



Undeclared Work In European Agriculture

**Extent, causes
and attempts to reduce it**



EFFAT

Investigation on behalf of the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT)



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We are grateful to the European Commission for providing national data.

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*Undeclared work is a scourge
that must be eradicated*

PREFACE
BY THE SPONSORS

by Peter K. Holm,
President of EFFAT Agriculture Sector



In 1997, when we were still the European Federation of Agricultural Workers' Unions (EFA), we went public for the first time with a report on undeclared work to make known what is deplorable in the sector and urge all stakeholders – employers' associations, governments and parliaments – to take action against a curse that puts our European social model at risk. As a result, the European Commission conducted an investigation on illicit labour in 1998.

Based on the work done by the European Council between 2006 and 2009, we returned to the issue to find out whether the situation has improved. On behalf of the executive committee of the agricultural sector of EFFAT, I would like to express our gratitude for the financial support given by the European Commission, without which such a project would not have been possible. I would also like to thank all representatives of the EFFAT member organisations as well as the representatives of employers and governments whose information was indispensable to make the study meaningful.

Last, but not least, I would like to thank the experts of the Forum Social Innovation (FSI) and the agricultural sector of EFFAT for their extensive contributions that now enable us to draw clear-cut conclusions:

- Illicit labour in Europe's agriculture is a widespread evil that needs to be abolished;
- illicit labour has not diminished over the past 13 years – the period between the two reports (done in 1997 and 2010, respectively);
- the current statutory provisions and instruments to fight illicit labour are insufficient and are not comprehensively applied.

The hope remains that the submission of this new report will help integrate activities to fight illegal employment and that they can be developed, implemented and reviewed together with the social partners. This is the only way to achieve our common objective:

CREATING A SOCIAL EUROPE.

PREFACE BY THE AUTHORS

*by Jean-Pierre KLAPUCH, FSI President
and Thomas HENTSCHEL, FSI Vice-President*



When commissioning us to do a study on illicit labour in the agricultural sector of the European Union, its extent, causes and potential solutions, EFFAT also gave us an infrastructure that comprised employees that made it a pleasure to do the job.

We would like to thank all trade union employees, but also the representatives of the employers' organisations – members of GEOPA-COPA – and the representatives of the national labour market institutions that provided the foundations for this report. We would also like to thank the secretariat of EFFAT's agricultural sector for the organisational efforts such a study requires.

The results of the investigation are unambiguous: 25 % illicit labour is unacceptable. There is, therefore,

a need to collect more information, mainly about regional distribution, the especially affected subsectors and branches, the affected employee groups, etc. And there is a need for activities on the part of all those who are responsible to reduce illicit labour.

EFFAT published a first report on undeclared work in the sector in 1997. It sparked a large number of initiatives some of which are described in this study in greater detail.

Our hope is that the study now presented will prompt similar activities. We would be pleased to be of assistance for more extensive work.

*Brussels (BE), Pulversheim (FR), Berlin (DE)
July 2010*

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1 INTRODUCTION

Undeclared employment or, in the broader sense, illegal employment confront national governments and the European Union with huge problems for a variety of reasons. For the European and national trade unions, these forms of employment are entirely unacceptable.

In the context of this study, participants agreed to use the following definition, which is by and large also used by European and many national institutions of the Member States:

Illegal work is work done for pay

- without reporting to the institutions in charge in accordance with regulations;
- without payment of taxes and social insurance contributions in accordance with regulations;
- with reporting done for tax and duties purposes stating only a fraction of the real work involved;
- with employees not having the necessary permits to do the work in accordance with national rules.

Reaching agreement on the definition set out above was a first element in dealing with the issues the trade unions in the agricultural sector had selected for this study. The above definition goes far beyond the general descriptions of the phenomenon, which, in the political context, are often restricted to the legal or illegal status of the workers concerned. It appears to be important for the agricultural trade unions to show that any approach is insufficient when it is limited to the status of a worker without taking into consideration that even when having a legal existence, an employee may be offered, or ask for, illicit work.

Agriculture on the level of the European Union is, therefore and in keeping with the predominant definitions used by the national agricultural social partners – employers' associations and trade unions –, defined as the sum total of work done to produce crops and animals on land, islands, in fresh water and offshore continental shelf areas. Basically, the definition covers agriculture, forestry, horticulture, fish-farming and aquacultures. Institutions for agricultural consultancy services or services in the broader and narrower sense that exist in many Member States have not been included in this study.

The study was able to draw on previous works. Back in 1997, the European Federation of Agricultural Workers' Unions (EFA) – the agricultural precursor of EFFAT – did a study on the issue⁽¹⁾. In its conclusions, the 1997 study underlines the importance of the problem among the then 15 EU Member States and refers to the difficulties to present an accurate assessment of the phenomenon. The 1997 investigation has not lost any of its topicality.

The current report is also published at a time when a lot is in flux in national and European institutions. The social partners are urged to discuss the developments in clandestine employment and the associated illegal practices and pass on relevant conclusions to the institutions in charge.

Undeclared work or, more generally speaking, illegal work in the broadest sense of the word confronts EU Member States with huge problems even if its scope will be difficult to gauge also in the future

(1) EFA (1997): Undeclared work in agriculture – study carried out by the European Federation of Agricultural Trade Unions with the involvement of the national trade unions in Germany, France, Italy, the Netherlands, Spain and the United Kingdom, conducted by Orseu in 2000 and supported by the European Commission.

The EU has set itself the task of measuring the extent. This requires an investigation that establishes, among other things, a method to determine both scope and development of the problem accurately. Member States have meanwhile taken the necessary measures to do so, partly upon the instigation of the European institutions.

What is the purpose of the assessment?

First, there is the closer unification of the economic area between the 27 Member States. Here, the first major problem arises, because the positions of the 27 members on the negative impact of illicit labour on the economy differ considerably. These different views need to be treated with caution.

- Some Member States believe that undeclared employment, that is, the underground or grey economy, promotes competition.
- Other Member States pass laws and take measures the effects of which may not be helpful to attain the objectives.
- Still others cope with a political legacy in which the shadow economy has grown from a system that implicitly boosts that type of economy. This is why it continues to take a prominent place in economic life.
- Finally, there are countries in which the shadow economy and, consequently, undeclared employment, are regarded as factors to promote social peace.

In the final analysis, it cannot be denied that these practices seriously reduce the efficiency of the Lisbon strategy.

The social aspects weigh just as heavily: undeclared work is not on the decline (the Commission holds the view that there is objectively nothing to indicate a reversal of the trend); clandestine employment is even spreading. At the same time, different types of practices emerge. None of the players striving to improve the quality of life inside and outside the world of work will be able to tolerate the social consequences.

What needs to be worked on?

We believe that the trade unions need to define, above all, what they understand by “undeclared employment” or, more generally, “illegal work”. This step in the process is of utmost importance to the subsequent exchange of views and must not lead to a definition that deviates from the definition used by the European Commission.

The conclusions and recommendations put together by the Committee on the Environment, Agriculture and Local and Regional Affairs of the Parliamentary Assembly of the Council of Europe must be submitted and discussed so that participants may take a stand. The conclusions of the Committee (as well as others, in particular those of the European Commission) contain several proposals that concern the national trade unions directly. They deal, among other things, with

- the question whether seasonal workers are able to organize and defend their rights. What role do the national organisations play when actions are taken in that area?
- the question what role the trade union organisations and, in addition, the social partners play in making concerted efforts and launching major information campaigns on occupations in agriculture;
- the position that the trade union organisations take in discussions on how to systematically include compliance with working conditions and labour legislation in the product requirements documents of manufacturers.

Nevertheless, the discussions on specific comments, proposals and questions submitted by national trade union organisations that were interviewed for the study need to be expanded. The following points are crucial:

- How can the conduct of the new employment arrangers (“affairists”) promoting illegal practices be monitored?
- How can the profession be rehabilitated and standardized? Here, the Netherlands and Italy offer case studies to contribute to the discussions. The agreement concluded between the French Government and the French FNSEA may also be used as an example, even if it had been desir-

able to discuss such a text with the trade union organisations.

- How can stable relations be built with other national trade union organisations that have developed from the large supermarket chains to impact on the pricing behaviour of the sector in question?
- How can stable relations be built with the organisations of the social partners in countries receiving labourers and in the countries of their origin to be able to monitor observance of the rights of migrant workers?
- How can the competition between all direct and indirect actors in the sector be amalgamated?
- How can standard practices be established to improve cooperation with the regulatory bodies?
- What are the means the trade union organisations should use to address these issues?

What is the contribution that the social partners can make to reduce illegal employment?

Once consensus has been reached on the issue, the discussions could lead to drafting a charter or a code of conduct. The charter on “good conduct” in the construction sector is a concrete incentive for the social partners to jointly draft a charter or a code of conduct also for the agricultural sector. Could such a charter – even if it bore a “seal of quality” – effect a change of behaviour? Is legislation not rather set to aggravate difficult situations? Although directives are drafted, they only address selective issues of the overall problem, such as the issue of “migrant workers”. Or should the problem rather be dealt with globally? The discussion is now open: what matters is the outcome that the social partners are able to achieve in the process of unifying the economic area and of abolishing practices associated with illegal employment.



2 ILLEGAL EMPLOYMENT IN THE AGRICULTURAL SECTOR

2.1 Methodology approved by the steering committee

Note: This investigation was conducted in 10 Member States. The method used (Questionnaire 1 and open discussion) does not claim in any way to be scientific in nature, since this would have been difficult to ensure in the context of the project. On top of that, the few investigations that were made specifically on the issue in the agricultural field have nothing to do with scientific research in the traditional sense. The questionnaire was only submitted to the trade union organisations, because the intention was to find out how they look at the issue of illegal employment. Beyond the questions currently discussed, it would surely be interesting to highlight some issues that complement our own recommendations. We have

in mind the often declared willingness of the trade union organisations to offer employees working outside their home countries better reception and information structures, particularly when the activity in question is on the fringes of (or outside) legality.

Apart from the figures compiled in the interviews, the crucial elements for the report are the discussions, particularly since the persons interviewed are often unable to supply any figures. It is a useful supplement to the various other reports on the issue, especially the survey conducted by the European Commission in June 2007.



2.2 Country reports

2.2.1 GERMANY

The representatives of the German trade unions do not have any accurate figures. The forms of recruitment listed in the questionnaire do exist, but their extent is unknown. Germany requires employment contracts to be concluded in writing. Before and after concluding an employment contract, a report has to be sent to the relevant authority, depending on the type of contract. The same applies to seasonal workers, who are not necessarily hired illegally. Germany has special regulations for seasonal or migrant workers. If employers want to hire migrant workers, they must employ 10 % local workers as a minimum. The seasonal workers (including migrant workers) are aware of the fact that their rights are not always observed. The employment contracts break down as follows: 80 % are full-time and 20 % are part-time contracts. Trade union membership is not the rule among seasonal workers: Out of approx. 330,000 seasonal workers, only few have joined a trade union. All in all, there are 300,000 fixed-term and 230,000 open-ended employment contracts.

As far as access to employment is concerned, note has been taken of various official and unofficial (approx. 50 %) channels. As a matter of principle, only the official labour offices are entitled to place workers in jobs. "Mouth-to-ear" advertising works

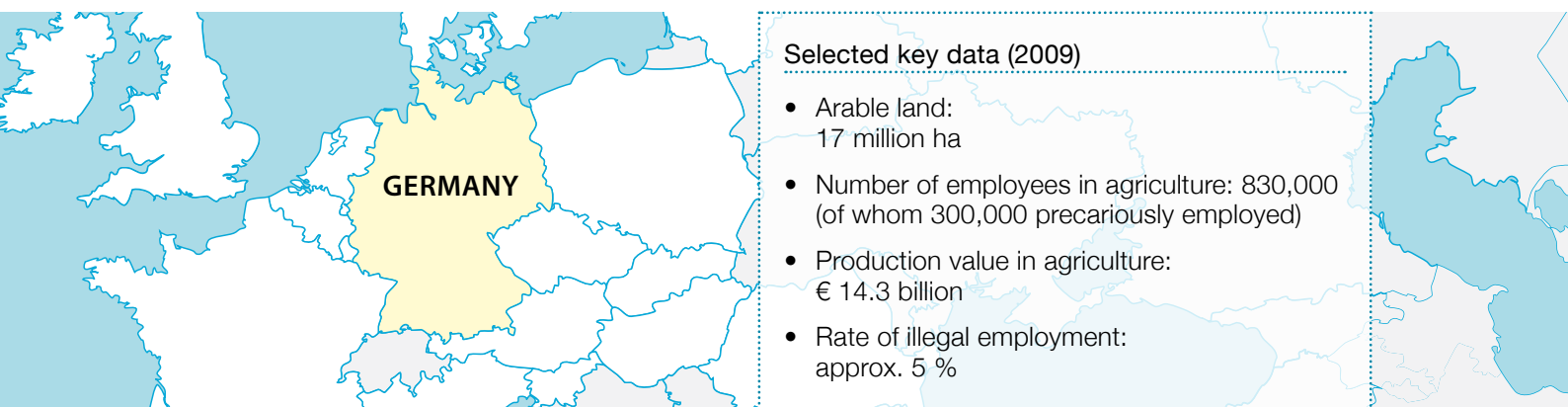
Some 5 % of farm workers are illegally employed. This relatively low figure prompts a comment that is applicable also to other Member States:

„We have no illegal employees because the wages are too low.“

The offices of the customs and fiscal administrations are in charge of inspections. All in all, these inspections work. The trade unions are in a rather awkward situation, because they are confronted with a number of ethical issues. Some 10 or 12 years ago, the very term "inspection" sparked discussions within the trade unions. Inspections taking place met with rejection and lack of understanding on the part of the employees. In short:

„The trade unions stand by and watch without taking action.“

As a result, the trade unions today are of the view that the state alone is responsible for supervisory measures. However, the trade unions may request the employment agency to carry out inspections on the regional level or initiate measures on their own when they are represented in the companies in question.



in Poland, Romania and Bulgaria, whereas there are also specialized agencies operating in the market. In addition, structured networks exist in the countries of origin. Poland, contributing 80 % to the pool of migrant workers, is the most important country of origin. Other countries worth mentioning are Serbia, Croatia, Romania and Bulgaria.

The German delegation pointed out that mutual support between neighbours, particularly when done only occasionally, is not punishable ("neighbourly help").

Falling back on illegal employment aims to reduce labour costs, including in the public sector. There is

a link between illegal work and migrant workers. Yet this link is not an exclusive one. The migrant workers come from different countries (Poland, Romania, etc.) and are apparently not victims of wage discrimination, as a rule. Payment, however, depends strongly on the volume of earnings, which promotes illegal practices. In addition, the large supermarket chains set certain production rules, which leads to an increase in irregularities.

Yet it also needs to be stated that migrant workers are hired because – just as in other Member States – local workers are no longer willing to do certain jobs. In these cases, illegal employment exists, but its scope cannot be pinpointed. Representatives of IG BAU also stressed that some migrant workers settle down without having official employment to draw social benefits. This problem is not restricted to Germany. Action should be taken on the European level. “Weekend work” of local workers or spare-time jobs done by pensioners to earn an extra income are other facets of illegal employment.

The most commonly found forms of illegal work are the following:

- First, flawed reports and unreported working time. Here, the administrations have far-reaching monitoring options, such as using a system that records working hours.
- Second, the undeclared recruitment of employees, which regards both migrant workers and seasonal workers.

Since migrant workers come from a variety of countries, competition and friction is likely to take place, as many countries, including Germany, have found out. This situation has prompted a number of spectacular measures on the part of the employers, who no longer hesitate to offer, for example, payment in kind (vouchers or goods). Just as in other Member States, a well-structured criminal organisation has emerged that has links with the new Member States from where the migrant workers come (countries of origin).

The following should be noted with regard to living conditions: The workers concerned live in their cars,

in caravans or in accommodation provided by their employer. Wages are paid regularly, and they are often taken to work by bus.

The German delegation has not referred to the investigation conducted in 1997. The German delegation is of the opinion that stricter institutional mechanisms are required to stem the spread of illicit labour. However, a slight reduction can be seen. Yet once the borders with Bulgaria and Romania are fully open as from 2011, further risks are looming. The issue remains complicated, because the trade unions, although pessimistic with regard to illicit labour, find it difficult to search for new solutions.

2.2.2 AUSTRIA

The trade union representatives do not have accurate data requested in the survey. The different forms of employment contracts referred to in the questionnaire exist. They break down as follows: open-ended contracts 70 %, others 30 %, full-time 75 %, part-time 25 %, seasonal 50 %. There are huge differences between the various fields of activity.

Official employment agencies and temporary employment businesses are very active. There is a system of entry routes for migrant workers, who mainly come from the following countries: Croatia, Poland, Romania, Slovenia, Bosnia, Slovakia and the Czech Republic.

Recruitment is done by the farmers themselves (40 %) and by employers' groups (30 %).

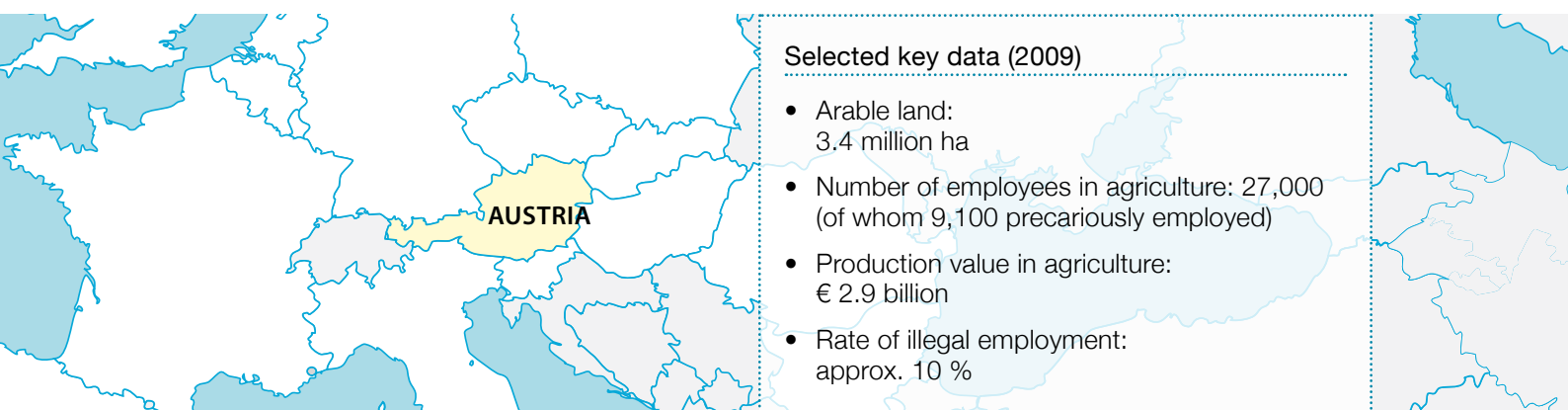
The rate of illicit labour in Austria is approx. 10 %. However, this figure is rather inaccurate. The situation is complex in forestry. Foresters, for example, are both self-employed and employed, so that they must occasionally negotiate and work with service providers.

and forestry. However, the survey had been made deliberately complicated so that the desired effect did not materialize.

The trade unions may ask the employment authorities for information on the situation of migrant and seasonal workers.

Recourse to illegal work mainly occurs in the form of undeclared recruitments, working hours and hourly wages. Seasonal workers are affected as well. However, the largest share is represented by illegal "cross-border tourists". Seasonal workers must be reported before starting to work.

Working conditions do not comply with statutory requirements. Hourly wages, partially with a lower limit of € 3, are clearly below standard wages. Payment in kind is widespread in family-run businesses. Wages are partly paid by the day. The situation is different in large businesses. Additional payments in kind are granted on a monthly basis and are reported to the tax authorities.



The Illegal Employment Control Agency (KIAB), the Labour Market Service (AMS), the regional health insurance companies as well as the agriculture and forestry inspectorates are in charge of supervision. This is generally done effectively. However, the AMS suffers from a shortage of staff. The trade unions, as a rule, side with the authorities that normally carry out the controls. They want to combat companies resorting to illicit labour, rather than punish the workers concerned. The trade unions may report cases to the authorities in charge and require them to cooperate. One trade union sent out a questionnaire in nine regions to investigate the effectiveness and trend of supervision in agriculture

2.2.3 BULGARIA

Bulgaria's agriculture finds itself in a special situation. The government has set macro-economic priorities and neglects the agricultural sector in the process. To stem potential conflict, rural areas have been given state grants. Yet more often than not, these grants were paid irregularly and were lower compared to those granted in other EU countries.

employed"). All in all, there are 650,000 registered and unregistered businesses.

Officially, 74,000 producers (owners) work in family-run businesses. Some of them recruit labour. A total of 56,500 farm workers have an employment contract; 10,600 employees work in administration.

Selected key data (2009)

- Arable land: 6.2 million ha
- Number of employees in agriculture: 144,000 (of whom 100,000 precariously employed)
- Production value in agriculture: € 1.7 billion
- Rate of illegal employment: approx. 50 %

BULGARIA

SAPARD and PHARE were the main community funding programmes implemented in Bulgaria. Following the economic and social changes in the country between 1989 and 1991, the entire agricultural sector has been restructured, and the people concerned had to become employees or set up their own company. Bulgaria has become attractive to foreign investors, but this has prompted fundamental cultural discrepancies. Another challenge is the aging population in agriculture.

The waves of migrants coming in in the period 1989/1990 and 2000 have caused additional employment difficulties. Following the changes, 60 % of the sector's experts, agronomists and other skilled workers left the country to work in other Member States.

Basically, the official employment agencies are in charge of recruitments, and there are regional offices in most major towns and cities. Meanwhile, there are also a number of informal recruitment channels in place.

All forms of employment contracts the questionnaire refers to exist in Bulgaria.

The grey zone of the sector is considerable. Out of 150,000 employees, 106,000 are not properly reported (claiming that they were more or less "self-

The trade union is unable to process this kind of information. There is no organisation in Bulgaria that would be able to provide systematic information on undeclared employment in agriculture. The trade unions can only give a general description.

Tracking down illicit labour is not among the government's priorities, even though a mutual agreement in the Three-Partite Council on the national level to combat the shadow economy and undeclared work exists. Yet the issue becomes difficult when agriculture is concerned. It is not in the interest of the government either to inform the EU of the reality of the situation. Some 90 % of illicit work is done in the villages. Young people leave school very early with no training. Their parents require them to work as helps from early on, while the government turns a blind eye.

Most farm workers used to work in factories that were shut down. Illegal work is mainly done on small farms. There is a lack of skilled labour in some areas. On top of that, wages are very low (€ 150 per month). The whole system needs to be overhauled. It is difficult to gauge the extent of illicit labour. Estimates put it at 50 %.

The employment agencies and the labour inspectorate are responsible for monitoring the sector, but they do not always do their work with the necessary rigour.



The trade unions have only limited resources: if they identify irregularities, they notify the employment authorities. There are no official meetings between the authorities and the trade unions. Employers claim that they support the struggle against illicit labour, but in reality, they increasingly often turn a blind eye. They could probably explain why they use undeclared labour (specific type of work, seasonal work, etc.), but there is no justifiable reason to break the law.

Together with the phenomenon of “illegal tourists” (coming mainly from Moldova and Ukraine), all forms of illicit labour exist. In summary, the employment situation in agriculture can be described as follows: Of the 250,000 employees in the sector, one quarter are employers, one quarter are declared workers, and the remaining half has an unknown status.

The trade union representatives differ in their views on the future developments in the field of illicit labour. Yet they hope that this type of employment will subside again when the economy normalizes.

The trade unions are willing to cooperate with the other partners concerned – ministries, employers’ associations, state-run agencies and non-governmental organisations – to conduct or continue to conduct an investigation to identify and clarify undeclared work. Important aspects could be

demographic development and qualification (breakdown according to age and qualification levels, skills profiles of agricultural workers). They also want to contribute to the process of normalisation to combat and/or overcome the negative social and economic repercussions for the sector in order to improve the living conditions of those working there.



2.2.4 SPAIN

Every year, the trade unions publish a monitoring report on the various agricultural campaigns (both inside and outside the country). The Spanish trade unions go, for example, to Belgium and France to monitor social and working conditions of Spanish workers harvesting fruit in Belgium or grapes in France. With regard to agricultural campaigns inside the country, the trade unions visit employers to report on the origins of the workers hired, their working conditions, accommodation, etc. and point out any irregularities and/or defects they find.

workers are paid piece rates. Some employers withhold the cost of the return tickets of their seasonal workers. Their working conditions are often difficult. There is also direct recruitment taking place in structures set up in the countries of origin. In Poland, for example, there are companies specifically established to recruit farm workers for certain countries of destination. Romanians receive residence permits valid for two years and work as self-employed although they were unable to benefit from the free movement of workers in the EU in 2010. It happens



Selected key data (2009)

- Arable land: 29.9 million ha
- Number of employees in agriculture: 725,000 (of whom 600,000 precariously employed)
- Production value in agriculture: € 21.8 billion

The official employment agencies, but also temporary employment firms are the main organisations placing workers in jobs. A placement channel called “delivery van” provides undeclared workers. Farm

often that these workers stop working before their contract expires. They stay in the country and seek work elsewhere.

It is the companies themselves, the employment arrangers and business associations that are responsible for recruitments. There is no further sub-contracting.

On the regional level, the employment authority conducts investigations to establish the extent of migrant work and illicit labour. The labour inspectorate carries out checks in the form of visits. Yet the number of inspectors is insufficient to cover all sectors. It happens that the trade unions demand to make an inspection, but the inspectors come too late. The trade unions published a leaflet with information for migrant workers to prevent them from working illegally.

There are, in general, different forms of “illegal” recruitments. Illegal tourists come mainly from Romania and Latin America. It happens rather frequently that recruitments and hours worked are not reported. The trade unions can be brought in on the initiative of the employees. The trade unions have concluded an agreement enabling them to make inspections (compliance with the collective wage agreement, accommodation, etc.). Employees are obliged to pay social insurance contributions (€ 79 per month for minor employment), while employers pay the employer contribution. The system may change as from 2010, since employees recruited for agricultural work abroad will come under the general social insurance system in which the employers deduct employees’ social insurance contributions

from their wages. Employers and employees can be punished (fines) if they fail to comply.

There are lots of irregularities. Illegal employment is a consequence of unscrupulous employers hiring the most obedient workers for whom collective wage agreements are ignored. These workers work longer and get paid less. Employers are obliged to offer their workers accommodation. In 2004, Spain regularized and/or legalized 700,000 illegal workers who had an employment contract but, in most cases, no residence permit. The trade unions organize information campaigns, but often come up against problems because of language barriers. An employee may report an employer to the authorities, who must then pay a fine and the social insurance contributions due and also conclude an open-ended contract with the worker concerned. The government and the trade unions signed a relevant agreement on the issue.

On top of that, there is lack of coordination between the countries concerned. A culture of legal hiring must be promoted. The EU must enforce compliance with good working conditions in all countries. A seal of quality should be considered. The issue should be discussed with GEOPA-COPA. The report contains suggestions to be studied together with the social partners.

It appears, though, as if illicit labour has continued to spread since 1997, and be it only due to greater migration and freedom of movement.

2.2.5 FRANCE

Interviewees considerably differ in their views on the depth and extent of illicit labour. Many believe that illicit labour is not combated intensively enough, while others say that the problem is less relevant. All in all, there is a lack of transparency and visibility in companies, and the situation has to be addressed differently in the various regions.

In companies with trade union representation, the known forms of undeclared work are rare. Representatives of public authorities and the employer associations have also analysed the problem in its entirety, while the trade unions mainly deal with the causes such as precarious employment, social exclusion or economic dependence.

Trade unions are represented everywhere in the rural areas and support the workers there. They defend, in particular, the observance of the rights of workers including registrations in accordance with the regulations (unpaid or insufficiently paid overtime is a frequent reason for disputes).

The agricultural sector is particularly affected where there is a predominance of seasonal work. Different forms of employment contracts exist and reflect the particular nature of agriculture; approx. 20 % of the employment contracts are open-ended.

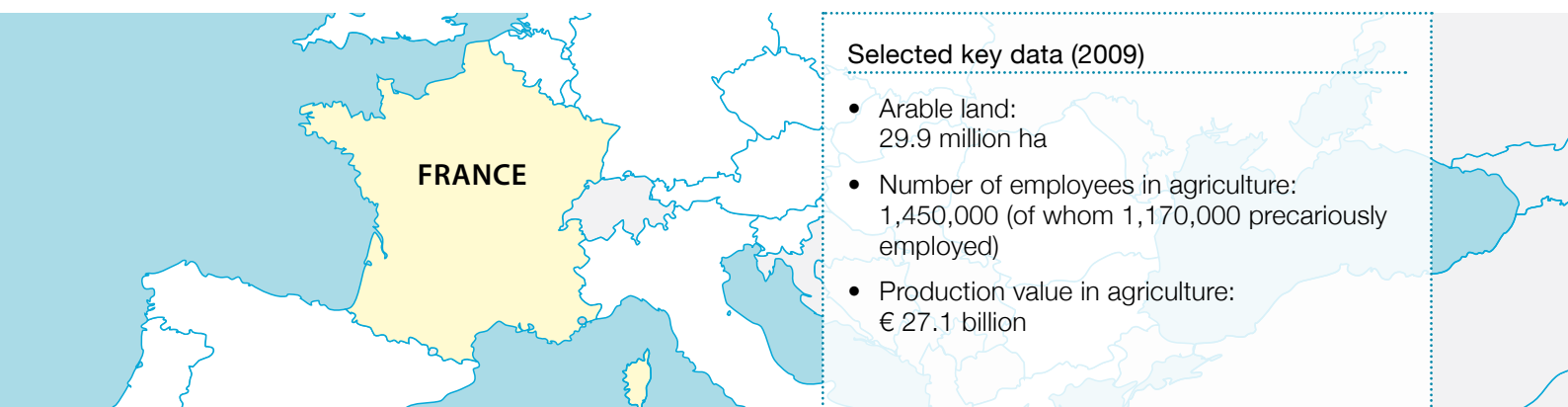
The most important recruiters of workers are, first of all, the companies themselves, followed by intermediaries and business groups. Exact figures are not known. The official employment agencies and sub-contractors (sub-suppliers and temporary employment firms) offer the main channels for recruitments. Yet in reality, there are two forms of hiring: official and unofficial.

France has a broad range of measures to combat illicit labour, but the results are disappointing in many regions.

The most widely spread illegal practice is unreported working hours, which is difficult to supervise. Interviewees have noticed that illegal employment is on the rise in other sectors, in particular in tourism. Services provided by foreign companies are often not reported according to the rules – interviewees fear that there is a considerable potential for illicit labour here and demand further investigations.

Until now, migrant workers from third countries and the new Member States have been recruited on the basis of contracts issued by the International Migration Office (“OMI contracts”) the content of which has been drawn up by the National Agency for the Reception of Foreigners (ANAEM). Seasonal workers are hired directly; these recruitments are legal. However, these employees find it difficult to insist on the correct payment of extra hours because they depend strongly on the employers if they want to have their contracts renewed on an annual basis.

It is difficult for both undeclared employees and their employers to legalize the situation and leave behind the clandestine conditions. The trade unions support employees calling for legalisation.



Since the EFA report of 1997, the situation has changed: an increase in the number of employment contracts, particularly for seasonal workers in agriculture, has been recorded. This is also in line with the requirements of increasing mechanisation.

Only few retired people continue to be in employment, although the law now allows them to do so. The introduction of Title Employment Services in Agriculture (TEPA), which had been supported by the trade unions and employers’ associations, has considerably eased the steps to be taken in the bureaucratic administration of recruitments. Since the introduction of TEPA and the specific contract relating to grape-picking, undeclared work has further decreased.

These days, the trade unions are very much concerned about the development of foreign service providers and the trend toward contracting and/or sub-contracting. These types of companies make the labour market even more complex and monitoring by the national authorities considerably more difficult. It also undermines the authority of trade union representatives (their power of action is reduced when dealing with sub-contractors) and requires increasing efforts of organisation and structuring on the European and international level, which is nearly impossible to do without additional financial resources.

The CFDT supports the payment of the guaranteed minimum wages (RMA) for employees living in

France to encourage recipients of transfer payments to return to work, even if precarious and limited in time.

Although the extent of the controls of undeclared work is rather insignificant, they have had a considerable impact, particularly in the fruit and vegetable sector in southern France, where lots of problems exist with regard to illegal employment. Coordination between those concerned is difficult. Apart from that, there is a lack of funding and inspectors. Punishments are not really sufficiently deterrent, and courts often do not treat applications for financial penalties as urgent.

A joint department of the ministries in charge (DILTI) was set up on the national level. Its brief is to combat illicit labour. The results achieved so far are disappointing.

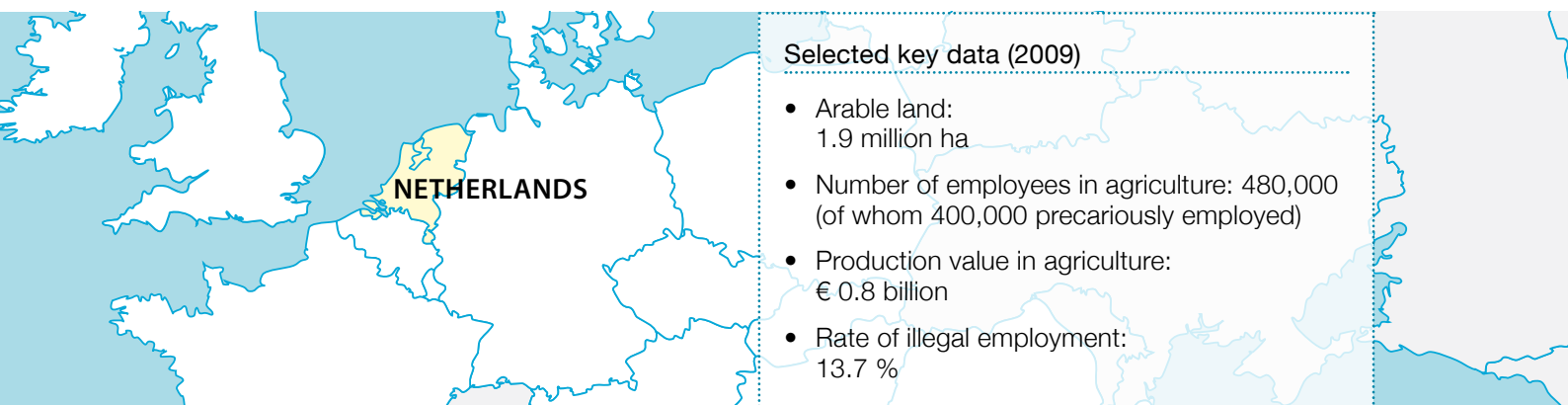
A national agreement between the ministries and the French Federation of Employers in Agriculture (FNSEA) was signed without any information of, or consultation with, the trade unions.

2.2.6 NETHERLANDS

Recruitments are mainly done through agencies (11,000 of which 5,000 are dubious). The dubious agencies do not pay social costs or the statutory minimum wages. The trade unions negotiate the wages with the agencies, but not without problems (particularly with regard to the dubious agencies). The trade unions have demanded since 2007 to certify the agencies.

cases. Wages paid to undeclared workers are lower than the official pay (€ 4-7 per hour compared to the official minimum pay of € 8.61 gross). Apart from that, wages are not paid regularly. National collective wage agreements do exist.

Xenophobia is on the rise. The trade unions have launched a number of different activities to combat it.



In 2006, 45,000 seasonal workers from Poland stayed in the Netherlands. In 2009, the figure was down to 35,000. Employers' associations, the self-employed and intermediaries are the main employers. Migrant workers are not covered by health insurance in most

There are 23,000 farmers in Dutch agriculture. Migrant workers from North Africa compete with those from Poland over labour standards, because the Polish workers cost less (competition triggered by the agencies?).

The labour inspectorate monitors mainly wages and working hours. Illicit labour is widespread: 40 % in the west of the country and 13.7 % on the national average. Foreign workers do not dare to complain, particularly with regard to their housing conditions. They fear being sent back home. The authority does nothing to track down illicit labour.

After their return home, migrant workers themselves recruit newcomers, coming from countries

such as Poland, Turkey, North Africa (Morocco), Spain and Portugal. There is no domestic migration. Local workers are not moving from place to place.

Workers from Eastern European countries are legally in the country even if they crossed the border clandestinely. All in all, there are approx. 40,000 migrant workers in the Netherlands for certain periods of time and 10,000 permanently. Illicit pay is common.



2.2.7 ITALY

Employers are interested in a workforce reserve made up of migrant and seasonal workers because there is a manpower shortage on the regional level.

Illicit labour is a serious problem in Italy, affecting about 50 % of the employees. Half of them are Italians, while the others, about 200,000 people, are migrant workers from other countries.

The Interior Ministry and the employment office are in charge of monitoring and sanctioning. Although the number of inspectors is high, only few checks are made. The trade unions report irregularities to the administration even though there is no statutory basis to do so.

Undeclared recruitment of old-age pensioners and migrant workers is the most common practice. Apart from that, the system is perverse: elderly people act

as fronts, running a company that is dissolved after a period of time, the objective being to avoid social insurance payments. Bogus cooperatives slow down normalisation. The Capo system is run by criminal gangs. The mafia plays an important role in it, forcing producers to sell directly on site. Sales remain unreported.

The shadow economy is a daily reality, particularly in southern Italy and Sicily. It affects 300-400,000 workers, mainly women and young people. Workers sleep on site in huts, which makes them instantly available. There are no written employment contracts. Workers from crisis-ridden industries now also look for work in agriculture to work illegally. Since old-age pensions are too low, pensioners are forced to earn something extra illegally. Estimates put the share of the Gross Domestic Product produced in Italy's agriculture illegally at 30 %.

The “capo” system in southern Italy

This is a special form of recruiting farm workers, in which an arranger, the caporale, is not only responsible for hiring the workers, but also for transporting them to their place of work.

Workers are hired on a day-to-day basis, mainly in the public squares of remote villages with no public transport. The caporale sets the terms himself. He hires workers and lays down a price. The farmer pays the wages to the caporale plus a commission.

This system gives farmers flexibility. The caporale only hires on the basis of demand. He also provides the bus to take workers to their place of work. The caporale has the monopoly on mobility and transport capacity. The caporale has become a “companion” for the employees – a function that the employment agencies do not, or do not want to, take on.

The caporale has good relations with all players – with the exception of the trade unions:

- with the bosses for whom all solutions are alright to hire flexible workers more cheaply;
- with the workers, since the caporale is the only one offering work in the villages;
- with the local authorities, because without their tacit approval their silence cannot be explained.

The Capo system is a mafia-like system, existing underground and thriving on the misery of the workers.

Excerpt from the 1997 EFA Report

Some sectors meanwhile have come to be hit by tension between local and migrant workers. The tense atmosphere will continue to aggravate, because there is no protection in place for migrant workers at all. This is fertile ground for intolerance and racism.

On 1 January 2008, an agreement came into force aiming to ease the situation (agreement between the government and the social partners also relating to migrant workers). The text of the agreement had been made available to the interviewees. In the meantime, employers and employees have taken a joint position on the negative consequences of illicit labour. The trade unions have been active in this area for more than 20 years now.

Basically, agricultural workers do not have the same guarantees as workers in other sectors. The social dimension is disregarded. The trade unions have urged EFFAT to include the issue in its agenda and discuss it at a conference. New studies only fill the shelves: Concrete action is needed.

The Italian trade unions hope that this investigation and the conference will impact on the discussion on the future directive regarding migrant workers.

Freedom of movement has become a reality and will continue to develop. The same can probably be said on illicit labour. Tough action must be taken against employers not complying with the rules.



Selected key data (2009)

- Arable land: 16.2 million ha
- Number of employees in agriculture: 918,000 (of whom 850,000 precariously employed)
- Production value in agriculture: € 26.1 billion
- Rate of illegal employment: 30-50 %

The shortfall in social costs caused by illicit labour should be deducted from grants. Efforts must also be made to prevent the Services Directives (“Bolkestein Directive”) from having negative repercussions for collective bargaining agreements.

Case in point: seasonal workers quotas

Italy sets annual quotas for seasonal workers from third countries. The agriculture trade union organisations have repeatedly pointed out that the quotas are set erroneously. In some provinces, certain persons are given the right to hire seasonal workers (they are awarded quotas), but they do not employ them then. Instead, companies that had not been given the right to hire employees via the quota system are offered the quota workers as illegal employees.

2.2.8 POLAND

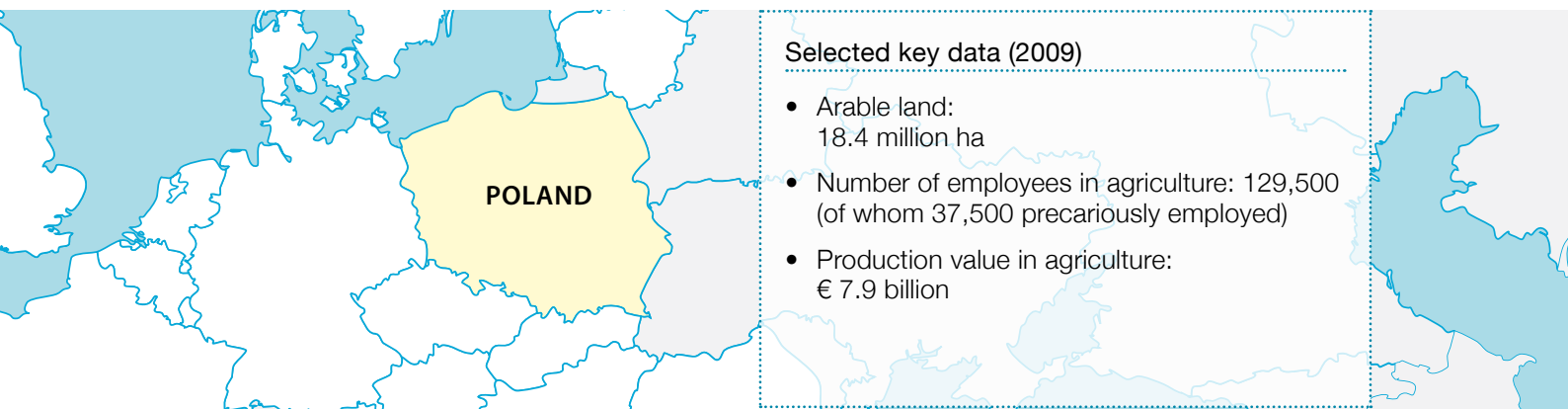
Open-ended employment contracts (80 %) and fixed-term contracts (10 %) predominate. Part-time work is below 10 %. Full-time work means 40 hours per week. Approximately 40 % of the open-ended contracts are full time. In addition, there exists a “performance contract” that is similar to a fixed-term contract but does not cover social insurance contributions. Approximately 5 % of all employees have such a contract. They do not receive any social benefits, have no fixed working hours and are brought in to work as required.

The official agencies are responsible for recruitment, but connections are crucial (friendly connections are particularly important in large companies). There are also agencies specialized in agricultural jobs and temporary employment businesses, but they play only a subordinate role in the agricultural sector.

When searching for employment, it is again connections that count the most (80 %), followed by events and trade fairs. Street recruitment is also common, particularly when seasonal workers are hired.

Migrant workers come mainly from Ukraine and Belarus. They are hired under “performance contracts”. In most cases, these are skilled workers who are unable to find work in their home countries. Employers are typically the farm directors.

The national labour inspectorate is responsible for supervision. It cooperates with the customs authority and the border police. The general view is that cooperation between the authorities in charge could be improved. The government is seen as doing too little, although it has recently set up expert committees.



Informal recruitments fall into two categories: declared work or undeclared work. However, the state blocks pay to a certain level. Old-age pensioners may continue to work, but social insurance contributions are off-putting. Workers under compulsory insurance are resentful of migrant workers.

When the trade unions find cases of illicit labour, they do not inform the authorities, while the authorities, in turn, do inform the trade unions. The trade unions are well represented in large companies. Illicit labour does not present a problem on the national level, but this can change in the medium term.

Resources for groups representing the interests of those involved are scarce. Meanwhile, specific

agreements have been concluded with neighbouring states such as Ukraine, Belarus and Russia.

There is nothing known about the working and living conditions of migrant workers, except for the Ukrainians, who are housed in buildings without running water and electricity.

Thanks to trade union cooperation, the administration is able to work effectively. In the past, the blame was solely put on the employee. The new penalties act as a deterrent. The trade unions are in favour of tougher sanctions. There is no doubt that illicit labour will continue to spread when the eastern borders open and more migrant workers from Asia arrive.

2.2.9 PORTUGAL

There is no statutory requirement to conclude written employment contracts. Only fixed-term contracts need to be made in writing. Most employment contracts are verbal. Seasonal work is often undeclared. There is widespread assumption that there is a link between seasonal migrant workers and undeclared employment. The existence of a written contract makes it easier to regularize and/or legalize migrant workers.

The recruitment of workers is in the hands of a large number of intermediaries. Basically, however, it is the job centres that arrange contacts between job-seekers and employers, but this does not apply always apply to the agricultural sector. “Mouth-to-ear”

information and the recruitment practice common in Italy exist side by side.

There are no accurate data available on illicit labour. However, this type of work is not to be underestimated. Estimates are that it accounts for about 60 % in the agricultural sector. Its share goes down because employers may receive European and national funding, which forces them to comply with valid legislation.

The authority in charge does not consider the problems existing in the agricultural sector as a priority. For this reason, activities and results achieved often depend on pure chance. In 2002-2003, the trade

unions had more influence and found it easier to be heard.

The trade unions are accepted when their activities bear fruit. Unfortunately, the general view of their accomplishments is often negative, because they occasionally disregard cultural conventions. Nevertheless, it remains to be noted that employers often fall back on the expertise of the trade unions. This is a contradiction based on a kind of exaggerated individualism.

Normalisation remains superficial, because other forms of illegal work emerge all the time, such as unreported working hours. Very often, the employee concerned agrees to the practice. In such cases, the employer pays the social insurance contributions that the employee would have to pay.

awareness campaigns have not produced the hoped-for results, so that the trade unions are now looking for other solutions. At the same time, the sector suffers from a shortage of skilled workers. The minimum wage remains low; since January, it has been € 426 per month.

The cultural dimension was highlighted. For the trade unions, this is a fundamental issue, because it determines the conduct of employers and employees. The trade unions organize educational campaigns. However, strong political determination is needed to run such campaigns over a longer period of time. In addition, employers and employees have concluded agreements that are partially regarded as being unconstitutional. The situation is rather complex, and solutions can only be found on a fairly long-term basis.



Selected key data (2009)

- Arable land: 2.6 million ha
- Number of employees in agriculture: 140,000 (of whom 105,000 precariously employed)
- Production value in agriculture: € 2 billion
- Rate of illegal employment: 60 %

Trade union representatives say that the country is grappling with a serious cultural problem: There is a widespread view that illicit labour is not reprehensible. Information and awareness campaigns were conducted, but with limited effect. The forms of illicit labour are known. Here are just a few examples: undeclared recruitments, misdeclarations, sickness leave (with the employee working on the farm while presumably ill).

With regard to working and living conditions, a considerable improvement can be seen in Portugal, also in the rural areas. However, migrant workers do not really benefit from this development. Although they do not live like “slaves”, they find themselves in an extremely precarious situation. On top of that, they are only superficially trained, particularly when it comes to using pesticides.

Based on the study mentioned above, the issue of “Migration – Illegal Employment” was on the agenda of a half-day debate at the national trade union conference in 2005. The information and

The relationship between “migration” and “illicit labour” is unclear. The situation is changing because the traditional north-south migration within the country is also changing. The presence of newcomers from a variety of countries, e.g. Brazil, has only helped to shift the problem. Illicit labour has always been widespread in Portugal. The increasing shortage of labour attracts migrant workers coming mainly from four Central and Eastern European countries.

2.2.10 ROMANIA

Romania's agriculture employs 130,000 people with open-ended contracts and 80,000 with fixed-term contracts. Migrant workers are not recorded in the statistics. There are 3.5 million small-sized farms in Romania.

Romania is somewhat special with regard to the term "illicit labour". Every family may farm 1,000 m² of arable land that is not subject to property tax. The income generated from the land does not need to be declared since it is regarded as a source of livelihood. When a farmer has more land to work, he may hire seasonal workers.

The official employment agencies are the main places of recruitment. They are the only intermediaries permitted. Controls take place. Romania also has "labour exchanges" that are used by approx. 5 % of the employers' associations. Migrant workers are hired directly (no specialisation). Payment is occasionally made in kind. In general, the number of migrant workers is very low (2-3 %). The majority of them come from Ukraine and Moldova. In most cases, the farms themselves hire workers.

Skilled agricultural workers prefer to go abroad. Training at home has become poorer.

risks involved, loss of pensions and unemployment. All these are major problems in Romania.

Undeclared workers work more or less under the same working conditions as anyone else. However, illegal workers earn more. The employer covers the risk of work-related accidents.

Relations exist between Romania and Spain in the field of migrant employment. Spain takes in a large number of Romanian workers. Joint action has been proposed. Since there are many trade union members among those going to Spain to work, a skeleton agreement was signed between the Romanian and Spanish farm workers unions.

In terms of future developments, Romania must be seen as a special case. The country suffers from a shortage of labour because so many leave to work elsewhere. More than 4 million Romanians work abroad. Large companies are confronted with a series of problems. And there are no legal solutions in place for small businesses. Illicit labour as a problem will be here to stay.

Selected key data (2009)

- Arable land: 14.7 million ha
- Number of employees in agriculture: 210,000 (of whom 80,000 precariously employed)
- Production value in agriculture: € 8 billion
- Rate of illegal employment: 40 %



Illicit labour is widespread (40 %), because non-wage labour costs are high. Wages as such are low. The trade unions are anything but pleased with this situation, but there is nothing they can do. Undeclared recruitments, unreported working hours, the hiring of old-age pensioners and migrant workers are the most common forms of illicit labour.

Checks are mainly carried out in structured businesses, the main regulatory measures being fines, warnings and closures. The trade unions exert pressure and conduct information campaigns on the

2.3 On the relevance and extent of illicit labour in the agricultural sector

The country reports show clearly how much the agricultural sector is affected by the problem of illegal employment. Even if only few Member States could be studied, the data compiled appear to support the existence of a stable trend toward illegality in the sector.

Based on the number of employees in the European Union, collected by the agriculture trade unions under agri-info.eu and used by us, the study covers more than 5 million farm workers in Europe out of a total of 6.8 million. This means that the major countries that have the most employees in agriculture are covered. Covering 70 % of the total number of employees means that the investigation can draw well-founded conclusions.

It is unlikely that the report overestimates illicit labour, because countries such as France and Spain, which have a considerable share of agricultural employees, have not been included in the calculation of the rate of illegal employment.

It is unlikely that the report underestimates illicit labour, because the partners supplying relevant data (mainly the agriculture trade unions and the national employment market institutions) tend not to have an objective interest in underestimating illicit labour.

So if we use the figures we were given as a basis for the countries not investigated and consider the geographic concentration of illicit labour, a figure of approximately 25 % as a quota for illegal employment in European agriculture is in order. We would like to highlight yet again the inaccuracy of this figure, but we believe that it is an adequate and alarming reflection of the reality in the sector⁽¹⁾.

Country	Number of workers	Rate of illicite labour
DE	830,000	5 %
AT	27,700	10 %
BG	144,000	50 %
IT	920,000	50 %
FR	1,450,000	n/a
ES	725,000	n/a
PL	130,000	n/a
PT	140,000	60 %
RO	210,000	40 %
NL	480,000	13 %

According to the investigation, about 25 % of the activities performed by legal or illegal employees in agriculture must be categorized as illicit labour.

(1) The Council of Europe published a special report on “Agriculture and Illegal Employment in Europe” (Committee on the Environment, Agriculture and Local and Regional Affairs, Doc. I1114–20 December 2006).

2.4 On the causes of illegal employment in the agricultural sector

Agriculture is an economic sector that depends strongly on the exploitation of illegal workers, particularly when it comes to seasonal work. Agriculture is by far not the only branch depending on the exploitation of illegal foreign workers. Fruit and vegetable growing remains a labour-intensive activity. Despite a lot of mechanisation, it continues to need lots of workers.

Recourse to illegal employees has meanwhile become a characteristic feature of agriculture. This is one of the conclusions drawn by the Council of Europe in its report, when it writes that, “This situation creates economic advantages and distortion of competition benefiting the less law-abiding entrepreneurs and its concomitant is the abuse or total denial of agricultural workers’ social rights”. There is a growing number of international trafficking gangs exploiting the precarious situation of migrant workers for criminal purposes.

Another major cause is the deterioration in prices for agricultural produce and commodities. Value generation on many farms, even in entire regions, is not sufficient to pay decent wages. Investments are primarily made in services to be provided in advance and machinery, the cost of which must be paid. The large supermarket chains should also be pilloried. Contacts must be established between them and agriculture. They are the ones exerting pressure on producers and their prices. Scraps over the lowest price have immediate repercussions for the workers in the sector. They must work longer hours, get less pay and see their rights disregarded. For all these reasons, local workers are no longer willing to work in agriculture.

The conclusions presented by the Council of Europe in its report are varied and could be an inspiration for the projected charter (or code of conduct), for example:

- The rapporteur is convinced that the working conditions for seasonal farm workers need to be improved. Regulations must be harmonized. For this purpose, a binding framework spelling out working conditions applicable to all farm workers should be drawn up.

- Seasonal farm workers should organize better to defend their rights more effectively. The national and European trade unions should also promote and defend the rights of seasonal workers.
- Public authorities and farmers should consult and mobilize to launch broad-based information campaigns, the objective being to promote agricultural training and the recruitment of local labour while creating fair working conditions in the process.
- Public authorities and consumer associations should exert pressure on companies and large supermarket chains simultaneously.
- Public authorities should urge producers and distributors to include compliance with social legislation and decent working conditions in their product requirements document.

Undeclared work and immigration is often seen in combination. However, the increase in immigration has nothing to do with a commercial need on the part of the employers to promote undeclared labour. For them, it is rather about finding workers at all. At the same time, new actors have appeared on stage (placement agencies) that act as intermediaries between the workforce on offer and the demand for it. Some are unscrupulous and have developed criminal activities. So the point is undeclared employment, whereas migrant workers are often both part of the problem and also its victims.

2.5 Attempts at reducing illicit labour in the agricultural sector

The European Commission⁽¹⁾ attributes illicit labour to the following factors⁽²⁾: growing demand for manpower in the wake of socio-demographic changes, self-employment (including bogus self-employment) and the increasing simplicity to set up businesses across borders requiring efficient international supervisory and enforcement authorities and/or systems.

With regard to the results of Eurobarometer Survey No. 284 conducted in 2007, the Commission has added the following aspects: The single most important factor stimulating illegal employment is the avoidance of taxation and administrative bureaucracy (particularly where atypical employment is concerned, e.g. seasonal work), rather than a desperate situation; cash payments are of immense importance; the phenomenon can frequently be observed among students, the self-employed and the unemployed; and there is hardly any expectation of sanctions in case of discovery⁽³⁾.

We had to find out in the course of the investigation that these causes do not describe the problems in agriculture comprehensively or only insufficiently so.

With reference to the 2003 Council resolution, the Commission summarizes the proposals made by the Council as follows⁽⁴⁾: removal of financial incentives, administrative reform and simplification of procedures, intensification of supervision and sanction mechanisms in cooperation with labour inspectorates, tax authorities and social partners, transnational cooperation among Member States and awareness raising activities.

The above proposals are surely helpful to find general cross-sectoral solutions, but it needs to be reviewed whether they are also suitable for the efforts to reduce the problems in agriculture.

This was reason for the Committee on the Environment, Agriculture and Local and Regional Affairs of the Parliamentary Assembly of the Council of Europe to conduct an investigation in agriculture. The conclusions to be drawn from it demand to put an end to political and material concessions made

- to unscrupulous work arrangers promoting uncontrolled flows of migrants;
- to Member States adopting legislation running counter to their own declared objectives;
- to companies, particularly small-scale companies, that want to be competitive at all cost and find themselves pressurized by the big supermarket and distribution chains;
- to those companies offering working conditions dating back to the last century; and
- to the major trading companies putting producers under extreme price pressure.

The authors of this study support the comments made by the Council of Europe. Below, we will look at the necessary measures one by one and review their potential effects. This assessment is based on the analysis of the statements made by the trade unionists participating in the discussions and also the statements made by the employers' representatives and officials of government or other institutions involved in the project.

- Replacing lack of labour "on site": This aspect, following up from many general problems (particularly demographic development, development of education as an economic factor, neglect of rural areas), is the trigger for extensive migration that hits agriculture more than any other sector in Europe. Rather than training workers in the local labour markets skills needed in agriculture, efforts are made across Europe⁽⁵⁾ to hire migrant workers from other countries – as replacements rather than additional labour.

(1) COM (2007) 628

(2) Only factors relating to agriculture are listed.

(3) Quoted from COM (2007) 628

(4) ABl. C260 dated 29 October 2003, p. 1, quoted from COM (2007) 628

(5) Since 2007, recruitments have been worldwide, e.g. Bolivian workers in Spain

- Implementing controls by institutions “on site”: A number of trade union representatives have clearly referred to the deplorable situation that some Member States try to transfer responsibility for controls in the country of destination to institutions in the country of origin. The violation of the principle “Equal rights for everyone working in the same place” must be ended.
- Applying legal principles and institutionally implementing standards generally applying “on site”: Reports have often been heard on courts, employment market organisations or other institutions outside the agricultural sector fixing wages for migrant workers that fall well short of rates set by local practice or collective wage agreements. The EFFAT trade unions support the principle of “Equal pay for equal work done in the same place” across Europe.
- Providing employment contracts in the language of the employees for whom they are meant (the social partners could offer standard employment contracts on their websites).
- Simplifying administrative procedures: Although nearly all Member States have simplified the administrative rules for seasonal workers in agriculture, this has not helped to strengthen the local or regional employment markets.
- Freedom of movement: The agriculture trade unions have always had intensive debates on the implementation of the free movement of labour – ever since before Spain and Portugal joined the then European Economic Community (EEC). With the end of the entry restrictions agreed in the context of the enlargements in 2004 and 2007 in sight, solutions to find new opportunities and follow developments on the national levels early must be discussed.
- Awareness raising activities: A draft sectoral plan of action could help the social partners in European agriculture working in the Social Dialogue Sectoral Committee (SOD AGRI) in their negotiations on sectoral sensitisation and information campaigns.
- It is conspicuous that the problems are less severe in those countries that have independent agrosocial welfare systems – while agricultural structures and the labour markets in the sector are almost equivalent. If it were true that institutions tend to act as barriers rather than intermediaries between supply and demand in the employment markets in question – and this appears to be the thread running through the Commission’s analyses – sectoral and quasi-“specific” institutions would be in a position to find better, more efficient and less costly solutions to reduce social insurance fraud and illegal employment.
- Payment in cash is, without doubt, an important element of the “system of illicit labour”, but it is not easy to abolish. It is often the precondition for an employment contract to materialize at all, and it concerns all those employees who do not have a bank account for personal or other reasons.

2.6 Political measures and practical advice for the social partners

The authors of this report feel that the conclusions drawn by the European Commission in its Communication entitled “Stepping up the fight against undeclared work” dated October 2007⁽¹⁾ do not go far enough to effectively reduce illegal employment in European agriculture. It is also regrettable that the European Commission refrained from implementing concrete measures to combat illegal employment after the public hearing on its Green Paper “Modernizing labour law to meet the challenges of the 21st century”⁽²⁾.

The Commission rightly deplores that

- illicit labour in the EU has increased rather than decreased;
- illicit labour puts the Lisbon objectives at risk, undermines the social insurance systems and promotes social dumping;
- illegal employees are more often involved in accidents, fall ill more often, have less social protection and little career prospects.

However, the measures proposed are, in most cases, neither innovative nor specific enough to guarantee progress of any kind.

We believe it is important to point out – which the contributors to this study have impressively confirmed in the various countries – that illicit labour exists in very different forms – different in terms of the historic background, actors, interests and potential solutions.

To us, the most important action appears to be – and here we support the statements made by the European Foundation for the Improvement of Living and Working Conditions⁽³⁾ – to collect and share information. It would be of great significance for EFFAT to participate in the activities of the Dublin Foundation.

(1) COM(2007) 628

(2) COM(2007) 627

(3) The European Foundation for the Improvement of Living and Working Conditions 2009

This is why the authors propose to EFFAT to consider the following measures for discussion with the players involved and contribution to the process of political opinion-building:

- Illegal employment in agriculture is a comprehensive problem. This is why projects of the organisations of the social partners to combat illegal employment should be given priority in European programme funding.

The 27 EU Member States differ in their views on the role and definition of illegal work:

1. Some Member States have passed legislation and taken measures that, in some cases, are likely or even certain to impact negatively on achieving the objectives set.
2. In other Member States, the shadow economy continues to play a major part in economic life, since it is the political legacy that has emerged from a system promoting it indirectly.
3. Furthermore, there are countries that regard the black economy and, consequently, illicit labour as factors conducive to social harmony.
4. Eventually, some Member States believe that illicit labour and, consequently, the underground (or grey) economy promote competition.

EFFAT has declared that such practices are unacceptable. They massively impair the Lisbon Strategy the objective of which is full employment with decent jobs.

The social aspects weigh just as heavily: Illegal employment is not declining; according to Commission data, it is even on the rise. EFFAT and its affiliated organisations have always campaigned for a high quality of life inside and outside the world of work. This is why the social repercussions of the current development are unacceptable. EFFAT will make a determined effort to bring this deplorable situation to an end.

How can EFFAT bring this development to a halt to improve the current situation?

- Member States must apply regulations and the options resulting from them with the greatest possible care.
- Employers must be punished for violations of existing rules by reducing or withdrawing grants and other aid.
- Trade supervisory offices are in a position to take action, but have limited resources: either Member States increase funding or give the various supervisory bodies the authority required to make supervision more effective.
- Employment arrangers whose unscrupulous activities promote uncontrolled waves of migrants must be prosecuted.
- The waves of migrants coming in must be put under stricter supervision and the exchange of information between institutions intensified.
- The large supermarkets exert enormous pressure on manufacturers' prices. Action is needed: the social partners of both sectors (agriculture, supermarket chains) should strengthen their contacts and start negotiations.

Proposed action to be taken by the social partners in the agricultural sector:

- Information, sensitisation and mobilisation: This is necessary to launch broad-based information campaigns producing concrete results in different situations. The Commission has confirmed this need.
- Monitoring compliance with working conditions and labour legislation: The social partners must set up monitoring structures together with the trade supervisory authorities.
- Corporate commitments: the conclusion of collective wage agreements that guarantee employees decent wages and working conditions.
- Negotiating agreements with Member States.
- Employees must be enabled to organize themselves to fight for their rights.

- Networking: a network, for example, could help to link the social partners in the countries of destination and the countries of origin through brochures, leaflets, etc.
- Participating in government monitoring: trade supervisory offices etc.
- Tightening legislation on the European level: Some of the measures taken do not go far enough to effect a change of conduct.
- Providing satisfactory accommodation.
- Negotiating employment contracts to be made in writing: This applies, in particular, to migrant and seasonal workers, even if their contracts are very short term only. Contracts should also exist in the language of the migrant workers.

These brief guidelines are to enable social partners EFFAT and GEOPA to continue their activities on the European and national levels, either on the level of the European Social Dialogue Sectoral Committee or at the various meetings of European and national institutions:

- Sectoral level (Social Dialogue Sectoral Committee): A charter can be prepared and subsequently be communicated to each Member State.
- European organisations: drawing up a joint rating system of common practices on the basis of the annual national reports with the inclusion of the following points:
 - Written proceedings of meetings with the labour inspectorate and other authorities in charge of combating illegal employment;
 - Evaluation of the specific activities carried out by the national social partners to combat undeclared work;
 - Evaluation of activities carried out together with social partners of the Member States whose citizens stay in another Member State;
 - Evaluation of the jobs filled with migrant workers (including seasonal workers) rather than local workers.
- State organisations: In addition to the evaluations set out above, the national organisations also have to resolve the following tasks:

- Trade union organisations: assessing the measures taken to improve the degree of organisation among migrant workers.
- Employer organisations: assessing recruitment procedures.

EFFAT will continue to exert pressure together with its partners and do all it can to secure decent working conditions for the employees it represents. This will be the purpose of its policy and activity.



2.7 Preparing a plan of action

The plan of action outlined below consists of five steps:

- □ □ □ □ Monitoring
- ■ □ □ □ Informing
- □ ■ □ □ Mobilising
- □ □ ■ □ Involving
- □ □ □ ■ Acting

■ □ □ □ □ Monitoring

Issues	Responsibility	Resources
Monitoring compliance with statutory working conditions	National and European trade union and employers' organisations	<p>Quarterly meetings with the administrations on the regional level</p> <p>Annual meeting on the national level to review the situation</p> <p>Informing the European associations</p> <p>Informing the Social Dialogue Sectoral Committee</p>

□ ■ □ □ □ Informing

Issues	Responsibility	Resources
<p>Informing workers about rights, duties and potential sanctions</p> <p>– Informing employers</p>	National and European trade union and employers' organisations	<p>Producing a brochure together with all social partners and the labour inspectorate to be distributed by the authority in charge</p> <p>Providing information on the Internet (agri-pass and agri-info websites, websites of the social partners, etc.)</p> <p>The brochure must, inevitably, contain a survey of the "Advantages and risks" of legal employment.</p>
Seasonal workers	Labour administrations in the broader sense	Monthly status of job offers and types of recruitment of migrant workers

□□■□□ Mobilising

Issues	Responsibility	Resources
Mobilising all forces	Administrations – Public authorities – Trade union and employers’ organisations – Companies in the framework of “exchange networks”	Drawing up a charter in which the social partners commit to combat the spread of illicit labour and the establishment of parallel structures promoting illegal employment and to support compliance with legislation
Extending the applicability of collective wage agreements	Social partners on the national level	Negotiating collective wage agreements where none exist; contracts must be available in the languages of the employees concerned.

□□□■□ Involving

Issues	Responsibility	Resources
Regular dissemination of information on the European level	National associations inform European associations	Reporting on sector level Involving European institutions
Promoting contacts with trade unions and encouraging workers to organize	Labour administrations	Publication of contacts of trade union organisations that are able to defend workers’ interests

□□□□■ Acting

Issues	Responsibility	Resources
Drawing up national plans of action	National trade union and employers’ associations	Plans drawn up should reflect national circumstances, but contain the first four steps. Plans must also contain joint activities of the trade union and employers’ associations as well as separate activities. These plans must be submitted to the Sectoral Committee for evaluation.

Note: When drawing up national plans of action, attention must be paid to the recommendations set out in Chapters 1 and 2 of this report.

3 APPENDICES

3.1 Questionnaire

The discussions with the trade unionists interviewed were based on the following questionnaire (discussion guide):

1. Recruitment

- 1.1 What are the main forms of recruitment used by companies? If possible, give absolute figures or percentages. Several answers possible.
- | | |
|---|---|
| <input type="radio"/> Open-ended contract | <input type="radio"/> Part-time |
| <input type="radio"/> Fixed-term contract | <input type="radio"/> Seasonal employment |
| <input type="radio"/> Full-time | <input type="radio"/> Others |
-
- 1.2 Through what channels does recruitment take place?
- | | |
|---|--|
| <input type="radio"/> Official employment agencies | <input type="radio"/> Recruitment by state-run offices |
| <input type="radio"/> Temporary employment agencies | <input type="radio"/> Capo systems (Italy) |
| <input type="radio"/> Agencies specialised in agriculture | <input type="radio"/> Sub-contracting |
| <input type="radio"/> Other (if so, please describe) | |
-
- 1.3 Do businesses fall back on informal types of hirings, and if so, what are they:
If possible, give percentages.
- | | |
|---|---|
| <input type="radio"/> Bilateral (employee/farmer) | <input type="radio"/> Trilateral (employee/farmer/intermediary) |
|---|---|
-
- 1.4 Other forms of recruitment
- The point is to find out if and to what extent workers are hired directly on site in a third country. If this is done, answers must be accompanied by accurate explanations, since this is a type of recruitment that may contribute to the spread of illicit labour.
-
- 1.5 Migrant workers
- | | |
|--|---|
| <input type="radio"/> Countries of origin? | <input type="radio"/> Special characteristics (type of contract, skills etc.) |
|--|---|
-
- 1.6 Structures of the employing units – who is the employer?
- | | |
|------------------------------------|---|
| <input type="radio"/> Farmer | <input type="radio"/> Operating group |
| <input type="radio"/> Intermediary | <input type="radio"/> Others: please describe |

2. Assessment of illegal work in agriculture

This discussion must leave a lot of room for a free exchange of views after asking the questions on the following issues:

- 2.1 Does illicit labour play a major part in agriculture in your region / your country?
- 2.2 If yes, what percentage does it potentially account for?
- 2.3 Does the authority in charge (please give its name) devote a major part of its efforts to identifying and prosecuting illicit labour?
- 2.4 What are the instruments that trade unionists and employers have to identify cases of illicit labour?
- 2.5 What are the most common or assumed forms of using illicit labour?

- 2.5.1 Undeclared recruitment
- 2.5.2 Misdeclared recruitments
- 2.5.3 Unreported working hours
- 2.5.4 Pensioners
- 2.5.5 Migrant workers
- 2.5.5.1 Countries of origin:
- 2.5.6 Seasonal workers
- 2.5.7 „Clandestine“ tourists
- 2.6 Open discussion

3. Living conditions of undeclared agricultural workers

Open discussion including on the case of “illegal” workers. The point is, above all, to make it possible to voice diverging views that inevitably differ depending on whether they are voiced by employees, trade unionists, farmers or government officials. The issues addressed can be rather varied, but should include the following:

- Types of pay
- Existence or non-existence of an employment contract
- Regularity of payment
- Social conflicts
- Social conditions (transport, accomodation, food, etc.)

4. Ways of addressing the problem

Views should be expressed freely, but only after looking, above all, at the draft Directive “Providing for sanctions against employers of third-country nationals illegally staying in the country” (though not exclusively, since this is not the only issue raised in the questionnaire).

Instruments could be, i.a.:

- Penalties for employers illegally employing third-country workers
- Immunity from criminal prosecution and protection for workers and trade unionists pointing out illicit labour (whistle blowers)
- Other instruments
- Information campaigns
- Regulatory measures (penalties, fines, punishments, exclusion of claims)

5. Development of illegal employment in agriculture

- 5.1 How has illegal employment in agriculture developed since 1997 (EFA study)?
- 5.2 How will illegal employment in agriculture develop over the next few years?

3.2 Sources of information

STUDIES

European Federation of Agriculture Trade Unions (EFA), 1997: Undeclared work in agriculture – study carried out with the involvement of national trade unions in Germany, France, Italy, the Netherlands, Spain and the United Kingdom, with the support of the European Commission.

European Commission, 2007: Communication dated 24 October 2007 – COM (2007) 628: Stepping up the fight against undeclared work.

European Commission, 2007a: Eurobarometer study 284: Undeclared work in the European Union, May-June 2007. The study conducted in all 27 Member States provides the basis for the first part of this report.

European Commission, 2006: Green Paper: Modernising labour law to meet the challenges of the 21st century. COM (2006) 708 dated 22 November 2006.

Council of Europe, 2006: Report by the Committee on the Environment, Agriculture and Local and Regional Affairs. (Doc. 11114 - 20 December 2006).

European Foundation for the Improvement of Living and Working Conditions, 2009: Measures to tackle undeclared work in the European Union – quoted from: <http://www.eurofound.europa.eu/pubdocs/2009/251/de/1/EF09251DE.pdf>

OTHER INFORMATION SOURCES

European Commission, 1998: Communication COM (1998) 219.

FTA-UGT, 2008: Brochure for foreign migrant workers, available from the Spanish trade unions.

“Accordo Governo – Parti Sociali Agricole”, agreement of the Italian agriculture trade unions, signed in September 2007, available from the Italian trade unions

WEBSITES

European Commission www.ec.europa.eu

European and national social partners

ETUC www.etuc.org

EFFAT www.effat.org

EFFAT Agriculture www.agri-info.eu

EFFAT Migration www.agri-migration.eu

NATIONAL LABOUR INSPECTORATES

ALBANIA

Inspektoriati i Punes / State Labour Inspectorate
Ministria e Punes, Ceshtjeve Sociale e Shanseve te
Barabarta
Rruga e Kavajes, No. 53, Tirana

AUSTRIA

Bundesministerium für Arbeit, Soziales und
Konsumentenschutz, Sektion VII,
Arbeitsrecht und Zentral-Arbeitsinspektorat
Favoritenstraße 7, 1040 Wien

BELGIUM

Service public fédéral Emploi, Travail et
Concertation sociale
DG contrôle du Bien-être au Travail
Rue Ernest Blerot 1, 1070 Bruxelles

BOSNIA-HERZEGOVINA

Federal Administration for Inspection Issues
Inspectorate of Labour Inspection
Turhanija br. 2, 71000 Sarajevo

BULGARIA

General Labour Inspectorate Executive Agency
3, Kniaz Dondoukov Blvd, 1000 Sofia

CROATIA

Labour Inspection
Ullca grada Vukovara 78, 10000 Zagreb

CZECH REPUBLIC

State Labour Inspection Office, Czech
Occupational Safety Office
Horni namesti 103/2, 74601 Opava

CYPRUS

Department of Labour Inspection, Ministry of
Labour and Social Insurance
12 Apellis Street, 1493 Nicosia

DENMARK

Danish Working Environment Authority
Landskronagade 33, 2100 Copenhagen

ESTONIA

Labour Inspectorate of Estonia
29 Gonsiori Street, 10147 Tallinn

FINLAND

Department for Occupational Safety and Health
00023 Helsinki

FRANCE

Ministère du Travail, de la Solidarité et de la
Fonction publique, Direction générale du travail
39-43 Quai André Citroën, 75015 Paris

GERMANY

Spitzenverband der landwirtschaftlichen
Sozialversicherung
Weißensteinstr. 72, 34121 Kassel

HUNGARY

Ministry of Social affairs and Labour, Department
of Labour Protection
Alkotmany 3, 1054 Budapest

ICELAND

Administration of Occupational Safety & Health
Bíldshöfði 16, Reykjavík

IRELAND

Health and Safety Authority
The Metropolitan Building
James Joyce Street, Dublin 1

ITALY

Servicio Centrale per il coordinamento degli
ispettorati del lavoro e de la previdencia sociale
via Pastengo 22, 00185 Roma

LETTONIA

Ministry of Welfare, State Labour Inspectorate
Lr Valdemara St. 38, 1010 Riga

LITHUANIA

Lithuanian State Labour Inspectorate
19 Algirdo gatvė, Vilnius

LUXEMBURG

Inspection du travail et des mines
3, rue des Primeurs, 2361 Strassen

MACEDONIA

Ministry of Labour and social policy, State Labour
Inspection
Partizanski Odredi 48-a, 1000 Skopje

MALTA

Occupational Health & Safety Authority
17, Edgar Ferro Street, Pietà MSD07

NETHERLANDS

Ministry of Social Affairs and Employment, Dutch
Labour Inspectorate
P.O.Box 90801, 2509 LV Den Haag

NORWAY

Norwegian Labour Inspection Authority
Statens hus, 7468 Trondheim

POLAND

National Labour Inspectorate
Ul. Krucza 38 / 42, 00-926 Warszawa 63

PORTUGAL

Ministerio do Trabalho e da Solidariedade social
Autoridade para as Condições do Trabalho
Av. Casal Ribeiro, 18-A, 1000-094 Lisboa

ROMANIA

Romanian Labour Inspectorate
14 Mihai Vorevod Str. - Sect.2, Bucharest

SERBIA

Director of the Labour Inspectorate
Ministry of Labour and Social Policy of the
Republic of Serbia
Ruzveltova 61, 11000 Belgrade

SLOVAK REPUBLIC

National Labour Inspectorate
Masarykova, 10, 04001 Kosice

SLOVENIA

Ministry of Labour, Family and Social Affairs,
Inspection Division
Parmova 33, 1000 Ljubljana

SPAIN

Ministerio de Trabajo y Asuntos Sociales, Dirección
General de la Inspección de Trabajo y Seguridad
Social
Agustin de Bethencourt, 4, 28071 Madrid

SWEDEN

Swedish Work Environment Authority
Ekelunsvagen 16, 17184 Solna

SWITZERLAND

Bereich Arbeitnehmerschutz des Amtes für
Wirtschaft und Arbeit, Interkantonaler Verband
für Arbeitnehmerschutz (IVA)
Neumühle-Quai 10, Postfach, 8090 Zürich

TURKEY

Turkish Labour Inspectors
Bıyık (8) Cad. 169/4, 2 Emek-Ankara

UNITED KINGDOM

Health and Safety Executive
Redgrave Court, Merton Road, L20 7HS Bootle

3.3 Contributors to the report

AUSTRIA

Heinz FLUCH, GMTN

Werner VOGL, GPA

BULGARIA

Svetla VASSILEVA, FNSZ/FITUA

Valya VASILYONOVA, FNSZ/FITUA

Anelya NACHEVA,

NFZGS-PODKREPA

Ludmilla TODOROVA, CBAO

Svetla TONEVA, Expertin KNSB

CZECH REPUBLIC

Bohumir DUFEK, OSPZV-ASO

Marie CHACATUROVOVA, OSPZV-ASO

DENMARK

Peter Kaae HOLM, 3F

Morten FISCHER-NIELSEN, 3F

Jesper LUND-LARSEN, 3F

EFFAT

Arlette CUREZ, Secretary

Arnd SPAHN, EFFAT Agriculture secretary and
Study Coordinator

ESTONIA

Aare NEVE, ETMK

Riia NEVE, ETMK

FINLAND

Sirpa SAVE, PL

FORUM SOCIAL INNOVATION – FSI EXPERTS

Patrick CAUDRON

Thomas HENTSCHEL

Jean-Pierre KLAPUCH

FRANCE

Bernard ANGIBAUD, FGTA-FO

Barbara BINDNER, FGA-CFDT

Fabien GUIMBRETIERE, FGA-CFDT

Jean-Pierre MABILLON, FGTA-FO

Pierre VAN NOPPEN, CFE-CGC

Jocelyne MARMANDE, FGTA-FO

Pascal LEFEUVRE, FNAA CFE CGC

Didier COLPIN, CFE-CGC

GERMANY

Hans-Joachim WILMS, IG BAU

Holger BARTELS, IG BAU

Korbinian SEDLMAIER, IG BAU

ITALY

Antonio CARBONE, ALPA

Franseco VERRASCHINA, UGC-CISL

Pietro MINELLI, UGC-CISL

Nicoletta SIMONINI, UGC-CISL

Albino GORINI, FAI-CISL

Giovanni PASTRELLO, FAI-CISL

Armando ZANOTTI, FAI-CISL

Carmelo MAZZOTTA, FAI-CISL

Stefano FAIOTTO, FAI-CISL

Francesco ORSOMANDO, FAI-CISL

Maurizio MASTROANTONIO, FAI-CISL

Pietro PELLEGRINI, UILA-UIL

Pasquale PAPICCIO, UILA-UIL

Silvia FATTORI, UILA-UIL

Ernesto D'AMBROSIO, FLAI-CGIL

Gino ROTELLA, FLAI-CGIL

LATVIA

Vladimir SOKOLOVS, LATU

LITHUANIA

Alfonsas GEDGAUDAS (+), TUFLAW

Regina DAPSYTE, TUFLAW

NETHERLANDS

Martin SIECKER, FNV Bondgenoten

Anneke VAN WEZEL, FNV Bondgenoten

Marijke BIJL, OKIA

Mohamed DAHMANI,

FNV Bondgenoten

Gerard ROEST, FNV Bondgenoten

Wim RAMAKERS, CNV

NORWAY

Arvid EIKELAND, Fellesforbundet

POLAND

Leon GRYCUK, ZZPR

Urszula SAS-DOLZYCKA, ZZPR

Anna FIERLA, ZZPR

Andrej KRENKOWSKI, NSZZ Solidarnosc

PORTUGAL

Jorge SANTOS, SETAA

Matilde MIRA, SETAA

Joaquim M.F. VENANCIO, SETAA

ROMANIA

Tudor DOROBANTU, Agrostar

Stefan NICULAE, Agrostar

Florin ISTRATE, Agrostar

Niculae TANASE, Agrostar

Gheorghe VLAD, Agrostar

Niculae ISPIR, Agrostar

Aurelia ROSU, Agrostar

Vasilica BLEBEA, Ceres

Dan BOTANOIU, FNPAR-GEOPA

SAN MARINO

Stefano ZONZINI, CDLS

SLOVAK REPUBLIC

Frantisek BALAZ, OZPP

Frantisek KNAPIK, OZPP

SLOVENIA

Jovo LABANAC, KZI

Joze SAPAC, KZI

SPAIN

Miguel RODRIGUEZ GUTIERREZ,
FTA-UGT

Lucia GARCIA-QUISMONDO GARCIA,
ARCICOLLAR, FTA-UGT

Jesús GARCIA ZAMORA, FTA-UGT

Cecilia SANZ FERNANDEZ,
FSIABT-CC.OO.

Montserrat SAGARRA FITO,
FSIABT-CC.OO.

SWEDEN

Anders JONSSON, Kommunal

Sofia BERGLUND, Kommunal

Karin NÄSMARK, Kommunal

TURKEY

Canan KOC, Tarim-Is

Ilhami POLAT, Tarim-Is

Ali DALKILIC, Tarim-Is

UNITED KINGDOM

Chris KAUFMAN, Unite the Union

Steve LENIEC, Unite the Union



EFFAT

EFFAT is a European umbrella organisation representing more than 127 national trade unions from 38 European countries and the interests of more than 2.5 million members working in agriculture, food, tourism, tobacco and allied sectors.

EFFAT is a member of the European Trade Union Confederation (ETUC) and a regional organisation in the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

EFFAT
European Federation of Food,
Agriculture and Tourism Trade Unions
38, Rue-Fossé-aux-Loups
B-1000 Brussels
Belgium

www.fffat.org



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Forum Social Innovation
33 Rue Joseph Jacquard
F-68840 Pulversheim
France

www.forum-si.eu

