

## ***Fighting against exploitation of the workforce and for stricter application of labour standards, access to justice and cooperation with labour inspectorates***

- Jean-René Bilongo / CGIL -

According to estimates, the underground economy (of which undeclared work is a significant part) accounts for around 17% of Italy's gross domestic product, while the average in other, more advanced European countries varies between 15% and 4%. So it would not be going too far to say that the underground economy is a structural element of the Italian economy and is rooted in sectors where there is the most deconstruction, where small businesses dominate the scene, where interest and control by criminal organisations is most widespread and, consequently, where monitoring and combating undeclared work is most complex.

This situation has particularly severe effects on two areas of the economy, namely agriculture and construction, and the services sector should be added to the list. These are the three sectors that are most affected by the spread of undeclared work, a type of work that not only deprives the tax authorities of a considerable sum of money but is also an especially fertile breeding ground for accidents, which are often severe or even fatal. [The International Labour uses the term "undeclared work" and defines it as underground or hidden labour, clandestine employment, 'black' labour, moonlighting or, commonly, illegal work. These terms are for the most part used in industrialised countries and refer to kinds of work whose activities are covered by labour law, but are not in conformity with its administrative requirements. For example, workers are paid below the minimum wage, employers do not register workers with the social security authorities, taxes and social security contributions are not paid on employment earnings.]

Two more factors should be added to this picture, which is already far from encouraging. Firstly, workforces on building sites and in agricultural concerns are increasingly made up of migrants from outside the EU. Secondly, the emergence of the 'crime of irregularity' means that such workers are under pressure and feel blackmailed since they cannot complain to law enforcement officers about being exploited because doing so would expose them to a tragic boomerang effect whereby they would risk immediate criminal prosecution for irregularity and could be deported.

### **ILLEGAL HIRING AND THE NEED TO PUNISH IT WITH AN AD HOC PENAL PROVISION**

CGIL and its sectoral organisations for agriculture (FLAI) and construction (FILLEA) are currently promoting a national campaign entitled **STOPCAPORALATO** (which could be translated as STOP ILLEGAL HIRING) and have drafted a bill to make illegal hiring a criminal offence. Illegal hiring is currently punished with an administrative fine of scarcely €50 for each worker hired.

Anyone who has been keeping a watchful eye on the situation of immigrant workers in Italy is bound to remember the raids carried out by the *Guardia di Finanza* (Financial Police) in Rosarno (Calabria) in April 2010. These raids resulted in a number of company owners being put behind bars for other crimes, such as enslavement.

And what about *female workers* in such situations? Generally speaking, women's working conditions in the informal economy are worse than men's working conditions. Women are hired to do less independent work, they earn less and do undeclared work out of economic necessity and in some cases (becoming increasingly common), forced labour goes side by side with undeclared work.

CGIL believes that there is a greater need than ever before to move beyond the clear limit set in current criminal law, which is why we are advocating a bill directed at and for discussion by all institutional stakeholders, starting with political powers and parliamentary committees. We are convinced that a new precept urgently needs to be added to the criminal code: illegally hiring workers is an offence, and as such, it must be punished!

Against this backdrop, we should also consider another factor that we believe to be essential, namely the protection of the thousands of workers currently at the mercy of *caporali* (illegal labour contractors), particularly workers from outside the EU. Our reason for this is as follows: before irregularity became a crime, foreigners could demand that their rights as workers be respected, even if they did not have residence permits, but now that irregularity has been made an offence, foreigners without residence permits are viewed as criminals for the sole reason that they are in the country irregularly, and so they cannot fight for their rights as workers. This has led to strange, paradoxical situations such as the case of an immigrant worker who reported those exploiting him – the illegal labour contractors (*caporali*) employing him – and was served with a deportation order.

We can see from this that there is a need for legal clauses protecting non-EU workers, clauses that could break the twofold connection between victims and their tormentors and would be integrated into important agreements drawn up in cooperation with certain local institutions and the prefectures.

## **MONITORING, INSPECTIONS AND SANCTIONS**

A close look at data from various European countries reveals a framework in which action against undeclared work takes the form of inspections, with consistent investment in the structures that are meant to perform the inspections, coordination between the authorities responsible for inspections and, of course, redefining the system of sanctions. Now more than ever, priority should be given to the capacity of social security institutions, labour inspectorates and trade unions to inspect and monitor.

## **THE ITALIAN CONFEDERATIONS' STRATEGIC PLAN FOR FIGHTING UNDECLARED WORK**

Faced with the challenges posed by the scourge of undeclared work, the Italian trade union confederations have worked together to develop a joint strategy focusing on a number of elements, with the following being the main points:

**1. launching a large-scale information campaign that could become rooted in society and create a common heritage**

Undeclared work must be disvalued. For this to happen, all of the institutional, entrepreneurial and social driving forces in Italy must join forces and take action. A good way of making this happen would be to organise a permanent campaign to fight undeclared work by promoting information and awareness-raising initiatives involving social institutions, public bodies, chambers of commerce, job centres, schools, prefectures and the different systems in place for monitoring and curbing undeclared work. This permanent campaign would run parallel to various measures designed to instil a culture of legality and promote 'healthy work' within a 'healthy company'.

**2. actions to govern and link up activities fighting undeclared work at national level**

For undeclared work to be combated effectively, there must first be shared systems for interpreting the phenomenon and opportunities to discuss matters and cooperate with the government. In any case, it would be helpful to:

- have a permanent national institution for discussion of such matters, such as a 'control room' for social bodies and regional and central government institutions. Its aim would be to foster initiatives and boost the visibility of the network of organisations fighting undeclared work throughout Italy and in each sector of the economy;
- develop a system for connecting and evaluating the results of studies and system monitoring;
- develop a system connecting the databases of the relevant ministerial departments (finance, interior, labour), the pensions and social security institutions and the regions;
- create a single database of (Community, national and local) facilities for companies;
- establish a closer link between development policies and specific processes for regularising undeclared work by bolstering actions against irregularity.

**3. new efforts to reform inspectorates and cut down on bureaucracy**

There is still insufficient monitoring capacity, which, in turn, determines the probability of companies being able to avoid checks by inspectorates. It would therefore be a good idea to encourage:

- increased coordination between the various inspectorates and between the inspectorates and other stakeholders responsible for fighting irregular work, while respecting the independence of pensions and social security institutions;
- providing inspectorates with more financial and technological resources;
- more checks focusing on certain ways of concealing dependent work;
- improvements to the collection process with a view to shortening timeframes and boosting efficiency with an accelerated administrative and judicial procedure.

**4. creating congruity indices**

The Italian confederations suggest implementing a new method of interpreting and checking the actual work done within companies. For this to be possible, congruity indices must be created (these indices concern the relationship between the quantity and the quality of the work and the number of hours worked proportionate to the number of workers). Compliance with these indices should be the main condition

for identifying where action should be taken by the inspectorates of the different institutions, among other things.

#### **5. establishing new standards for irregular workers**

A considerable share of undeclared work is characterised by the presence of irregular immigrant workers (from both within and outside of the EU). Without wanting to repeat the Italian confederations' many proposals on immigration, it would be a good idea to:

- give all workers who have applied for a work permit the status of workers;
- create a mechanism to protect immigrant workers and, once the employers exploiting them have been reported, have this mechanism support them in their move away from undeclared work until the potential regularisation of their employment relationship. This could be done by granting immigrant workers a residence permit that would act as a guarantee until they are able to establish employment relationships that comply with the relevant standards.

#### **6. establishing new standards for agriculture**

There are many forms of undeclared work in agriculture, so appropriate ways to combat them must be developed. This is why the sector's Joint Opinion must be implemented immediately. It is especially important that suitable legal provisions be adopted to:

- define an extraordinary national plan to make a list of employers in the sector (with a distinction being drawn between agricultural operators/businesses, companies working with related activities, companies that do not own land and farmers who are producing for their own consumption);
- change the system for the payment of [social] contributions by agricultural businesses;
- introduce a *single code* for application by agricultural businesses in their dealings with all public services.

#### **7. creating a national fund for the regularisation of undeclared work and rationalising resources for fighting undeclared work**

The Italian confederations also suggest creating a national fund for the regularisation of undeclared work and the bolstering of companies that have regularised their undeclared workers. The details of the fund's operation should be defined in close cooperation with the regions and the relevant social bodies. The fund's purpose would be to:

- link up some of the resources for increasing the bonus targeting workers who are moving away from undeclared work and for companies involved in local schemes for regularising undeclared work;
- provide some support for the reconstruction of previous construction periods (workers involved in the process for moving away from undeclared work) for the years preceding involvement in the local scheme for regularising undeclared work.

Moreover, with a view to implementing a single strategy for fighting undeclared work, it would be worthwhile to set up ways of coordinating and rationalising national and EU resources for combating the phenomenon. Emphasis should be placed on mechanisms to 'reward' areas where local schemes for regularising undeclared work have proved particularly effective.

It is clear that nobody can claim to have a cure-all solution that can immediately eradicate the plague that is undeclared work.

However, implementing certain measures would make it possible to considerably reduce the amount of undeclared work, using an approach that would see trade unions cooperate closely with the workers enduring undeclared work.

The key issue is the will to turn proposals into legal provisions that would apply to all stakeholders in the matter, first and foremost companies and employers.

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