



FEDERATION EUROPEENNE DES TRAVAILLEURS DU BATIMENT ET DU BOIS  
EUROPEAN FEDERATION OF BUILDING AND WOODWORKERS  
EUROPÄISCHE FÖDERATION DER BAU- UND HOLZARBEITER

## **Undeclared Work in the Construction Sector**

*The European Federation of Building and Woodworkers (EFBWW) is a recognised European social partner for the building and woodworking sector, representing 2.3 million workers from national trade unions in the building and woodworking sector. In its capacity as a European Federation, the EFBWW occupies a key position as observer of the social and economic situation in the construction sector. The EFBWW wishes to assume its responsibilities unequivocally on the issue of "undeclared work" and without discussing any excuses. Through this input, the EFBWW wants to make a constructive contribution as an interlocutor of the European Commission and Council to the European debate on undeclared work.*

# Undeclared Work in the Construction Sector

## EFBWW proposal to the members of the Standing committee Building

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# Undeclared Work in the Construction Sector

## EFBWW proposal to the members of the EFBWW Working Party on “Undeclared Work”

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### I. THE EUROPEAN CONSTRUCTION SECTOR IN FIGURES

The construction sector is the leading industrial employer in Europe, representing 7.5% of total European employment and 28.1% of industrial employment in the European Union<sup>1</sup>. The European construction sector comprises roughly 1.9 million construction firms, of which 97% have fewer than 20 workers and 93% fewer than 10.

Approximately 11 million workers are directly employed in the European construction sector. Employment in the sector has a very powerful multiplier effect on employment as a whole; one job in the construction industry generates two new jobs in the overall economy<sup>2</sup>. A strong employment policy in the construction sector therefore has a positive impact on employment in general.

Compared with other industrial activities, the construction sector is by far the most labour-intensive industry. About 50% of turnover is achieved through the labour of the workers. For this reason the work force of construction firms constitutes the main economic lever for the future survivability of the sector. Productivity in the sector largely determines the competitiveness of building enterprises.

Traditionally construction workers are an exceedingly vulnerable group in the highly competitive battle between building firms. A high incidence of work accidents (some of which with a fatal outcome), substantial number of cyclical unemployed and large proportion of undeclared work (more on this later) are therefore not unknown phenomena in the sector.

The fiercely competitive situation in the construction sector is apparent inter alia from the strong pressure to drive down prices ever lower. A major adverse effect of the competitive pressure is the relatively high number of bankruptcies in the sector. The incidence of "fraud" is also extremely high. The main reasons for this is the lack of "quality", "expertise" and "survivability" of construction firms. In some subsectors the financial capacity of firms also plays a major role (particularly in the commercial and industrial building subsector).

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<sup>1</sup> Sustainable construction final report, European Commission - DG enterprise

<sup>2</sup> (Communication from the European Commission: "The Competitiveness of the Construction Industry" COM(97)539 dated November 1997, chapter 2)

The construction sector is distinguished from other industrial sectors by the fact that the most economically-advantageous bid is not always the best bid. Unfortunately, not everyone is convinced by this principle.

The construction sector is not only the biggest industrial employer, but also the motor of general employment policy. The impact which the sector has on economic, social and fiscal policy is of considerable importance for national authorities. Productivity of construction workers is one of the key factors for the competitiveness of construction firms.

## **II. WHAT THE EFBWW UNDERSTANDS BY "UNDECLARED WORK"**

The quest for a uniform definition is a long road down which many have travelled. In a Commission Communication on "undeclared work"<sup>3</sup> an attempt was made to demarcate the concept of "undeclared work" and to define its scope.

The EFBWW also takes the view that a uniform European definition is highly desirable. Three aspects are of key importance in this respect:

- (1) a standard term
- (2) a standard definition
- (3) a standard classification

### **A. A standard term**

There are at present countless synonyms for the term "undeclared work"<sup>4</sup>. Undoubtedly all these alternatives are correct to a greater or lesser extent from the linguistic viewpoint. But using so many terms (in order to avoid constant repetition) at the same time leads to various misunderstandings and confusion. This is certainly the case when documents are translated into other languages. For these reasons the EFBWW has opted unequivocally for one single term, namely "undeclared work" and its equivalent translations, as stated by the European Commission in its Communication on "undeclared work".

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<sup>3</sup> Commission Communication on undeclared work COM (1998) 219 final.

<sup>4</sup> Illegal employment, informal economy, social fraud, black work, moonlighting, ...

## **B. A standard definition**

When deciding on a definition, the EFBWW opts unequivocally for a broad definition of the concept of "undeclared work". In so doing the EFBWW has adopted a *position in principle* and rejects any form of "undeclared work". Experience has taught us that there are no limits to the creativeness of "undeclared workers" and their users when it comes to concealing their activities. Were an (over-)narrow definition to be adopted this would open up loopholes for evading the legal scope of application of the term "undeclared work" and thereby create immunity from sanctions. The EFBWW wants to avoid such a situation.

The Commission uses the following definition of "undeclared work": *"any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account the differences in the regulatory system of the member states"*.

The EFBWW would point out that the proposed definition creates too great a margin for interpretation, which limits its applicability in practice. Set out below is a critical analysis of the proposed definition.

The Commission definition stipulates that *"unpaid activities"* do not fall within the scope of application of "undeclared work". This provision was introduced in order to prevent "services between friends" and "voluntary work" from being regarded as "undeclared work". Consequently, work is not considered to be "undeclared" when no such payment takes place or when this cannot be proved. The nature of "undeclared work" means that in practice it is difficult to prove that payment (or remuneration) has been made, as the remuneration for "undeclared work" is not de facto officially recorded. This begs the question with whom does the burden of proof lie? The EFBWW takes the view that the distinction between "paid activities" and "unpaid activities" is not the decisive factor in the definition of "undeclared work".

The reference to the *"legality"* of the activities seems an obvious choice. In this way criminal activities are excluded and fall outside the legal scope of this debate. In the light of its experience, the EFBWW is of the opinion that in practice criminal activities can also be regarded as "undeclared work". We are thinking here, for example, of such cases as fly tippers dumping hazardous building waste. In practice, these "criminal activities" are naturally not reported to the proper authorities and the tax and social obligations are not met. If the illegal activities are considered to be "work", the perpetrators (the persons ordering the waste to be dumped and those carrying out the dumping) will additionally be required to pay the owing tax and social charges. It goes without saying that this would not prevent criminal proceedings from being pursued.

The EFBWW further wishes to avoid matters being taken out of the hands of the industrial inspectorate services as a result of it being ascertained during the course of the proceedings that the case concerned is not "undeclared work" but "criminal activity", which comes under the province of other investigation services.

The reference to the "*reporting obligation*" for "work" is just one of the many obligations in a normal employment relationship with respect to the authorities. In most cases "notification" on its own is not sufficient, but there are additional obligations (for example, to provide a (written) employment contract, payment of tax and social charges, etc.), which must be met. The member states decide which obligations must be complied with. It would therefore be better to take compliance with national legal, regulatory, administrative or contractual obligations as a reference point.

As mentioned earlier, the EFBWW considers that there should be a broad rather than a narrow definition of "undeclared work". In the light of the above remarks, the EFBWW proposes the following definition of "undeclared work": *"Any form of work intended to evade all or some legal, regulatory, governmental or collective provisions of a fiscal, social or administrative nature, in accordance with the provisions of the country of employment."*

### **III. UNDECLARED WORK IN THE CONSTRUCTION SECTOR**

Together with a number of other sectors, the construction industry is frequently held up as a segment of the labour market in which there is a high proportion of undeclared work. Owing to the clandestine nature of undeclared work it is difficult accurately to assess the extent and nature or, a fortiori, the economic, social and fiscal repercussions. The European Commission therefore uses very widely varying figures. It can realistically be assessed that between 5 and 20% of the European Gross National Product (GNP) is achieved by illegal means<sup>5</sup>. It is striking to note that the variations between different EU countries are very wide<sup>6</sup>.

In the meantime, most countries have given clear signals that the scale of "undeclared work" is constantly increasing. This may be an indication that the problem is greater than had been thought until now.

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<sup>5</sup> Report on the Commission Communication on undeclared work, A5-0220/2000

<sup>6</sup> According to an ILO report the percentage of "undeclared work" in the accession countries to the EU is substantially higher than in the Union.

It has emerged from an internal EFBWW survey that it is not possible simply to consider "undeclared work" as an homogeneous concept. The fact is that, in practice, there are a great many variations in application. Accordingly, a clear distinction can be made between "*undeclared work without an intermediary*" and "*undeclared work with intermediaries*".

An "undeclared worker" working without an intermediary is somebody who is working *exclusively for their own name and account*. In the case of an "undeclared worker" working with an intermediary a third person is involved. The "undeclared worker" is not working for their own name and account but *for the name and account of the third party*. Where the "third party" is the usual employer of the "undeclared worker", very often there is "coercion" by the employer to make the worker carry out the "undeclared work". In such cases various employers put forward arguments which prompted their firm to use undeclared workers (imminent delivery deadlines, need to cover for workers off sick,...). The worker, being in a subordinate legal position, cannot easily avoid the situation.

The EFBWW takes the view that an intermediary in "undeclared work" also carries a heavy responsibility. It is they who have instigated the "undeclared work", thereby obtaining personal gain whether directly or indirectly.

#### **A. Forms of undeclared work in the construction sector**

The EFBWW has studied the different forms of "undeclared work" and ascertained that various graduations exist, ranging from one-off odd jobs carried out on an exceptional basis to organising work by illegal workers on construction sites. Below the EFBWW seeks to chart the different forms of "undeclared work". Within the construction sector, the EFBWW has distinguished four categories of "undeclared work":

- (1) "occasional undeclared work"
- (2) "structural undeclared work"
- (3) "organised undeclared work"
- (4) "criminal undeclared work"

One particular situation is the possibility of creating "undeclared work" by using the opportunities for posting workers across borders.

##### **(1) Occasional undeclared work**

Occasional undeclared work is "undeclared work" carried out on an *irregular* and *additional* basis. In the construction sector, this is by far the best-known and most widespread form of

“undeclared work”. It generally concerns small-scale repair, maintenance and supervisory work, e.g. in the private renovation sector. In most cases the work is carried out by people connected with the user and outside the normal working hours of the usual job, for example in the evenings, at the weekend or on public holidays.

A frequently occurring problem in the case of "occasional undeclared work" is the blurred dividing line between "services for friends" and “undeclared work”. In the EFBWW's opinion when the remuneration comes to more than the total costs incurred (travel expenses, purchase of equipment, materials, etc.), this is undoubtedly a case of undeclared work, regardless of the relationship between the user and the "undeclared worker".

### **(2) Structural undeclared work**

"*Structural undeclared work*" occurs when the "undeclared worker" has a *legally-recognised full-time employment contract* – whereby all the legal obligations have been fulfilled – and in addition *periodically* carries out extra work which is remunerated by illegal means, that is without complying with the tax and social obligations.

It is striking to note that "structural undeclared work" occurs more frequently in certain subsectors of the construction sector than in other subsectors. A number of subsectors identified with a relatively high percentage of "structural undeclared work" are those specialised in *industrial maintenance* (industrial insulation, industrial painting, removal of asbestos,...), the *demolition sector* and the *private renovation sector* (in particular, but not exclusively, interior work, such as painting, paper hanging, electricity, plumbing and maintenance work). The high degree of "structural undeclared work" in certain subsectors of the construction sector is characteristic to each country.

### **(3) Organised undeclared work**

"*Organised undeclared work*" occurs when the "undeclared worker" *does not have a legally-recognised full-time employment contract* – whereby all the legal obligations have been fulfilled – and in addition *periodically* carries out extra work which is remunerated by illegal means, that is without complying with the tax and social obligations.

Within this category of “undeclared work”, a patina of legality is often created. For this purpose, legal edifices are fashioned in order to get around a legal full-time employment contract -- including compliance with the same. The EFBWW regrets to note that some member states are making too little effort to root out these legal sleights of hand. At the



present time, there is a very wide palette of possibilities. The national construction unions and inspectorates regularly come across new techniques which all share the same objective, namely by organised means to avoid complying with all or some of the legal, regulatory, or contractual provisions of fiscal, social or administrative obligations.

In practice the following techniques, amongst others, are employed:

- Temporary workers are employed in the construction sector, without complying with the relevant employment conditions applicable to the construction sector;
- Workers are employed in the construction sector by an enterprise which does not fall within the sphere of competence of the construction sector: e.g. metalworking sector, horticulture,...
- Workers who are employed as "self-employed workers", but in reality carry out work in a subordinate capacity -- the so-called "bogus self-employed workers";
- Workers with a part-time employment contract are employed full-time without complying with the legal, regulatory, governmental or contractual obligations;
- Workers who carry out a skilled occupation but have an employment contract with lower wages than legally entitled, the difference being made up in "undeclared" payments;
- Workers who possess false certificates or diplomas for carrying out certain certified occupations;
- Persons drawing benefit (unemployed, disabled and retired persons) who work "undeclared" on the side in their free time.
- ...

#### **(4) Criminal undeclared work**

The fourth form of "undeclared work" is undoubtedly the most serious. This concerns "organised criminal undeclared work". This form of "undeclared work" always goes hand-in-hand with other serious violations of criminal law. The most commonly occurring cases are infringements of safety, environmental, public health and corporate legislation. In some extremely serious cases this even amounts to "traffic in human beings". "Criminal undeclared work" can therefore be regarded as the "slavery of the 21st century". One important feature of "criminal undeclared work" is the *harm done to the integrity of workers or the environment*. This may concern both the physical and psychological integrity.

In the case of "criminal undeclared work" those principally responsible are often operating behind screens, sometimes abroad. One well-known form of this is the illegal contractor who keeps at arms length distance by using intermediaries, so-called front men, as much as possible.

The EFBWW notes that in the case of "criminal undeclared work", workers with an illegal status are increasingly being used, for example (bogus) asylum seekers. This form of undeclared work is organised by chains of crooked contractors and/or customers. In the great majority of cases, the "undeclared workers" are "victims" rather than "perpetrators". Because these workers lead a clandestine existence and seldom speak the local language, they are a highly vulnerable group. Extreme situations involving intimidation, locking up and removal of passports are becoming ever-more common. In many cases the "criminal undeclared work" concerns hazardous construction work where very stringent requirements apply, such as removing asbestos, working with polluted materials, work carried out at a height, at a depth or in high temperatures,...

A topical example is the employment of people who have entered the country legally on the basis of a (long-term) tourist visa. In many cases these people return to their home country once the visa has expired, only to return subsequently. A smaller group opt to remain in the country illegally and continue working after the visa period has expired.

A highly disturbing development is that instigators of "criminal undeclared work" are investing a great deal of effort in obtaining legal status: for example by setting up sham companies, using employment agencies, etc. Within the EU there is also a noticeable rise in "criminal undeclared work" whereby cross-border posting arrangements are misused (see below).

## **B. Cross-border posting of workers**

A particular form of "undeclared work" is the misuse of *cross-bordered posting*<sup>7</sup>. The EFBWW has found that posting procedures are increasingly being misused, especially in the border areas between Western European countries and a number of Central and Eastern European countries<sup>8</sup>. The construction sector is one of the main targets. The possibility of posting workers across borders is often used as a legal cover for creating what is actually a situation of "undeclared work". Owing to the cross-border character it is often difficult in practice to identify what the situation really is in the country of posting. The following cases of misuse have come to the EFBWW's knowledge:

- The existence of sham employment contracts and certificates;
- Repayment of wages and premiums paid out demanded once the workers return to the country of posting;
- Use of mailbox addresses for posting companies in countries with low social charges.

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<sup>7</sup> European Directive 96/71/EC

## **IV. THE CONSEQUENCES OF UNDECLARED WORK IN THE CONSTRUCTION SECTOR**

Owing to the extent of “undeclared work” in the construction sector the consequences are quite extensive. They are manifested at both macroeconomic and macroeconomic level.

### **A. Macroeconomic level**

The macroeconomic consequences of “undeclared work” in the construction sector have been amply demonstrated in the past. In the first place, the national authorities receive substantially lower revenues from taxes and social charges. The extent of “undeclared work” in the construction sector means that the overall amount of lost income is huge. No precise data quantifying this loss is available at present. However, there is no doubt that every year the coffers of the European authorities are emptier to the tune of many billions of euros as a result of “undeclared work” in the construction sector.

Most social insurance systems, such as for sickness, pensions and accidents in the EU countries are financed from taxes and social charges on work. In order to compensate for the financial shortfall resulting from lost income caused by “undeclared work”, increasingly savings are being made on the expenditure side by the social insurance systems. The end result is that the ultimate cost of “undeclared work” is carried by the "weakest shoulders" in our society. The EFBWW considers this to be a serious undermining of the social protection system for construction workers.

The fact is that “undeclared work” undermines the political consensus on which the mechanism of the social dialogue between social partners (and the State), solidarity and general welfare are founded. These principles form the cornerstone of sustainable development in the construction sector. Any individual divergence from the basic principles must consequently be rejected. Otherwise a labour market will be created which is based on unbridled individual competition without any attention being paid to the well-being of workers, the quality of the finished product and the sustainability of the sector.

Undeclared work produces considerably less revenues for the social protection of workers as no social charges are deducted for undeclared work. As a consequence, there is an indirect increase in social charges for those carrying out undeclared work. This increase in cost is necessary in order to guarantee a well-balanced and affordable social protection for all construction workers.

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<sup>8</sup> The EFBWW is well aware of this development and will be carrying out an in-depth study of the practical application of posting directive 96/71/EC in the near future.

The EFBWW takes the view that undeclared workers also have a right to proper social protection. The costs of such protection must be recovered in full by the State from the employers who have neglected to pay the social charges.

## **B. Microeconomic level**

For individual construction firms, the problems created by “undeclared work” in the sector are evident on a day-to-day basis. In particular, bonafide enterprises which resolutely refuse to use “undeclared work” find themselves at a serious disadvantage. Crooked firms which use “undeclared work” are able to deliver a product at a lower market price which in the long run creates a situation of "distortion of competition" between the crooked and the bonafide firms. In some subsectors of the construction sector, which differ from country to country, there is currently already structural unfair competition such that nobody can survive without having recourse to “undeclared work”. The EFBWW sees these subsectors as "oil slicks" which are increasingly spreading into other subsectors and ultimately will affect the entire construction sector...

## **V. SOCIAL DUMPING AND UNDECLARED WORK**

In the broad sense, social dumping is a situation in which certain social standards are lowered as a result of external pressure by part or all of the economic system. In an assessment of the different forms of “undeclared work” in the construction sector, structural, organised and criminal undeclared work are undoubtedly external factors which in the long term place a heavy burden on the financing capacity of the existing social protection systems, either in terms of restructuring or by a reduction in tax and social charges. Herein lies a real danger concerning dumping of wage costs.

This pressure arises from the distortion of competition between those companies using “undeclared work” and those which do not. Unlike other sectors, the construction sector is exceedingly sensitive to this situation. The main reasons for this were outlined earlier, namely the high degree of competitive pressures and labour-intensive character of this industry.

## **VI. CONCRETE PROPOSALS BY THE EFBWW FOR PREVENTING, DETECTING AND SANCTIONING “UNDECLARED WORK” IN THE CONSTRUCTION SECTOR**

The EFBWW accepts the recommendation by Regioplan Research Advice and Information<sup>9</sup> that “undeclared work” must be tackled by a mix of measures. In so doing, a balance needs to be sought between prevention and repression. The EFBWW stresses that a mix of measures can only be effective where these form a coherent whole.

As “undeclared work” is strongly linked to the type and nature of certain sectors, it is recommended that measures be adopted in close consultation with the sectoral social partners. Being closely in touch with the day-to-day situation on the ground they are very well-placed to formulate appropriate policy initiatives. In particular, the EFBWW emphasises the importance of tripartite dialogue between the State, workers' and employers' organisations in the construction sector in order to address the “undeclared work” problem jointly. Without such close cooperation among the social partners there is very little prospect of success, simply because there are no or too few connecting points with the real situation in the construction sector.

### **A. An appropriate awareness-raising campaign**

All too often the fact is ignored that “undeclared work” is first and foremost a collective responsibility. The problem is not just confined to those people doing “undeclared work” but also encompasses a much larger group in our society who to some extent tolerate “undeclared work”. In order to achieve the ambitious objective of full employment (by 2010) in the European Union, first of all a general climate of awareness must be fostered. To this end, the clear message must be put across that “undeclared work” is a serious transgression with far-reaching socio-economic consequences. The authorities must clearly indicate that they really do want to put an end to “undeclared work” by hammering out a clear and effective package of policy measures. Such an awareness campaign should target two groups. The first is society as a whole and the second those specific sectors in which a significantly higher level of “undeclared work” prevails.

A strong general awareness campaign is absolutely essential for those countries in which there is a higher degree of social acceptance of “undeclared work”. These are the countries where “undeclared work” is particularly prevalent and the concept is generally so well-entrenched in the general population that the seriousness of

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<sup>9</sup> “Undeclared Labour in Europe, towards an integrated approach to combatting undeclared labour”  
[http://europa.eu.int/comm/employment\\_social/docs/undeclared\\_labour.pdf](http://europa.eu.int/comm/employment_social/docs/undeclared_labour.pdf)

“undeclared work” is barely perceived. Consequently, a wide-ranging awareness campaign is vital.

It is indispensable to target an awareness campaign on those sectors, including the construction sector, which has a higher degree of structural “undeclared work”. In this connection, a well-targeted message must be directed at all the parties involved in the sector. A public statement that the social partners and the State are agreed on a range of measures and that they also are actually working together on these measures sends out an extremely important signal. The EFBWW particularly advocates joint action by the social partners and the State. Set out below are a number of sector-specific policy measures aimed principally at preventing and combating “undeclared work” in the construction sector.

With a view to putting an end to cross-border “undeclared work”, the EFBWW is calling for an awareness campaign to be launched in specific home countries aimed at persuading and warning people about the consequences and risks of carrying out “undeclared work” in another country. Such a campaign would obviously need to be organised in close cooperation between the authorities and the social partners in the home countries and the countries of employment.

## **B. Appropriate detection techniques**

A key feature of “undeclared work” is the invisible character of this activity. Depending on the degree of seriousness of the “undeclared work”, undeclared workers and users make even greater efforts to “hide their activities from the light of day”. The EFBWW proposes a number of very practical measures for making “undeclared work” more visible.

### **(1) Prior notification of construction activities**

Before starting up a construction project every (principal) contractor or client must provide the inspectorate services in advance with all the information required to assess the scale of the site and, where appropriate, to identify the subcontractors. This data should be entered into an electronic database made available to the different social and tax inspectorates. In this way, construction sites can be monitored more effectively by the inspection departments.

When notifying a construction site, the following data as a minimum must be reported: the identity of the customer, the architect and all contractors and subcontractors, the scheduled start and end dates for the works and the nature of the works. This notification should also be accompanied by a list of all workers to be employed on the site.

Provided that this data is maintained and processed in a structured manner, the authorities would have an effective tool for carrying out targeted checks and investigations. In this age of the Internet and ICT it is perfectly possible for such notifications to be made electronically.

Obviously where notifications are not made or are incorrect this must be regarded as a serious violation which is subject to sanctions.

### **(2) Physical notification of construction sites**

In addition to the advance notification of construction sites, it is highly desirable that the site itself be clearly marked. Whatever the size of the site, clear and uniform signs must be placed on every site. Along with basic information about the site, the signs must clearly indicate the authority responsible for supervision so that any undeclared work can be reported. If necessary, the idea of a "whistle blowing" scheme for reporting such activities could be considered.

### **(3) Effective control of construction sites**

In order to combat "undeclared work" effectively, effective checks on construction sites are necessary. For this purpose the competent authorities must have state-of-the-art equipment and sufficient personnel to carry out their inspection duties. It is absolutely essential that the services organise themselves efficiently and that resources and powers are not too thinly dispersed. Inspections should not only take place during normal working hours. They should also take place during weekends, nights, evenings and morning hours as well as during holiday periods. The frequency of the checks should be in proportion to the number of construction sites. Good coordination between employment offices, tax departments, inspectorates and the customs services is necessary. The trade unions need to have an active role in the inspections and should have opportunities to act proactively.

In addition to the classic inspections, new control methods must be used to detect "undeclared work". In particular, construction firms declaring very low levels of work must be thoroughly checked. These firms report only small amounts of work per worker. This information can be checked, for example, in the tax or social insurance declarations.

A well-coordinated approach clearly calls for an interdisciplinary approach. The establishment of special investigation and detection services to combat "undeclared work" could make a considerable contribution to unmasking and detecting complex fraud techniques.

#### **(4) A social identity card for construction workers**

The social identity card is an additional control instrument for combating undeclared work on construction sites. The card is a personal pass which is sent out periodically to all building workers. Only those building workers for whom the employer has paid the social charges and taxes receive a social identity card.

The employers must apply for the identity card using a special form before the building worker starts work. This form contains clear particulars about the actual terms of employment of the building worker and the social security and tax obligations of the employers. At the same time as the application is submitted, the employer makes an advance payment for the tax and social security charges. The building worker also receives a copy of the application form. Directly after receiving the application and the advance payment, the social identity card is sent to the building worker.

The card contains social identification data about the worker concerned and his/her employer. On the basis of the social identity card, the employment inspectorate can ascertain on site whether the employer has paid the social charges. The building worker can also take action if he/she finds that no pass has been prepared for him/her.

Construction workers can also take action when they find that they have not received a passport or when the information reported does not correspond to the work actually carried out.

### **C. Improving organisation of the construction sector**

It cannot be emphasised enough that preventing and combating “undeclared work” in the construction sector can only be achieved from within the sector itself. For this purpose it is absolutely essential that the sector has sector-specific tools for preventing and combating “undeclared work”. There follow a few concrete proposals.

#### **(1) Combating the practice of abnormally low prices**

The prices of tenders submitted under procurement procedures for public contracts often vary widely. By accepting an abnormally low tender which does not cover the costs of works carried out correctly, the customer is turning a blind eye to certain practices such as non-compliance with social security and tax laws.



The State must seek to counter knock-down prices in a structural manner. Possible solutions include automatically excluding any tenders more than 20% below the average of the tenders submitted.

In addition, those authorities which place public contracts must assume their responsibility, as part of their supervisory and control obligations, to prevent “undeclared work” on construction sites.

### **(2) More stringent establishment conditions**

In the construction sector, the lack of quantitative and qualitative requirements to be met by those wishing to become building contractors undoubtedly plays into the hand of the undeclared work phenomenon. Given the labour-intensive character of the construction industry, applying more stringent entry requirements for this sector would be a responsible move. The criteria to be met by contractors must be laid down in advance and objectively in the light of the specific building activities of the contractor.

### **(3) Joint and several liability of principal contractors**

Joint and several liability laid down by law for the tax and social insurance debts of those parties using subcontractors to carry out construction work is a necessary measure to restrict “undeclared work” in the construction sector. The EFBWW has found that countries which already have such legislation are obtaining good results in their fight against this problem. In the light of these successes, the EFBWW wants a European legal framework to be drawn up in which joint and several liability is regulated. In other words, the principal contractor can be deemed to have joint and several liability for tax and social insurance debts of the subcontractors organised by him.

The basic premise here is that the principal contractor has primary responsibility for the whole organisation of the construction site. Consequently, he is also jointly and severally liable for all social insurance and tax violations by all workers on the construction site, including the workers of the subcontractors.

In order to organise this joint and several liability efficiently, the EFBWW proposes that this be implemented in conjunction with the compulsory prior declaration of construction sites (see above). In this declaration, the principal contractor must accurately describe the construction work and identify all subcontractors. On the basis of this information, the principal contractor can pay a specific guarantee into a bank account set up specially for this

purpose. This amount corresponds to a percentage (e.g. 50%) of all tax and social insurance charges that the principal contractor and the subcontractors(s) must pay for the personnel employed by him (them).

If the principal contractor does not wish to pay any guarantee into a special bank account he will be deemed jointly and severally liable for all tax and social insurance debts of his subcontractors. Should the principal contractor choose to pay a guarantee his joint and several liability is limited to the portion of his guarantee.

Only once the works have been completed and the principal contractor and subcontractor(s) can produce proof that all tax and social insurance charges have been paid will this guarantee be released in favour of the principal contractor.

The EFBWW takes the view that the principal contractor would then be more selective in choosing his subcontractors and would keep closer control over the personnel employed on the building sites.

#### **D. Adequate sanctions**

Effective controls clearly imply that strong and appropriate sanctions must be provided in law for those people and undertakings who gain the greatest (financial) advantage from “undeclared work”. It is important in this connection that the competent authorities can act quickly and effectively. To this end, they must have a range of powers with which they are in a position to prevent, detect, the combat and sanction “undeclared work”. In order to be effective, the competent authorities must be able to apply administrative sanctions. These sanctions must prevent the illegal situation from persisting.

##### **(1) Genuine penalties**

For stringent penalties to have effect, the violations established must also be effectively punished by the courts. The EFBWW regrets to note that in practice there is a wide gulf between the judgments handed down and the actual sanctions applied.

For the construction sector, the EFBWW argues the case for specially-adapted sanctions, such as the drawing up of "blacklists" and a ban on carrying out construction work.

## **(2) Cross-border application of penalties and sanctions**

The EFBWW is finding increasingly often that the penalties and sanctions imposed in connection with undeclared work are being circumvented as a result of the guilty party being situated abroad and/or the enterprise having its registered office there. By this stratagem, organisers of undeclared work seek to achieve some form of immunity. To date, an effective legal framework for implementing penalties and sanctions in another EU member state and outside the EU has been lacking at European level.

With an eye to EU enlargement and the rising trend in cross-border undeclared work, this legal vacuum must be filled as quickly as possible. In the meantime, the EFBWW is urging that cross-border coordination between the administrative, political and legal departments be improved.

## **(3) Negative publicity**

A "blacklist" is a summary of all enterprises and those responsible for them who, during the past five years, have received a judgment against them in the final instance for having carried out "undeclared work".

The EFBWW takes the view that drawing up a blacklist is a highly effective deterrent for sanctioning and preventing "undeclared work".

For a building contractor it is a serious additional sanction if it is publicly made known that in the past they have had a judgment against them for carrying out "undeclared work". In addition, customers and principal contractors will be less willing to use the contractor if he has been guilty in the past of carrying out "undeclared work".

It goes without saying that the drawing up of blacklists must be subject to every precaution to ensure correctness and respect of privacy. For this reason, these databases should only be operated by an objective State body.

## **(4) Ban on carrying out construction work**

Again and again it has been stated that "undeclared work" in the construction sector can only be prevented when the driving force to do so comes from the sector itself. In this respect, it is very important that crooked contractors who use "undeclared work" are consistently and systematically rooted out of the construction sector.

For these reasons, the EFBWW advocates the application of a ban on carrying out construction activities for those persons and enterprises who have a judgment against them for “undeclared work”.

## **VII. CONCLUSIONS**

The EFBWW recognises the particular sensitivity of the “undeclared work” issue in the construction sector. In the same way as other sectors with a high degree of “undeclared work”, open dialogue is a delicate matter. The EFBWW takes as the starting point the fact that “undeclared work” cannot and must not be covered by the normal employment rules. In this connection, the EFBWW rejects all justification for using “undeclared work”.

To date the EFBWW has noted that the EU member states remain convinced of the need to protect the social status of workers and to safeguard the existing minimum standards. In the day-to-day practice, by contrast, we find that minimum standards are coming increasingly under pressure. The EFBWW emphasises that a lowering of social charges will not bring about a reduction in “undeclared work”.

At European and national level the authorities need to formulate a legislative framework that gives the sectoral social partners the scope to develop concrete policy measures which can prevent, detect and sanction “undeclared work”, which is undermining the socio-economic model. The sectoral social partners at European and national level know better than anyone else the real problems facing the sector. Consequently, they are the best placed to propose concrete measures for preventing, detecting and sanctioning “undeclared work” in the sector.