



Joint statement by the European social partners in the construction sector

Concrete recommendations for tackling undeclared work and social fraud in the construction sector

Over the years, the European social partners in the construction sector (EFBWW and FIEC) have repeatedly spoken out against undeclared work in the construction sector. EFBWW and FIEC believe that an effective and efficient policy based on a zero tolerance policy to any form of undeclared work will promote and value equal treatment of workers, while at the same time ensure a fair level playing field for all law-abiding companies. As such, undeclared work is a continuous threat for a sustainable construction market and social progress.

The Eurobarometer “undeclared work” 2019¹ shows that still 19% of all EU undeclared activities take place in the overall construction industry. The most frequent undeclared activities are carried in the field of home repair and renovation activities (21%). These high figures do not differ much from the latest data (2013), which implies that no or very little overall progress was achieved to tackle undeclared work in the construction industry. This reality contributes to the construction industry having a bad reputation and leads to being less attractive for young and skilled workers. Therefore, this problem needs to be addressed in an efficient and effective manner.

Undeclared work is not a static phenomenon and constantly follows political, economic, fiscal and social developments. This implies that there are constantly new challenges and that existing and future enforcement mechanisms must be continuously assessed and adjusted where necessary.

Through this Joint Declaration, the European social partners of the construction industry call on the European, national and regional policymakers and the national social partners to step-up their actions in the fight against undeclared work and social fraud in the construction sector and push a better enforcement of the rules. This declaration contains recommendations that can be converted into concrete actions at the various levels and by the competent parties.

An inclusive, long-term and coherent approach to undeclared work and social fraud

In recent years, the sectoral social partners from the construction industry in some European countries have been more and better involved in compliance and enforcement policies to tackle “undeclared work and social fraud”. Unfortunately, in some other countries, the sectoral social partners are often excluded from such initiatives. An efficient and effective policy to tackle undeclared work requires a broad partnership, which must involve the concerned sectoral social partners in Member States, together with the whole value chain (i.e. national authorities, clients, subcontractors, suppliers...).

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<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2250>

The fight against undeclared work and social fraud must be a long-term result-oriented action, which requires necessary investments in manpower, technology, cooperation and competences. Regrettably, many European countries are systematically reducing the number of labor inspectors and labor inspections. In some countries the discretionary power of those inspectors has been curbed.

Beyond the initial difficulty of discovering cases of undeclared work, there is also a problem with getting the sanctions effectively enforced. According to the latest Eurobarometer on undeclared work (2019) only 7% of the EU respondents consider that chances that the authorities find out undeclared work or issues fines is very high. Hence, fraudsters – both companies and workers – have less chance of being caught and if so, the sanctions may not be enforced.

Traditionally, policies to tackle undeclared work and social fraud have mainly focused on the correct payment of wages and social security contributions and the compliance with employment conditions. But the phenomenon of undeclared work and social fraud goes beyond these issues and also refer to the correct payment of VAT and taxes, for instance. The creation of a fair level playing field for all businesses and the social protection of workers are fundamental.

Moreover, the classic approach to undeclared work and social fraud often emphasizes cases of social fraud within national borders. The reality in the construction industry is that cross-border social fraud is also an important form of undeclared work and social fraud.

Improving monitoring and quick response to complex forms of undeclared work and social fraud at EU level

An important evolution of undeclared work and social fraud in the construction sector is their increasing complexity of forms, especially when it comes to cross-border fraud. This complexity is often encouraged by unclear laws and regulations (containing loopholes, exceptions, contradictions and ambiguities), an inadequate cooperation between public administrations (domestically and cross-border) and the poor/limited exchange of information between different administrations in the various countries involved, as well as a fragmentation of their capacities and powers. Of course, fraudulent companies and workers use these legal and administrative weaknesses to their advantage.

Making optimal use of digitalization to better tackle undeclared work and social fraud

The ongoing digitalization of our society, economy and administrations offers great opportunities for improving transparency and for the relevant administrations and social partners for a more effective and efficient fight against undeclared work. By collecting, seeking, standardizing, exchanging, comparing and matching data, the competent bodies can quickly identify and intervene in cases of suspected undeclared work and/or social fraud. For this purpose, it is important that national authorities, administrations and social partners operate the digital transition of their databases as soon as possible, allowing for easier exchange and comparability of data, on a case-by-case basis. Inspection services should also be equipped with wireless IT tools allowing them to consult and match data in real time when they are undertaking inspections on construction sites. Specific digital tools, inter alia digital working time registrations, social identity cards offer new possibilities to improve the control of the labour market, while at the same time limit the administrative burden for companies.

Last but not least this should help to document workers professional careers and protect their individual and collective social rights in the context of frequent cross border assignments.

Tackling undeclared work and social fraud-in public procurement

The share and the impact of public procurement in the construction industry varies in the different Member States but is overall very significant. Through public procurement, national, regional and local authorities redistribute taxpayers' money. By doing so, all concerned authorities are expected to carry out public procurement procedures efficiently and with high standards of conduct in order to ensure the highest quality of service delivery. But cases of undeclared work and social fraud continue to exist in the execution of public works. Going for the lowest price instead of the "best price-quality ratio" sometimes leads to awarding contracts to companies with unsustainable business models, which then may use undeclared work to lower their costs.

Recommendations of the European social partners of the construction industry:

EFBWW and FIEC strongly recommend to:

- 1. national, regional and local authorities to involve the relevant sectoral social partners in the definition, design and implementation of all compliance and enforcement policies to tackle undeclared work and social fraud in the construction sector.**
- 2. EU Member States to provide sufficient human, technical resources and capacity to tackle undeclared work and social fraud. By combining all available resources, the existing resources and capacities can be used more efficiently and effectively. In general, Member States should consider reinforcing their labour inspection services and provide them with the necessary powers to succeed in their mission.**
- 3. EU Member States to analyze their internal administrative and juridical procedures and sanction mechanisms and verify that they are sufficiently dissuasive and efficient to hinder frauds.**
- 4. EU Member States to apply an overall coherent policy at national/regional/local level to tackle undeclared work and social fraud. This can be done, for example, by appointing a national/regional/local responsible policymaker, who has a transversal competence to tackle all forms of undeclared work and social fraud. This approach, including cooperation of all relevant services, together with the sectoral social partners, will also allow for better targeted inspections.**
- 5. EU Member States to improve the prevention, control, cooperation and coordination between the different national/regional/local authorities to tackle the cross-border dimension of many situations of undeclared work and social fraud.**
- 6. the European Platform tackling undeclared work - which will soon be integrated into the European Labour Agency (ELA) – to strengthen its role of observatory of complex fraudulent practices, in cooperation with its national liaison officers, the European and national social partners of the construction industry and the relevant national authorities, with a view of proposing concrete solutions. The ELA should intensify and operationalize its activities from 2021 onwards (i.e. joint inspections, information, mediation and capacity building). The ELA should also be given the opportunity to provide an opinion whenever the European Commission intends to regulate the European labour market on a matter that falls within the scope of competences of the ELA.**

7. the European Institutions and the national governments to work towards a cross-border and national digitalization and interoperability of their respective databases, where labour and company data is used to strengthen the enforcement of legal obligations (including in the field of posting of workers). The exchange and processing of digital data for better enforcement is fundamental and should be undertaken in respect of “data privacy”.
8. the European Commission to improve the European Exchange of Social Security Information (EESI) and consider the possible options in relation to the instauration of a unique European Social Security Number (ESSN) and an EU company register (connecting national company registers).
9. the EU Member States to promote and use the “best price-quality ratio” to award public contracts.
10. the EU Member States to take the necessary preventive, controlling and enforcement within the Public Procurement, so that Undeclared work and social fraud are effectively and efficiently tackled.

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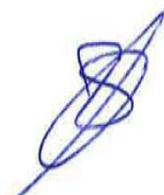
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