the employer's health insurance
- Undeclared workers are not covered by the employer's pension insurance

What are the risks for the employee with UNDECLARED WORK?

- Undeclared workers are not covered by Social Security
- Undeclared workers are not covered by the employer's liability insurance
- Undeclared workers are not covered by the employer's health insurance
- Undeclared workers are not covered by the employer's pension insurance

Undeclared work Bad for you, harmful for all!



