

European Institute for  
Construction Labour Research

CLR

*Undeclared Labour in the Construction Industry*

Country report - **France** – June '06

Marcus Kahmann - political scientist (Dipl. Pol.) and sociologist (DEA)

## 1. National Regulatory System Relevant for the Construction Industry

### 1.1. Statutory and Collective Regulation of Labour Relations

French labour law is drawn up on four levels, whereby the requirements of the Labour Code are attributed the greatest importance. In addition, in some areas there are interprofessional collective agreements, which assume a statutory nature. Examples of this are the conventions for professional training. At a third level there are the sectoral agreements to be concluded by the trade unions and employers' federations. Among other things it is prescribed by law that the sectoral negotiations are to be carried on at regular intervals. Wage bargaining for example is to be conducted annually. Also at company level collective agreements may be concluded. Here the labour code also prescribes intervals between negotiations (among other things regarding wages), provided there are trade union delegates in the company. The order of precedence for regulations in the labour code provided that sectoral collective agreements have to be more favourable than the statutory regulations, and the plant agreement more favourable than the sectoral collective agreement. The great influence of the State on the collective regulation of labour relations, particularly if compared to the voluntaristic Anglo-Saxon tradition of free collective bargaining, is apparent in its role as initiator and moderator in collective bargaining as well as in the frequent application of the generally binding declaration of collective agreements.

The role of the Labour Code is further strengthened by the low level of trade union and employers' organisation. This is below 10% industry-wide on the trade union side (Courtois and Labbé 2001) as well as about 5% in the construction industry (Druker and Dupré 1998). In construction, to a large extent characterised by SME's, trade union membership is predominantly concentrated in large and medium companies. The ideological trade union split in a number of interprofessional umbrella organisations is also worth noticing. Trade unions with the strongest membership in construction are members of the CFDT (*Confédération française démocratique du travail*) and CGT (*Confédération générale du travail*). Social dialogue is restricted to wage negotiations and the joint management of social funds.

The structure of the construction collective agreement system is characterized by a division into public works on the one hand (contractors that carry out infrastructure and other public works, for instance railway tracks and highway construction, tunnels and drains) and private construction on the other. For both sectors independent wage negotiations are conducted annually with three employers' associations, which are independent of each other (FNTP, FFB and Capeb). This does not exclude that agreements of the contractual partners show fundamental similarities since the industry federations on the trade union side have consciously not accepted any analogous organisational split.

In private construction and public works, there are three national collective agreements (blue-collar workers; administrative/technical employees; managerial and staff workers). For blue-collar workers and administrative/technical employees wages are negotiated regionally (and then declared generally binding). For the managerial and staff workers wages are negotiated at national level. For workers in private construction there are two - generally binding - national collective agreements, one for employees in enterprises with less, and another for enterprises with more than 10 employees

Wages are negotiated at the level of the 22 regions by the decentralized structures of the employer's federations and trade unions. In all, every year 88 wage negotiations take place for

construction workers. Nonetheless, the power of these agreements to spread also to non-organized companies can be assumed. In line with the statutory regulations of 1998 and 2000, generally binding regulations on working time (the so-called *Aubry-Laws I, and II*) establish a weekly working time of 35 hours with full compensation (L. 212-1 *Code du travail*). The settlement allows at the same time a weekly working time of 39 hours, in so far as the additional work is remunerated with overtime bonuses. The yearly overtime quota permitted had been gradually reduced to 130 hours per year per employee under the socialist Government; in 2003 with the so-called *Fillon-Law* the maximum number of allowed overtime hours had been raised to 180 hours per year. In 2004, the legal contingent was extended to 220 hours per year. The number of maximum working hours in public works is determined by the collective agreement and depends on the firm's yearly working-time (130, 145 or 180 hours). It is possible to set up working time accounts by company agreement. From the 36<sup>th</sup> hour overtime bonuses amount to 25%, from the 44<sup>th</sup> hour to 50%. Until 31 December 2008, overtime bonuses in firms with no more than 20 employees amount to 10% from the 36<sup>th</sup> to the 39<sup>th</sup> hour. The maximum weekly working time amounts to 48 hours/week (in so far as there is no special permit from the employment authorities), without – in accordance with the wage agreement – the weekly working time being allowed to exceed 44 hours in a period of 6 consecutive months of work. The daily maximum working time amounts to 10 hours. The advocates of making working time flexible and allowing the extension of the number of overtime hours might understand these legal changes as a contribution to the fight undeclared labour, even if this was not their main purpose. The new working time regulations complicate the work of the Labour Inspectorate.

Finally, social funds are significant for the regulation of labour relations in construction. Both under- and non-declaration of labour are of equal concern to them. The first funds in the industry were introduced by law. Then, since the fifties, the social partners have taken over the initiative. The following sector-specific social funds are jointly administered: the training fund financed by vocational training contributions (CCCA, *Comité central de coordination de l'apprentissage*), the industrial accident prevention fund (OPPBTB, *Organisme professionnel de prévention du BTP*), the supplementary pension fund BTP-Retraite, the providential fund BTP-Prévoyance (guaranteeing continued pay and additional compulsory health insurance), the further training funds (GFC-BTP/AREF, FAF SAB, OPCA-TP). Only the paid holiday and bad weather compensation fund (*Union des caisses de France, Congés-Intempéries BTP*) is not jointly administered. Contrary to the industry-wide wage and framework agreements, which have always been contested and never obtained the signature of all trade unions, with regard to social funds a basic consensus of all players was developed. The interest of employers in the allocation of employees in sufficient numbers and qualifications in a sector characterized by discontinuous employment and disadvantageous working conditions laid a foundation for the development of social funds in partnership between capital and labour. Not surprisingly, in international comparisons French labour relations in construction have been described as relatively highly regulated (Campinos-Dubernet *et al.* 1992), particularly in view of the significance of generally binding collective agreements and social funds in the industry.

## 1.2. *Relevant Provisions in Taxation, Social and Labour Law*

Although in French labour law there is no definition of an employee, case law assumes the existence of a contractual employment relationship if the following three components apply: performing labour for a third person; remuneration; a tie of subordination. Self-employment is assumed if the person performing the work is registered in the adequate registers (Trade and Company Register, Professional Register, URSSAF) and his/her activity corresponds to the

declaration. Yet, it is acknowledged that in reality the criterion of ‘subordination’ is often difficult to establish (Mazeaud 2004: 272). In case of the existence of a direct and permanent tie of subordination of the self-employed to the contractor (bogus self-employment) an employment contract has to be established.

In France, the majority of taxes are levied by central State authorities. There is a distinction made between taxes on income (income tax, corporate income tax), value added tax, transaction taxes and local taxes. The latter are levied by the local and regional authorities. Corporate income tax is at 36.66 %. The income tax rate is between 12% and 56%. Different other related tax deductions can drive the individual income tax rate further down. VAT is currently at 19.6%. VAT taxes have to be declared basis by businesses on a monthly. Business tax is levied by the local authorities and, depending on turnover, rises up to 4%.

The social security system is divided into several branches (Meunier-Boffa 2003):

- The general scheme that assures the protection of workers who are employed in the industry, commerce and other types of employees;
- The agricultural scheme, that assures the protection of people active in agriculture and forestry (employees and farmers);
- Specific regimes for particular groups of agricultural workers;
- Autonomous regimes for non-waged, non-agricultural trades and professions.

Wage-earning construction workers enter into the first category. The general scheme distinguishes between four segments:

- sick leave, maternity, invalidity and death;
- work-related accidents and diseases;
- old-age and widowhood pensions;
- family benefits.

These segments are administered by different institutions. A central agency named ACOSS (*Agence centrale des organismes de sécurité sociale*) is in charge of the joint management and supervision of these funds. The funds are levied by the local contributions check off centre for the general social security scheme URSSAF (*Union de recouvrement des cotisations de sécurité sociale et d’allocations familiales*). The contributions to social security are paid by employers and employees to equal shares. The sum depends on the wage amount. Wage-related contributions make up for about 67% of the total expenses in social security. To cover the chronic deficit of the social security system, additional tax-based contributions have been introduced in the 1990s (notably CRDS, CSG). Together they account for about 20% of the social security-related expenses.

Two other, but distinct institutions still have to be mentioned in the context of French social security: the unemployment benefit fund ASSEDIC (*Associations pour l’emploi dans l’industrie et le commerce*) that is administered jointly by the social partners (contributions are equally collected by the URSSAF) and a mandatory additional pension scheme for salaried workers, including those employed in agriculture.

### 1.3. Liability Regulations

The notion of liability in the context of subcontracting has been laid down in the relevant law of 31 December 1975. It defines the rights and duties of the three principal actors of the economic chain in construction.

Being at the origin of the economic process, the client (*maître d'ouvrage*) has to consent to the subcontractors employed by the main contractor. The client is urged to remind the main contractor of the necessity to prevent the employment of a subcontractor carrying out illegal work. To prevent undeclared labour, the client may ask the contractor to show the contracts concluded with the subcontractor(s). In case of undeclared labour, the client will be held responsible. Under certain conditions, the client can equally be made responsible for the payment of sums (social insurance, taxes) due by a subcontractor that employed undeclared labour or foreigners without a work permit.

The main contractor can equally be made responsible for the direct or indirect use of undeclared labour, the use of workers without work permit, or illicit temporary employment. He can equally be committed to meet the account of an illicit subcontractor. According to labour law, the contractor is obliged to demand those documents which attest its legal existence before the start of service by the subcontractor and then every 6 months. The main contractor is equally obliged to keep copies of the contracts with the subcontractors. Providing these contracts to the client, obtaining its consent and furnishing a guarantee of payment to the subcontractor are mandatory.

In case the subcontractor resorts to another subcontractor, it becomes a main contractor itself with the same liabilities. Before the start of the service and then every 6 months the subcontractor is obliged to deliver the documents which attest the existence and the regularity of the enterprise. A third country subcontractor must obtain the permission of the migration authorities for the employment of non-EU workers. Moreover, they are obliged to deposit a preliminary declaration of posting and to comply with French legislation, notably in matters of health and safety, the minimum wage, and working hours.

### 1.4. Licences and other regulations to prevent undeclared labour

French law provides for a whole series of licensing, business and labour law mechanisms, serving the prevention of undeclared labour. These were mainly introduced or refined during the course of the 1990s in order to combat undeclared labour. Checking compliance with these regulations is of great importance when undeclared labour is ascertained by the labour inspectorates.

- Registration in the Trade and Company Register. This is prescribed for all physical persons and legal entities that are engaged in trading. This registration must take place for legal entities as soon as possible after registration of the business and for physical persons within 15 days after business has commenced. The relevant application must be submitted to the central clearinghouse for enterprise formalities CFE (*Centre de formalités des entreprises*).
- Registration in the Professional Register by legal entities or physical persons, who do not employ a staff of more than 10 and which are active in the area of manufacture, processing or the provision of services. The relevant application must be made to the CFE before carrying out the business.

- All persons, whose occupation does not fall within the scope of the obligation to register in the Professional, Trade or Company Register (for instance independent professionals, salesmen, farmers and foresters) must register without delay (there are various deadlines according to the type of business) with the contributions check off centre for the general social security scheme URSSAF and the tax authorities. Registration takes place through the CFE. For those occupations for which it is compulsory to register in the above-mentioned registers, registration with the CFE automatically results in social and tax legislative registration.
- For the employment of workers in the private sector (with the exception of home helps or family helpers) the employer has to submit since 1993 a preliminary declaration of hire (DPAE) to the URSSAF or the agricultural social security office before the employee's work starts. The declaration has to contain data for identification of the employer, the identity and nationality of the employee, the date and time of hire as well as, for the agricultural social security office, the type and duration of the contract. The employee receives a copy of the declaration from his/her employer unless it is part of the written contract. DPAE has made a substantial contribution to making it difficult to contest concealed labour by their perpetrators.
- With the exception of private individuals every employer must keep the unified register of staff. This has to record the surnames and first names of all staff (including those of home and agency workers), classified according to place of employment and the time of hire. In addition, nationality, date of birth, sex, occupation and professional qualification as well as the beginning and end of the employment relationship have to be declared. For foreign workers from non-EU countries, the type and number of the work permit and photocopies of these certificates have to be declared and attached to the register. Specific registers have to be held at all subsidiaries.
- Transfers of wages by the employer must be accompanied by the issue of a wage slip, which has to be issued at a set time once a month. From this the following must emerge: the identity of employer and employee; the wage agreement applicable; the period referring to payment, the hours worked during the compensation period, specified according to type (night work, overtime, etc.); the various compensation components (wages, bonuses, payments in kind, etc.); the extent of employer and employee shares in social security, including the social security account number.

### 1.5. *Undeclared Labour in French Industrial Law: Legal Definitions*

The Law in favour of small and medium enterprises (2005-882 of 2<sup>nd</sup> August 2005) associates a whole series of different practices with the concept of 'illegal labour'. Common ground with regard to definition is that they contravene elementary provisions of the employment laws and either occur within the frame of an enterprise (as a contractor or self-employed) or an employment relationship. By definition infringements may be committed by both French and foreign service providers. All persons, i.e. also their clients, participating in the performance of illegal labour may be prosecuted. The legal system particularly targets their originators. In the presentation of facts regarding undeclared labour by French law particular importance is attached to "concealed labour", since the majority of practices of undeclared labour can be subsumed under this category.<sup>1</sup>

---

<sup>1</sup> In the following the associated criminal offence of "Human trafficking and exploitation of vulnerability" is excluded from presentation since this occurs at the fringes of illegal activity.

**Concealed employment** (*Travail dissimulé*)<sup>2</sup>, this encompasses:

1. Independent profit-orientated activities, which intentionally breach trade, tax or socio-legislative standards. Profit orientation is established by criteria such as advertising, type and regularity of the activity or lack of/contrived invoices. Intent is assumed if an activity or receipts are hidden consciously and systematically in order to avoid payment of taxes and social insurance contributions. Even if an intentional action in the sense of a concealed employment cannot be ascertained, the relevant sanctions are applicable in accordance with tax and social legislation. The ways in which these infringements of the law manifest themselves are the failure to register in the Trade and Company or Professional Register or failure to declare at the URSSAF or the tax offices. Differences may be ascertained by the extent of failure to declare (e.g. totally undeclared independent work; tax fraud by a regularly declared self-employed individual through work without an invoice).
2. The concealment of an employment relationship. An employer commits an offence, if he/she on engagement intentionally either did not submit the DPAE or has not sent the compulsory monthly wage slip to the employee. All private individuals and company management engaging staff, regardless of the size of the enterprise or sector, must hold both types of document. An offence is also committed, if the employer did not reveal all the hours worked during the period to which the pay slip refers (with the exception of collective agreement provisions for annual working time accounts).

Both the originator (an individual who conceals his/her own activity or that of his/her employees) as well as those, who make profit from the legal offence or participate in carrying this out (accomplices, recruiters) may be prosecuted. Regardless of whether it is a matter of physical persons or legal entities, the originator of a concealed employment (an individual who conceals their business or the employment of an employee), the client, the supplier of materials for work or any other person, who makes profit from the offence (for instance the client, in so far as knowledge of the situation can be proved), may be prosecuted by law.

The employee in question, on the other hand cannot be prosecuted by law. If the illegally employed worker does not continue to be employed (on a regular basis) after infringement of the law has been established, then regardless of the duration of employment, a severance payment must be made to him/her equal to six months wages. Other labour legislation provisions are also applied retrospectively; unpaid overtime, for example, must be compensated. However, should it transpire during the course of examination of the facts by the competent authorities, that the employee accepted the employment in the knowledge that the regulations applicable were not being adhered to (issue of the payslip; preliminary declaration of engagement), then the competent social security authorities and employment offices are advised of this. The latter may pronounce sanctions against the employee within the frame of their own statutes (cancellation of benefits; prosecution for fraud).

**Bogus Self-Employment** (*Faux travail indépendant*). Generally, the bogus self-employed person is registered in the relevant professional registers and is registered at social security and the Tax Office. In reality, however, her/she is an integral part of the enterprise; the enterprise management organises all his/her activities, directs and controls work performance as it does with its dependent employees. Therefore he/she works under the same conditions as an employee without being able to claim the relevant rights. Legally employment of bogus

---

<sup>2</sup> In 1997 the notion of ‘concealed labour’ legally replaced the notion of ‘clandestine labour’, suggesting an identification of undeclared labour with illegal immigration. This semantic clarification was notably due to the evidence produced by the labour inspectorates (Marie 1997: 158).

self-employed individuals falls into the category of concealed employment and they are prosecuted with the same consequences (Diagram 1).

**Illegal Accumulation of Employment Relations** (*Cumul irrégulier d'emplois*). This is applicable first of all basically for employees in Public Service, officials and public employees, and secondly, in so far as the total time worked is longer than 48 hours/week, for employees in private industry. Both the employee and his/her employer may be legally prosecuted. A fine of 1,500 € may be imposed on them.

**Fraud in Connection with Receipt of Wage-Compensating Benefits** (*Fraude aux revenus de remplacement*). If a recipient of wage-compensating benefits (unemployment benefit, early retirement) takes on a new occupation (as an employee or as independent worker), without declaring it, then employment laws threaten with 2 year prison sentence and a fine of €3,750.

**Illicit Supply of Workers** (*Prêt illicite de main-d'œuvre*). This category includes the supply for profit of workers by one enterprise to another which is forbidden in principal by French labour law. An exception to this is the supply of workers within the legal frame of temporary employment as well as the business of modelling and artists agencies. Different from regular sub-contracting, illicitly provided employees have no special qualifications or duties and are placed under the supervision of the client. Lenders and users are considered as co-perpetrators of the criminal offence and are both legally prosecuted. Natural persons may be prosecuted with prison sentences and a fine of 30,000 €, legal entities risk among other things a fine of up to 150,000 € (Diagram 1).

**Trafficking of Workers** (*Marchandage*). While the supply of workers is illicit outside the legal frame of temporary employment agencies, the supply of services for profit, notably in the form of subcontracting, is not. However, if in such a case disadvantages result for the employee from the profit-making supply of his/her labour through a contractor by breaching legal or collective agreement provisions, then French law talks about trafficking.

**Law-Breaking in Connection with the Employment of Foreigners.** The employment of foreigners from non-EU countries rests on the principle that first of all the entry of the employee for the purpose of accepting employment depends on the approval of the national employment and immigration administration. Approval of an application by the employer depends on the evaluation of the specific labour market situation. In principle precedence is given to domestic applicants in the granting of employment. Secondly, law prohibits the employment of residents without a work permit. Employers are encouraged to gather information systematically regarding the nationality of their employees as well as to check regularly their situation in respect of the right to remain and to up-date it in the register of staff. What is more, it is also prohibited for the employer to pay for the recruitment of a foreign employee; to falsify documents with the aim of obtaining a work permit; to give financial assistance for entry, residence and travel; to give access to a foreign employee or grant a work permit through a temporary employment agency. Employers (including private individuals commissioning) or their representatives, as well as beneficiaries of the fraud, in so far as they had knowledge of it (touts, middlemen, etc.) are criminally prosecuted (see Diagram 1 for the penalties). Employees without work permit will be taken away a temporary residence permit.

**Fraud in Connection with the Employment of Foreign Enterprises** (*Fraudes liées à l'intervention des entreprises étrangères sur le territoire français*). Three cases of transnational service provision are differentiated. a) If a service provider provides a service

which has a certain time-limit without posting employees (e.g. a self-employed) certain social and tax provisions are applicable, for instance the payment of VAT or the proof of the payment of social insurance by the service provider or his/her representative. If an enterprise uses posted workers, among other things the national labour legislation and the general binding collective agreements are applicable. **b)** All the statutory tax, social and commercial regulations are applicable to foreign enterprises permanently active in France. **c)** Also the currently valid statutory social and labour minimum provisions are applicable to employees of a foreign service provider, who is active on its own account for a limited period of time. Enterprises from third countries need work permits for their employees. Breaches of the law take the form of a concealment of the company head office (either no head office abroad at all or in the form of a post office box address, in order to circumvent the French legal situation). These enterprises are treated in law like the undeclared French ones. Sanctions therefore correspond to those in the event of concealed employment by failing to register with the Trade or Professional Register, failure to pay tax and social insurance as well as missing DPAE or pay slips.

**Diagram 1: Sanctions in the Area of Illegal Employment with Extreme Violation of the Law**

	Concealed Labour	Illicit Supply of Temporary Workers	Irregular Employment of Foreigners
Natural People	Three Years Imprisonment and a Fine of 45,000 €	Two Years Imprisonment and a Fine of 30,000 €	Five Years Imprisonment and a Fine of 15,000 €(per foreigner employed)
	What is more, where necessary, the following additional penalties: <ul style="list-style-type: none"> <li>• A ban on the practice of the incriminating business for the duration of 5 years</li> <li>• Seizure of tools, machinery, goods in hand and stock in trade</li> <li>• Publication and announcement of the judgement</li> <li>• Temporary or permanent exclusion from public authority commissions</li> </ul>		
Juridical Persons	Fine of 225,000 €	Fine of 150,000 €	Fine of 75,000 €
	What is more, where necessary, the following additional penalties <ul style="list-style-type: none"> <li>• Dissolution of the business (inasmuch as a legal entity was created, in order to perpetrate the crime)</li> <li>• Ban on the practice of the incriminating business</li> <li>• Permanent or temporary closure of the enterprise affected (not applicable in the event of employment without a residence permit)</li> <li>• Temporary or permanent exclusion from public authority commissions</li> <li>• Seizure of tools, machinery, goods in hand and stock in trade</li> <li>• Publication and announcement of the judgement</li> </ul>		
Possible additional sanctions: <ul style="list-style-type: none"> <li>• The competent authorities may in the event of a crime in connection with undeclared employment cancel public financial assistance for employment and training given to the respective enterprise (juridical or natural person) for a maximum period of 5 years.</li> <li>• If exemptions or reductions in social insurance contributions are claimed without the compulsory presentation of documents (undeclared hours worked; missing DPAE; missing pay slip), then this state of affairs constitutes illegal employment. The enterprises concerned must make the unpaid social insurance payments and not claim any social insurance exemptions for a maximum duration of five years.</li> </ul>			
Severance pay to be paid out after termination of the employment relationship <ul style="list-style-type: none"> <li>• Equal to at least six months salary (inasmuch as no more favourable statutory provisions or collective agreement exist) for illicitly employed workers;</li> <li>• Equal to a lump sum of one months salary (in so far as no more favourable statutory provisions or collective agreement exist) for employees without a work permit.</li> </ul>			

## 2. Institutions for Combating Undeclared Labour

The definition of undeclared labour in French law touches a variety of state and semi-public institutions. A number of supervisory bodies in charge of the phenomenon correspond to its varieties. The most important are the various sections of the Labour Inspectorate, the gendarmerie/police, tax offices, customs and the URSSAF. The only authorities, which have full authorization to carry out checks in the area of undeclared labour, are the police and gendarmerie, or more precisely criminal investigators, as well as the Labour Inspectorate (Diagram 2). Data from the year 2004 (DILTI 2005b) indicate that the gendarmerie, with almost 50% of all orders of summary punishment made out, has a large share of the monitoring. This is followed by the Labour Inspectorate with almost 25% and the social security institute URSSAF with a good 15%. It may be noted that in the various shares certain “cultural differences regarding organisation” are also expressed: while the Labour Inspectorate in its work lays emphasis rather on moving suspicious enterprises and on employees to comply with the regulations and acting preventively, the police and gendarmerie tend to issue tickets immediately in the event of an infringement.

**Diagram 2: Infringements and Authorized Supervisory Bodies**

Concealed labour	<ul style="list-style-type: none"> <li>• Criminal police</li> <li>• Labour Inspectorate</li> <li>• Tax Office Inspectorate</li> <li>• Customs</li> <li>• Social insurance</li> </ul>
Bogus Self-Employment	<ul style="list-style-type: none"> <li>• Criminal police</li> <li>• Labour Inspectorate</li> <li>• Tax Office Inspectorate</li> <li>• Customs</li> <li>• Social insurance</li> </ul>
Illicit accumulation of employment relationships	<ul style="list-style-type: none"> <li>• Police and Gendarmerie</li> <li>• Labour Inspectorate</li> </ul>
Fraud in connection with drawing wage-compensating benefits	<ul style="list-style-type: none"> <li>• Police and Gendarmerie</li> <li>• Labour Inspectorate</li> <li>• Local Labour Office</li> <li>• Unemployment Benefit ASSEDIC</li> </ul>
Unauthorised supply of temporary workers	<ul style="list-style-type: none"> <li>• Criminal police</li> <li>• Labour Inspectorate</li> </ul>
Unlawful labour trafficking	<ul style="list-style-type: none"> <li>• Criminal police</li> <li>• Labour Inspectorate</li> <li>• Tax Office Inspectorate</li> <li>• Customs</li> </ul>
Violation of the law in connection with the employment foreign workers	<ul style="list-style-type: none"> <li>• Criminal police</li> <li>• Labour Inspectorate</li> <li>• Customs</li> </ul>
Fraud in connection with the use of foreign contractors	<ul style="list-style-type: none"> <li>• Criminal police</li> <li>• Labour Inspectorate</li> <li>• Tax Office Inspectorate</li> <li>• Customs</li> <li>• Social insurance</li> </ul>

Source: DILTI 2005b, own compilation

At present 1,330 labour inspectors are employed. In addition, there are 550 inspectors from the Ministry of Agriculture and the Ministry of Transport. In the year 2005 they checked nearly 600,000 enterprises (*Le Monde*, 21st March 2006). The delegated Minister of Employment, Labour and Insertion of Young People Larcher, on the occasion of the presentation of his project for the reform of labour inspection, promised to take on 700 more inspectors between 2007 and 2011<sup>3</sup>. According to the Minister the French mechanism would then comply with European standards (*Le Journal du Management*, 15.3.2006). The CGT notices indeed the seriousness of the Government initiative, however, it finds that resources remain insufficient and claims the need to increase the number of inspectors to 3,000. Employer critics such as FFB consider the existing contingent to be sufficient and demand instead greater efficiency from the authority apparatus.

The public machinery for combating undeclared labour has been structured since the coming into effect of the relevant law of 11th March 1997: the Prime Minister is the Chairman of an interministerial committee for combating undeclared labour. Seven ministries are represented on it (Justice, Labour and Employment, Internal Affairs, Defence, Finance and Customs, Transport and Agriculture). It evaluates the policy against undeclared labour and determines its direction.

The national committee in the struggle against illegal work is subject to it. It unites the national ministerial Heads of Department as well as the social security institutes concerned. In addition, there are social partner representatives as well as representatives of the regional delegates. It has the task of co-ordinating the ministries concerned and of defining the strategic orientation of the supervisory authorities in matters of repression and prevention.

The inter-ministerial delegation for the struggle against illegal works (*DILTI*), founded in 1997, supervises the implementation of the guidelines decided by the national committee. It employs about 40 people who are recruited from the Ministries concerned as well as from two social security institutes and is under the jurisdiction of the Labour and Employment Ministers. It has the task of reporting at regular intervals to the national committee on the work of the competent national and regional authorities and organisations and even of introducing proposals for the improvement of public facilities. The DILTI functions at the same time as a co-ordinating point between the various ministries and organisations integrated in the struggle against illegal work. This includes advisory tasks, above all of a juridical nature, further training and information policy directed at the general public.<sup>3</sup> It may be added that it also fulfils the function of the national liaison office within the frame of the European Posting Directive (96/71/EC).

Below national level, in the *départements*, there are the committees for the struggle against illegal labour, in which the competent players at this level from the State, unions and management are joined to develop measures adapted to local conditions. Also at the level of the *départements* executive committees for the struggle against illegal labour (*COLTI*) are to be found that co-ordinate the work of the competent regional supervisory authorities. Their

<sup>3</sup> It may be added that this reform is in the context of the murder of two Labour Inspectors in September 2004. They were shot dead by a farmer who employed seasonal workers during one of their checks. The case aroused public awareness, partly because it highlighted the increasingly difficult working conditions of inspectors. In fact, between 1995 and 2004 the number of recorded acts of violence (handicapping, verbal abuse, threats, death threats, physical violence) against Labour Inspectors increased from 13 to 80 (*Le Monde*, 21.3.2006).

<sup>3</sup> Publications aimed at the public include in recent years the brochures: *The Posting of Workers to France for a Limited Period of Time* (2004), *Undeclared Labour: Status Report* (2003), *Service Provision by Foreign Contractors in France* (2002) as well as *The Struggle against Illicit Labour: Guide for the Profession* (1999).

permanent chair ensures in particular the exchange of information among actors, the flow of information to the criminal prosecution authorities and the statistical mapping of the operation.

It should be underlined that the political significance of undeclared labour has increased in past years. This is due mainly to acute financial problems of the national Social Security system. Government engagement has been evident in particular since the taking up of office by the current Minister for Labour, Employment and National Cohesion of the Conservative Government, Jean-Louis Borloo, who for the first time since 1998 summoned the national Committee for the Struggle against Illegal Work. He invigorated the remit of the authorities above all by initiating two-year plans, in which the general orientation of the policy for combating illegal work was prescribed (see chapter 6). On the occasion of the presentation of the first plan for the years 2004-2005 the Minister referred to the loss of 55 billion Euros of revenue inflicted every year on the State through illegal work. This corresponded to 4.4% of GDP and a third of the deficit of the social security funds. A “merciless war” would have to be fought against illegal labour (*L'Expansion*, 18.6.2004). In January 2006 the current two-year plan in the struggle against illegal work was decided. The latest project for reforming the Labour Inspectorate by the delegated Minister of Employment and Labour Larcher fits into the logic of a centralisation of supervision by setting up national multiannual plans.

On the other hand, trade unions have criticised this intention by stating that the Labour Inspectorate would lose its independence (documented by ILO-Convention 81). According to such criticism, focussing on undeclared labour, safety at work and social benefit fraud threatened, moreover, to neglect a whole range of other subjects, like working hours, wages, rights of participation (*Le Monde*, 21st March 2006). A further criticism by a majority of Labour Inspectors and trade unions targets the increasing focus on the work of the Labour Inspectorate on the persecution of illegal immigrants, among other things by the creation of a central office for combating illegal work (OCLTI). To Prime Minister de Villepin, the OCLTI represents the “last column” of his plan to fight illegal migration (*Nouvel Observateur*, 17 May 2005). Most labour inspectors believe such a task is not part of their professional remit and has to remain the duty of the police.

### **3. Nature and Characteristics of Undeclared Labour in Construction**

The following chapter will portray the characteristics of undeclared labour in the French construction industry as well as its macroeconomic dimensions. It is acknowledged from the outset that the existing relevant literature is extremely limited and moreover partly outdated.

#### *3.1. Characteristics of Undeclared Labour*

The following analysis of characteristics of undeclared labour is based essentially on DILTI data. These were generated from the records received from regional authorities for labour, employment and further vocational training. The data therefore touch exclusively on the cases ascertained during the supervisory activities of the Labour Inspectors and do not provide a faithful portrayal of the reality but rather indicate tendencies and trends. They also allow for comparisons of the occurrence of individual infringements.<sup>5</sup>

---

<sup>5</sup> According to DILTI (DILTI 2006) three further problem areas are to be taken into account in respect of the validity of the data. 1. If for example, several employees in an enterprise are affected by one and the same violation of the law, then in practice it happens that this violation is only recorded once on the relevant ticket. 2. However, what is more crucial is the problem that not all violations emerge from the ticket, as they were not

The records issued in the context of undeclared labour amounted in 2004 to 6,291. These were issued for a total of 9,611 offences. Compared to 2003 with 8,585 offences and 5,604 tickets issued this means a slight increase in undeclared labour. Table 1 shows fluctuations in the historical longitudinal section; according to DILTI the increase in tickets between 1994 and 1998 is due to the introduction of the DPAAE, while its regression since 1999 could be traced back to the increasing complexity of the violations of the law committed. The data therefore hardly allow for statements on real quantitative changes.

**Table 1: Illegal Work: Transsectoral Development in the Number of Tickets Issued, 1992-2004**

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Number of Tickets	5200	6155	9149	9891	10020	10050	10092	9747	8131	6182	5873	5604	6291

Source: DILTI 2005b

In 2005 the competent authorities checked a total of 59,256 enterprises (Table 2). 44% (26,177) of these checks were in construction (BTP), which has about 300,000 contractors. Here in almost 5% of the businesses checked violations of the law in connection with undeclared labour were established. This percentage is below the relevant percentage rates for agriculture, audiovisual media as well as music and theatre production, however above those of the removal business and hotel and catering.

**Table 2: Checks and Offences by Industries, 2005**

Sector	Enterprises Checked	Violations of the Law	Percentage Rate of Enterprises Acting against the Law
Agriculture	8,689	669	7.7%
Construction industry	26,177	1,253	4.8%
Removals	674	25	3.7%
Hotel/Catering	21,500	980	4.6%
Audiovisual Media	322	27	8.4%
Theatre and Music	1,894	100	5.3%
Total	59,256	3,054	5.2%

Source: DILTI 2006

Table 3 examines the transsectoral development of offences since 1995. It turns out that the “classical” forms of undeclared labour (undeclared self-employed labour and concealed employment of workers) are by far and away of the utmost importance. Their proportion has been fluctuating since 1995 between 71% and 82%. The employment of foreigners without a work permit amounts to between 4% and 10% and is therefore subject to obvious fluctuations, without it being clear, whether for instance changed supervisory practices (efficiency, main focus) or real changes are responsible. However, only few pieces of statistical evidence are to be found for the reduction of undeclared labour to illegal immigrants. A constant modest proportion of 2% is apportioned to law breaking in the context of illegal labour trafficking or the supply of temporary workers. A clear trend cannot be read off any of the four categories. The available data indicate relative stability of the forms over time.

---

*legally* necessary for the judgement. This can be explained in part by the areas of jurisdiction of the competent supervisory authorities (in this way the supervisors of the social insurance carrier URSSAF have no authorisation to impose sanctions in questions of illegal supply of temporary workers). Even the Labour Inspectorate and gendarmerie, vested with complete authority for criminal prosecution of undeclared labour, regularly simplify for legal or efficiency reasons. It is not known which elements of the offence are simplified. 3. Finally, not all tickets reach DILTI. A survey from 2001 concluded that merely 61% of tickets were passed on to DILTI.

**Table 3: Transsectoral Development of the Most Significant Violations of the Law Since 1995**

	1995	1997	2001	2002	2003	2004
Concealed Labour	71.0%	72.3%	82.1%	77.6%	76.3%	76.0%
Other Offences	21.3%	21.0%	9.0%	9.9%	14.4%	14.4%
Employment of Foreigners without a Work Permit	5.3%	4.0%	7.1%	10.0%	7.0%	7.2%
Unlawful Trafficking of Labour or Inadmissible Supply of Temporary Workers	2.4%	2.7%	1.8%	2.5%	2.3%	2.3%

Source: DILTI 2005b

A detailed analysis of transsectoral violations of the law (in 2004) shows that within the dominant violations “concealed employment” above all the concealed employment of workers is the one to which the majority of infringements and criminal offences are attributable (Table 4). The share of 41% of the “concealed employment of workers with deliberate lack of DPAAE” suggests this.<sup>4</sup> The recorded proportion of violations of the tax laws (2.2%) is remarkably small, as is, contrary to a frequently made diagnosis (e.g. EUROSTAT 2001), the fraud with regard to wage-compensating benefits in the context of undeclared labour with just a half percent, or the employment of foreigners without a work permit (7.18%).

**Table 4: Types of Violation of the Law in 2004, Transsectoral**

Violation of the Law	Number of Violations of the Law	Percentage
Concealed employment of workers with intentional failure to issue a DPAAE	3952	41.12%
Failure to register the enterprise	1460	15.19%
Failure to register with social insurance	777	8.08%
Employment of a foreigner without a work permit	690	7.18%
Concealed employment of workers and intentionally not issuing a pay slip	629	6.54%
Various violations in connection with illegal work	661	6.85%
Claiming services which were carried out by illegal labour	320	3.33%
Failure to complete a tax declaration	277	2.88%
Partial concealment of hours worked	206	2.14%
Missing DPAAE	204	2.12%
Banned supply of temporary employees	152	1.58%
Trafficking of labour	73	0.76%
Assistance to foreigners in illegally crossing borders and staying	62	0.65%
Illegal accumulation of employment relationships	44	0.46%
Violation of regulations regarding payslips	38	0.40%
Illegal drawing of wage-compensation benefits	26	0.27%
Use of bogus self-employed	20	0.21%
Supplementary welfare benefit fraud	20	0.21%
<b>Number of violations</b>	<b>9611</b>	<b>100.00%</b>

Source: DILTI 2005b

Table 5 specifies violations of the law ascertained in 2004 in construction according to trade branches. If first of all one compares the sub-sector data of construction with the transsectoral data (Table 4), it stands out that the proportion of the respective forms of illegal labour correspond approximately to the transsectoral percentage rates. This may be an indication that the nature of the phenomenon of undeclared labour in the construction industry is not substantially different from other sectors. The majority of the violations concern the use of

<sup>4</sup> It should be added that the classical illicit work in private households is more difficult to check under French law, because a visible indication of undeclared employment must exist from outside the flat or house, so that the supervisory body (police) can demand access in accordance with judicial authorization. In this respect it may be assumed that the real proportion is greater. According to the opinion of an interlocutor of the DILTI it may be “the best known but the least punished” form of undeclared labour.

concealed labour, at about 40%, in connection with a violation against the DPAE regulations. Notable deviations from the transsectoral average occur first and foremost in the event of violation of the law by enterprises failing to register. Here the percentage rate in construction across all sub-sectors with 10.7% stands clearly below the transsectoral average of 15.2%. Therefore, even if the figures do not allow any further differentiation, informal enterprises and self-employed seem to be less frequent than in the transsectoral average. Likewise, below average values occurred for construction in concealment of actual hours worked (0.7% to 2.1%). On the other hand clearly above average values are to be noted for illegal employment of foreigners (10.2% to 7.2%). What is more, it is also noteworthy that – at low level – crimes in connection with supply of labour-only or labour trafficking in construction are clearly more frequently ascertained than in the transsectoral average (2.7% or 1.4% to 1.58% or 0.76%).

**Table 5: Types of Violation of the Law in the Construction Industry, 2004**

Violation of the Law	Demolition and Excavation		Civil Engineering		Piping		Finishing trades		Construction Overall	
Use of concealed employment, deliberate omission of preliminary declaration of engagement (DPAE)	34	44.1%	768	40.9%	103	37.9%	121	36.3%	1026	40.10%
Contractor's failure to register	6	7.8%	183	9.7%	30	11.0%	56	16.8%	275	10.7%
Employment of a foreigner without a work permit	3	3.9%	207	11.0%	27	9.9%	24	7.2%	261	10.2%
Failure to register with social insurance	2	2.6%	149	7.9%	21	7.7%	20	6.0%	192	7.5%
Various violations with regard to illegal work	7	9.1%	141	7.5%	22	8.1%	23	6.9%	199	7.6%
Use of concealed labour, deliberate failure to issue a pay slip	6	7.8%	126	6.7%	17	6.3%	25	7.5%	174	6.8%
Use of undeclared labour	5	6.5%	90	4.8%	14	5.1%	27	8.1%	136	5.3%
Illegal supply of labour	7	9.1%	55	2.9%	6	2.2%	1	0.3%	69	2.7%
Failure to pay tax	2	2.6%	43	2.3%	10	3.7%	11	3.3%	66	2.6%
Illegal labour trafficking	1	1.3%	29	1.5%	4	1.5%	2	0.6%	36	1.4%
Violation of the regulations for preliminary declaration of hire (DPAE)	2	2.6%	19	1.0%	7	2.6%	7	2.1%	35	1.4%
Assistance to a foreigner for illegal border crossing and stay	1	1.3%	19	1.0%	4	1.5%	7	2.1%	31	1.2%
Concealment of part of the hours worked	0	0.0%	15	0.8%	0	0.0%	3	0.9%	18	0.7%
Failure to display a notice of works in progress ( <i>permis de construire</i> )	0	0.0%	6	0.3%	2	0.7%	1	0.3%	9	0.8%
Illegal acceptance of social benefits by the unemployed	0	0.0%	8	0.4%	1	0.4%	0	0.0%	9	0.4%
Assistance to a foreigner for illegal border crossing and stay	0	0.0%	6	0.3%	0	0.0%	3	0.9%	9	0.4%
Missing despatch advice	0	0.0%	6	0.3%	3	1.1%	0	0.0%	9	0.3%
Social benefit fraud	1	1.3%	4	0.2%	1	0.4%	2	0.6%	8	0.3%
Illegal accumulation of employment relationships	0	0.0%	2	0.1%	0	0.0%	0	0.0%	2	0.1%
Assistance in income support fraud	0	0.0%	2	0.1%	0	0.0%	0	0.0%	2	0.1%
Total	77	100.0%	1878	100.0%	272	100.0%	333	100.0%	2560	100.0%

Source: DILTI 2005b, own calculations

The trade-specific distribution is also of interest. In the area of demolition and excavation the proportion of use of concealed labour in connection with a missing DPAE with 44.1% is clearly above average the industry average (Table 5). The above average number of offences in the context of pay slips (7.8%) also indicates a high proportion of undeclared or partially declared labour. This corresponds to a below average proportion of offences in connection with independent enterprise activity (failure to register in the Trade Register). On the other hand the proportion of concealed employment of workers in connection with an incorrect DPAE in trade-specific violations of the law in the plumbing and finishing trades, 37.9% or 36.3%, is slightly below the industry average. The central indicator for the presence of informal enterprises, failure to register in the Trade Register, occurs in both sub-sectors with above average frequency (11.0% or 16.8%). With regard to the employment of foreigners without a work permit, it is noteworthy that these are found with greater than average frequency in civil engineering. Also in construction we note a lesser proportion of fraud in wage-compensating benefits.

According to Table 6 the majority of violations of the law occurred in the smallest enterprises. This is confirmed if the number of employees per category (Table 10) is taken into account: 1 to 10 employees with 35%, 11 to 50 with 33%, more than 50 with 32% of total employment in construction.

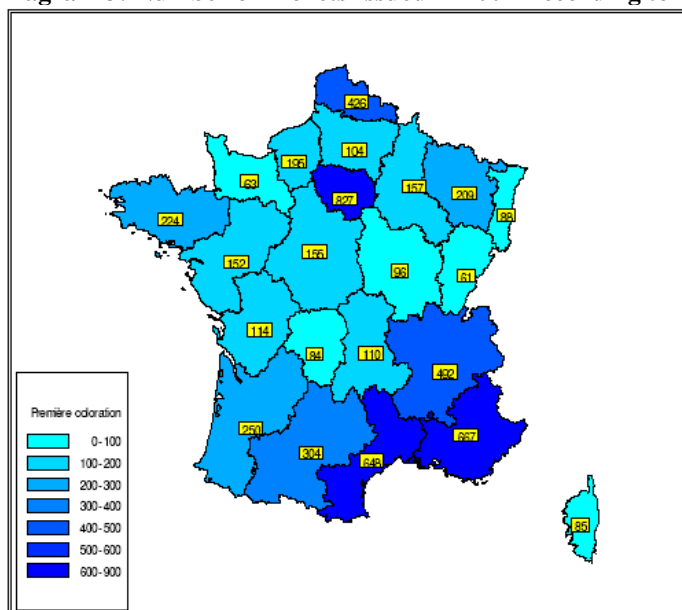
**Table 6: Percentage Distribution of Violations of the Law with regard to Enterprise Size in the Construction Industry, 2004**

No Employees	1 to 10 Employees	11 to 50 Employees	More than 50 Employees	No Data
10.0%	70.4%	2.5%	0.5%	16.6%

Source: DILTI 2005b

Diagram 3 illustrates the distribution of tickets in the year 2002 in the context of illegal employment according to regions. The illustration based on DILTI data indicates that there are clear regional differences in the occurrence of undeclared labour. Unfortunately, the data available do not allow for any detailed interpretation. It is notable that the Paris conurbation as the region with the strongest economy and the largest population and also the southern departments in the Mediterranean appear particularly affected by the phenomenon. It may be assumed that in the latter, in particular the construction boom in this area and tourism are responsible for this.

**Diagram 3: Number of Tickets Issued in 2002 According to Departments**



Source: Andriamanampisoa 2003

### 3.2. Macro-Economic Dimensions of the Phenomenon

The most up-to-date investigation into the macro-economic dimensions of informal economic activity dates back to 1989 and was published by the National Statistical and Economics Research Institute INSEE (Willard 1989). It refers to the year 1988. The object of analysis is the “shadow economy”, understood as all regular but undeclared economic activities. At present INSEE is working on a new study, which was not yet accessible.

According to an investigation in 1988, the sum of all activities in the shadow economy amounted to 250 billion Francs (38 billion Euro),<sup>7</sup> which is equal to a share in national real net output of more than 4% of GDP. This matches the real net output of industries such as agriculture or the energy sector. As a result of INSEE data, the extent of tax evasion and tax fraud by correctly declared enterprises exceeds that of undeclared work (economic activity by undeclared service providers) by about three times: 135 billion Francs of concealed receipts and 35 billion Francs withheld V.A.T. compared to 63 billion Francs (9.7 billion Euro) through undeclared work (Table 7). The values generated by undeclared work in 1988 correspond to about 1% of GDP.

**Table 7: Share of Real GDP of France’s Informal Economy, 1981-1988\***

Reasons for the revised assessment of the real net output	1981		1985		1988	
	Mio. Francs**	% of GDP	Mio. Francs	% of GDP	Mio. Francs	% of GDP
<b>"Shadow economy"***</b>	<b>99,600</b>	<b>3.1</b>	<b>141,450</b>	<b>3.0</b>	<b>170,500</b>	<b>3.0</b>
<b>Tax fraud and tax evasion. Of which:</b>						
• Concealment of receipts	83,600	2.1	110,100	2.3	135,000	2.4
• Withholding of V.A.T.	16,000	0.5	31,350	0.7	35,500	0.6
<b>"Undeclared work"****.</b>	<b>37,500</b>	<b>1.2</b>	<b>47,300</b>	<b>1.0</b>	<b>63,000</b>	<b>1.1</b>
<b>Of which:</b>						
• Commercial business	28,950	0.9	35,800	0.8	50,000	0.9
• Domestic services	8,400	0.3	11,500	0.2	13,000	0.2
Revised account assessments						
• Undeclared tips and gratuities	6,400	0.2	10,550	0.2	13,000	0.2
• Undeclared payments in kind	2,150	0.1	1,200	-	1,500	-

\* Scope of survey: non-agricultural and non-financial enterprises (excluding: large State enterprises).

\*\* One Franc corresponds to about 0.15 Euro.

\*\*\* Permissible productive but undeclared activities of declared units.

\*\*\*\* Permitted productive, undeclared activities of undeclared units.

Source: Willard (1989)

As a result of the same investigation in the year 1985, the proportion of shadow economy activities in the sector-specific real contribution to GDP of the construction industry amounted to 9.9%. Distinctly higher proportions of between 15% and 18% are recorded in the retail industry, the hotel and catering sector as well as personal care services. The construction industry therefore is positioned midway in a comparison of real net output between sectors in the shadow economy. However, if one considers the overall real net output of the construction industry, it is shown that in the year 1985, of the 35.8 billion French francs (5,4 billion Euro)

<sup>7</sup> These data were generated excluding agriculture and the financial services industry.

obtained by transsectoral irregular commercial activities almost one third (30.2%) was apportioned to this sector. The real contribution to GDP of the shadow economy in the construction industry ranks at the top just before the commercial services for persons with a share of 29.2% (Willard 1989: 42).

A more recent insight into the economic dimension of undeclared labour is given by the data of the Central Agency of Social Insurance Bodies (ACOSS) regarding the volume of the call on unpaid social insurance contributions (Table 8). In 2002 this amounted to 681 million € (ACOSS 2003). This sum corresponds to about 2% of social insurance contributions of all enterprises registered with URSSAF.

**Table 8: Volume of Undeclared Social Insurance Contributions, 1996 – 2002 (Million Euro)**

	1996	1997	1998	1999	2000	2001	2002
Volume of social insurance contributions checked	no change	no change	34,216	30,941	33,785	36,522	34,719
Volume of social insurance contributions claimed by URSSAF	393	461	476	592	620	782	681

Source: ACOSS 2003

#### 4. Functioning of the Illegal Labour Market

Before analyzing the functioning of the illegal labour market it seems necessary to evoke the situation on the formal market in construction. The reason for this is that its functioning and development are strongly connected with the development of undeclared labour.

##### 4.1. The Formal Construction Labour Market: Situation and Structure

The French construction industry is very dispersed. In fact, in 2003 it numbered 285,000 contractors. Of these, 268,000 had less than 10 employees. The proportion of small enterprises has even grown over the past two decades (Table 9). These contractors are active mainly locally. Due to their limited resources, by far the greater majority can fulfil the functions of main contractors only for small or very specific sites. Frequently therefore the role of sub-contractor devolves to them. Also in a European confrontation the industry proves to be structured predominantly by small enterprises: Therefore the proportion of businesses with less than 10 employees is greater than in Germany, Spain, Great Britain or the average for the other old EU-Member States. Only the Italian construction industry is more fragmented (DAEI 2004a). The enterprise fluctuation is also high. In fact at the end of the nineties for instance annually 15% of the total number of contractors was newly formed enterprises (Eurostaf 2000). Contrary to other industries, an increase in the number of enterprises could be noted since the beginning of the nineties. The accumulation of structural “risk factors” (size, capital equipment, fluctuation, labour intensity) contributes to the fact that the industry is particularly exposed to the phenomenon of undeclared labour.

**Table 9: Contractors in private construction according to the number of employees, 1983-2003**

Employees	1983	1989	1993	2000	2003
0 to 10	300,000	287,000	258,000	259,000	268,000
11 to 50	15,000	16,000	15,000	14,400	15,300
51 to 200	2,100	1,700	1,700	1,400	1,500
> 200	400	300	300	200	200
	317.500	305.000	275.000	275.000	285.000

Source: FFB 2005

The dispersal is not in contrast to a remarkable concentration trend: the large enterprises are among the largest in the world. Their share in world trade in construction, engineering construction and management contracting services amounted to 15% in 2002, which placed them in second place directly below the US American construction companies. Their share in the European market amounted in the same period to 27% (DAEI 2004b). The turnovers of the five largest concerns (*Bouygues, Vinci, GTM, Eiffage, Spie*) amount to about one third of the national industry turnover (EUROSTAF 2000: 14). Large foreign companies on the other hand had problems in the past in establishing themselves. Apart from the comparably low margins in the domestic construction industry, indeed above all the presence of the national champions with their well-developed regional networks is a decisive factor in this respect.

Since going through a trough between 1991 and mid 1997, the economic development of the industry has been characterised by a recovery. After an intermediate fall off in orders between 2001 and 2003 the sector trends advanced again and continue to remain on a growth course. The structure of the demand for construction services is characterised by a predominance of maintenance and renovation work. Its share amounts to about 50% of total demand. According to INSEE (2006) data, in March 2006 among the enterprises questioned from the industry the order books were full for more than half a year of full-time occupation by their employees. Every second business stated that it was short of production capacity. The main reason for this was the scarcity of the workforce.

The recovery of construction business since the end of the economic crisis at the end of the nineties is also evident from the increase in the number of employees by 3.6% between 2000 and 2003. More than a third of them are employed in enterprises with less than 11 employees. A further third is to be found in enterprises with up to 50 employees (Table 10). It may be noted that employment by temporary labour agencies plays an important role. According to INSEE at present about 10% of employees in construction are employed in such a way.

**Table 10: Number of Employees According to Company Size in construction**

Employees	1983	1989	1993	2000	2003
0 to 10	310,000	316,000	290,000	296,000	305,000
11 to 50	300,000	316,000	299,000	280,000	292,000
51 to 200	190,000	163,000	152,000	130,000	136,000
> 200	250,000	190,000	174,000	139,000	144,000
	1,050,000	985,000	915,000	845,000	877,000

Source: FFB 2005

An analysis of employment according to trades sectors shows that since the beginning of the seventies the proportion of employees in the main construction industry (*gros œuvre*) has fallen from about 55% to merely 39% (Table 11). Since then an increasing number of employees is distributed rather more over the finishing trades. In particular the electrical, plumbing and wood working trades have been able to increase their share of employees significantly. At the same time enterprises have recruitment problems in these trades.<sup>5</sup>

<sup>5</sup> A recent study of the French government on the prolongation of the temporary limitation on the free movement of workers points to labour shortages among bricklayers, carpenters, roofers and joiners.

**Table 11: Employees According to Trades in Percentages**

	1970	1980	1990	2000	2002
Construction industry (gros œuvre)	54.6	49.2	42.9	39.5	38.9
Electrical installation	5.4	8.1	9.0	10.0	10.2
Insulation	3.2	4.1	4.4	4.2	4.5
Manual roofing work and piping	10.6	11.3	12.5	14.3	14.2
Metal-working ( <i>métallerie</i> )	4.5	5.1	6.7	6.4	6.6
Hand painting	9.1	9.8	10.8	10.6	10.9
Wood working	7.9	10.1	10.4	10.8	10.9
Completion of interiors ( <i>Aménagements</i> )	1.2	2.3	2.3	2.7	2.8
Other	3.5	2.3	1.0	2.5	2.4
Total	100	100	100	100	100

Source: FFB 2005

To counter the latent labour shortage enterprises have sought to develop the following strategies: increasing wages<sup>8</sup>; activating family networks of their workers; granting bonuses to their employees for recruiting workers; campaigns for recruiting young women; recurring to temporary employment agencies (EUROSTAF 2000: 29). One of the causes for the recourse to undeclared labour can be sought in the limitation of these strategies. It has to be taken into account, however, that in 2005 half of all enterprises with recruitment difficulties required qualified workers or 17% engineers and masters (Ministère des Transports, de l'Équipement, du Tourisme et de la Mer, 2005). A simple complementarity between the supply of irregular labour (see 4.2) and the demand can therefore not be assumed. Recruitment of poorly qualified workforces was a problem for only 10% of enterprises questioned.

#### 4.2. *Functioning of the Informal Labour Market*

Due to the lack of recent studies on the subject, the following exposition is largely based on the interviews, which had to be carried out within the frame of this report. The statements made are to be regarded rather as hints to be verified and interpreted in further stages of work by players in the field, than as established facts. Due to its by definition illegal nature, the general difficulty in understanding the phenomenon was also reflected in the interviews. For a thorough empirical understanding further conversations, above all with the originators involved in these practices (clients, entrepreneurs, workers), would be necessary, which was not feasible within the restricted time available and material resources for the project.

Although not comprehensible on the basis of the present data, according to observations by the DILTI and also the FNTP, public construction activity is less affected by undeclared employment practices (if not even excluded) than the area of private construction services. As the interlocutor of the FNTP notes, one may have to do here primarily with formal enterprises, which have part of their work carried out by undeclared labour or foreigners without a work permit. With regard to the reasons for the lesser incidence in the public sector one can only speculate. The stronger dependency on public orders would be a possible explanation, if one realises, that the public authorities are confronted with the task of setting an example in questions of maintaining the law and are indirectly dependent on the electorate's mandate.

<sup>8</sup> According to the Ministry of Labour wages for workers in construction increased by 29.8% between 1998 and 2005. The transsectoral average wage increase amounted to 25.5% in the same period. Wage increases in construction have since been slightly above average.

The assumption of a concentration of undeclared labour in private building services coincides with the view of the Paris Labour inspectorate. According to the interviewee, it is found first and foremost in secondary contract work; the proportion of small enterprises is particularly high and thought to contribute to the phenomenon. Also particularly affected is bricklayers' work and plumbing, since here the qualifications required are not as high as for instance for electrician's work. Sionneau (2000: 5) points in a similar direction. According to him, three quarters of the "moonlighting" occurred in the area of house building. Secondary contract work in the private house building sector and renovation work were particularly affected. A point in question is the role of the private demand for cheap labour in the current private construction and renovation boom in French construction. Due to legal constraints, the difficulty for labour inspectors to monitor these activities (controls in private households) and the size of certain sites unquestionably facilitates the use of undeclared labour in a sense that its agents do not have to take too many risks.

It is unanimously reported that the majority of undeclared labour is found in small and the smallest enterprises with less than 10 employees. This is true in particular for the use of concealed labour. According to the experience of the Labour Inspector, as a rule the larger enterprises adhered to current regulations. When violations of the law are to be noted in large companies, these are against current provisions regarding overtime. However, on the construction sites employees of such firms were hardly to be found. This observation points to the profound changes in the organisation of the production process over the last twenty years, notably the wide-spread use of outsourcing by large contractors.<sup>6</sup> These have concentrated increasingly on the organisation of the production process (as well as canvassing for clients and other services) and the externalisation of their own construction activities. The growth of the number of small enterprises has to be understood in this context. This development corresponded with new, more flexible (and precarious) forms of the use of labour – such as temporary agency-work, self-employment, subcontracting or the posting of workers – that reinforced the segmentation of the labour market. Marie (1997) makes the point that more sophisticated forms of undeclared labour have developed at the margins of these forms. Indeed, FNTP and FFB currently see in two of them – the transnational provision of services and the sub-contracting chains – the decisive source of undeclared labour.

All interviewees reported that forms of undeclared labour regularly occur in transnationally operating posting companies. The number of transnationally active enterprises or (bogus) self-employed has significantly increased since the eastern expansion of the EU, among other things since France, contrary to Austria or Germany, has not imposed industry specific special regulations for the freedom to provide services. The recent increase in posting activity is perceptible also in comparison to the results presented in a previous study in the sector (Cremers and Donders 2004). According to the FNTP, the border-regions in particular, but also the heart of the country, are a target for brief use of foreign enterprises. According to DILTI's information the predominantly East European construction companies offer their services on special Internet pages, whereby the prices quoted often imply the circumvention of the French social minimum provisions applicable. According to the FNTP, the minimum

---

<sup>6</sup> It has been noted that in order to deal with the endemic problem of the "variability" of the construction process (changing weather and geological conditions; moving sites; strong position of the client), enterprises are confronted with a dilemma: They need to provide production capacities (labour and machines) without knowing when and for which site they will be contracted. Enterprises have two principal choices to deal with this: Either they internalise the risk by hiring qualified workers who are capable of coping with a variability of production; or they externalise the risk, as large construction companies have decided to do (cf. Campinos-Dubernet 1986).

wage applicable would often only be achieved, in that supplementary payments (travel and accommodation) were to be credited illicitly against the generally binding minimum wage.

The awareness conveyed of increased transnational service activity is also supported by the Ministry of Labour and Employment (Ministère de l'emploi, de la cohésion sociale et du logement 2006). According to the latter, since 2003 the number of notices of posting received by the Labour Inspectorate had increased by 80% to 6,163 (for 23,101 employees). It has to be underlined that these figures only refer to registered postings. There is ample evidence that in reality the number of postings is considerably higher, as much of the transnational provision of service activity remains completely undeclared. As the most common legal violations in this connection the Ministry names the illicit supply of temporary workers, violations against the right of settlement, the false declaration of the employees (false trainees, bogus self-employed, false honorary offices) as well as failure to register for social insurance in the countries of origin. Whether there are specific reasons for the increased reverting to posting companies, apart from the changed circumstances of EU-enlargement and expectation of more favourably priced provision of services, it was not possible to explain conclusively.

In the opinion of multiple interlocutors, forms of undeclared labour, in particular at the end of sub-contractor chains, may be encountered. According to the data of the DILTI interlocutor, 17% of the economic activities in the construction industry are allotted to sub-contractors. Frequently in this organisation of the production process, there is no financial room for manoeuvre for the contractors at the end of the sub-contractor chains for employing labour in a correct manner. This was absolutely clear in the opinion of the Labour Inspector questioned about the higher levels of the sub-contractor chains. The fiercer the competition and the dependency from the main contractor, the greater is the risk for firms and employees to recur to undeclared labour. This observation converges with the analysis pursued in a number of sociological studies (see, for example, Castells *et al.* 1989; Marie 1997; Mozère 1999) according to which the subcontracting system allows large contractors a more flexible and less cost-intensive use of labour, linking thus formal and informal economic activities. On the other hand, the FNTP stresses that the knowledge of the main contractors about undeclared labour at the authorized sub-contractors was often inexact, in that the number of employees in service to be stated by the latter (as a declaration of honour) – due to the use of undeclared labour – would in reality be higher. The FNTP therefore recommends its members, in particular when confronted with exceptionally low quotations or unrealistic deadlines by sub-contractors, to be on their guard.

According to the interviewees, recruitment of illegal workers is pursued essentially by word of mouth. Generally, the participating players (employer and employee, possibly clients) know each other. The relevant networks may be very constant, without being able to speak of the stamp of certain nationalities. The role of social networks in the organisation of undeclared labour has been confirmed by Laé (1989). In his ethnological study on individual informal (“black”) labour (albeit not specifically in construction) he points to the frequent alternations between legal and illegal labour. These alternations were simplified by the fact that its authors formerly had acquired competences and contacts in regular jobs. To be offered the desired jobs, he/she has to be permanently available and to ‘aliment’ and extend the relations on which they are founded. Under the conditions of the constant pressure to (re-)activate social networks the idea of “working on your account”, of a “freer life” rather turns out to be a phantasm. Mozère (1999: 65) emphasises that in the relationships underpinning the

networks “keeping the secret” plays a strategic role. The necessary trust can only be obtained by dense social relationships, based on the mutual ‘indebtedness’.

Undeclared labour is often remunerated on the basis of daily or hourly rates. Owing to its cash nature, for this process no data on the amount of remuneration can be provided. In France there is very little public or semi-public advertising for illegal work. For the more anonymous forms of undeclared labour local informal labour markets have developed, on which contractors or private clients recruit their workforces (frequently without a work permit) – often for a few hours, but also for several days. In Paris usual public meeting places are for example the DIY superstores, in front of which workers offer their labour force for sale to contractors and private clients. The Labour Inspector also reports of workers, who went to construction sites in order to offer their labour directly on the spot.

Because of their liability, normally the clients (public authorities, private individuals, enterprises from other industries) may not be integrated in the organisation of the use of undeclared labour. The relevant decisions would be made in the opinion of the DILTI interlocutor at the level of the trades.

According to the statements of the Labour Inspector, on large construction sites in the Paris conurbation, at the checks there were mainly foreigners without a valid work permit, who were employed illegally. The main regions of origin were Eastern Europe and Turkey. Conversely, the unemployed, pensioners or recipients of income support would work for private individuals. Owing to the current legal situation, access for the Labour Inspectorate was very difficult, so the interviewee could not give any information in this respect.

According to the statements of all those asked, the occupational qualifications required in undeclared labour were mostly low. Employees, who practised undeclared secondary activities, may be however, definitely highly qualified (the interlocutor of FNTP thinks that this was more and more the case), mostly however, the potential of their qualifications was not exhausted by the informal activity. Substantial substitution effects on the labour market were not suggested by any of the interlocutors. It was not clear to what extent undeclared labour resulted in a pressure on the generally binding provisions. CGT believed that there was such an effect with regard to the lower qualified regular workers. Considering the low priority of this issue on the trade union side, the impact should probably not be overestimated. The use of technology was also described as predominantly low. The payment of undeclared work is generally in cash; an additional form of bonus is the making available of work materials.

According to observations by the Labour Inspector, working conditions were below those of the correctly employed labour. Undeclared labour frequently works outside current regulations governing working hours. The relevant provisions for the applicable collective agreement such as refunding the costs of lunch or fares are circumvented (moreover, this practice is also to be found frequently with poorly qualified workers employed by temporary labour agencies, although this violation does not feature as undeclared labour in French law). On large construction sites concealed labour may indeed share the use of correct infrastructure of labour employed in accordance with the regulations. However, on smaller sites the picture may be different. There the Health and Safety regulations are often not complied with, even tools and machinery are often not compliant with the prescribed standards. Another problem was the accommodation of the undeclared labour.

The relationship between the use of undeclared labour and the business cycle is far from clear. A simple inverse relationship between economic growth and the spread of undeclared labour cannot be sustained, as is demonstrated by the current situation in French construction. Similarly, economic downturns do not necessarily seem to result in massive increases in the use of undeclared labour. Evidence rather points to a relatively stable amount of undeclared labour over time, the economic functions and forms of which may vary according to changing business requirements. Certainly the phenomenon is anchored deeply in the habits of parts of the clients, enterprises and workers.

During the talks, three functions of undeclared labour for enterprises emerged. Not surprisingly, the emphasis changed according to the position of the interlocutors in the production process and the wider sphere of social reproduction. It served first to compensate time deficits in completing orders in the context of a difficult labour market situation for the enterprises; secondly to circumvent administrative hurdles. In addition, for the employer's representatives there are the high social insurance contributions and the rigid working hour regulations that suggested reverting to illegal labour. In particular FFB underlined the significance of this point as the existing overtime regulation was seen as too rigid. The same level of infractions in the context of working-time regulations could not be assumed with other forms of undeclared labour. Thirdly, it is aimed to reduce the production price and to achieve extra-profits. Trade unionists and labour inspectors put forward this point as the essential motivation of employers to use undeclared labour.

## **5. Effects of Undeclared Labour in the Construction Industry**

As (negative) consequences primarily two effects were perceived in the interviews:

- Entrepreneurial unfair competition that allows extra-profits or enables less productive firms to stay in the market. The Labour Inspector interviewed thinks that in some sub-sectors of secondary contract work the tender prices were so low on account of the spread of undeclared labour that contractors employing in accordance with the tax and social security regulations would inevitably be outpriced. Increasingly, small enterprises in these sub-sectors were about to dismantle their level of employment, as the inspector suspects, in order to concentrate on obtaining contracts and to use illegal sub-contractors or labour. For the FNTP the problem posed by unfair competition was primarily due to the freedom to provide services. Since social insurance contributions are due in the country of origin, at least for East European enterprises there was an important competitive advantage.
- Industry image. In public, undeclared labour is often associated with the construction industry. On the side of the employers this is seen as a problem for workforce recruitment. In the view of the DILTI there might potentially be a self-reinforcing effect, consisting of the following elements: workforce shortage – reinforced reverting to illegal forms of employment – negative industry image – workforce shortage. It may be noted that the analysis of an industry specific labour force shortage was not shared by all interviewees. For the Labour Inspector the workforce did exist, it only had to be declared. For the CGT it went without saying that, given a current unemployment rate of 9.5%, it was forbidden to speak of a workforce shortage. If there was a recruitment problem, this was due to the real remuneration and working conditions, as for example could be read off the high percentage rate of young people who broke off their training.

One might add revenue losses for public households and social insurance. Also, social standards (health and safety standards; statutory and contractual employment regulations more generally) as well as trade and commercial law regulations are put under pressure.

## 6. Measures Taken

To portray the policy measures taken to counter undeclared labour, a distinction has been proposed between three types of measures (Cremers 2006). ‘Integrative’ measures aim at legalising, integrating or regulating undeclared labour into formal labour. Simplifying the business environment, reducing tax or social contributions for certain types of enterprises are common features of this approach. ‘Enforcement’ measures concentrate on the enforcement of existing laws or increasing the efficiency of persecution. Finally, ‘promotional’ measures concentrate on demonstrating the benefits of existing regulation, notably by improving working and employment conditions or public campaigns. In the French case, we find that the three main regulating actors have focussed on the first two types of measures.

### 6.1. Integrative measures

#### a) Tax-Based Measures

The policy aiming at the reduction of taxes for companies for combating illegal work basically includes two measures relevant for the construction industry.

For builders and contractors authorized to carry out renovation and maintenance work, since September 1999 a tax-based exemption clause has been applicable in the form of a V.A.T. rate reduced to 5.5%. This reduction took place in harmony with European Directive 1999/85/EC. Since the Council of Europe approved the extension of the relevant national exemption clauses in labour-intensive sectors of industry in February 2006 until 2010, the relevant French regulation has found further application. A reduction in the level of undeclared labour was one of the declared aims of this measure. Construction employers unanimously underlined the positive aspects of the reduction. Among other things a “significant reduction in illicit labour” in the sector could be noted. Also with regard to taxes and social insurance contributions benefits were greater than losses. A study carried out on behalf of the employers’ association for small contractors in the construction industry (CAPEB 2005) estimates its direct and indirect employment effect at 53,000. Other studies such as those of OFCE (*Observatoire français des conjonctures économiques*) are far more cautious. According to the study, “the majority of the results remain hypothetical, without demonstrating a possible causal link between the measure and the reduction in the shadow economy” (OFCE 2003). More importantly, it is unclear to which extent the reduction has led to a decline of undeclared labour in the industry. The trade unions interviewed within the frame of our research doubted that the measure would have a positive effect on employment and criticized in particular the unconditional character of the extension by the government. The CFDT would have liked to attach this to a promise of employment by the employers or other new measures by employers to combat undeclared labour.

A second tax-based tool for combating undeclared labour is the *Chèques services* for personal care services in the employer’s household, introduced for the first time in 1995. In the first year after introduction 140,000 employers made use of the cheques, without the number of quarterly social insurance declarations to URSSAF decreasing (Seuret 2004). At present there are about 900,000 cheques users. The area of application of this measure encompasses among other things small skilled manual, garden or household jobs. Since the reform in July 2005 these have been called *Chèques emploi service universel* (CESU) and allow employers to obtain from a central authority most of the usual formalities when hiring (drafting a contract of employment, issuing a pay slip, calculating and paying social insurance contribution).

What is more he/she can reduce 50% of the wages paid from income tax and use reduced social insurance contribution rates. In exchange the remuneration must correspond at least to the national minimum wage SMIC.

It may be added, that purchasers of a large piece of equipment (for instance a heating boiler) can take advantage of tax credits in case they have the equipment installed by a contractor.

#### *b) Socio-Legislative Measures*

In 2003 the RMI (*Revenu minimum d'insertion*, a minimum income support existing since 1988) was complemented by the RMA (*Revenu minimum d'activité*, minimum income for professional activity). The RMA represents a new type of contract of employment, which allows an employer to engage a person on long-term supplementary welfare benefit (at least 6 months) for the duration of at least 6 months for a weekly working time of a maximum of 30 hours, whereby the RMA to be paid by the employer supplements the RMI which will also be paid out. The amount of the minimum wage is calculated on the basis of the SMIC hourly rate. Although the main emphasis of the measure was the reintegration into the labour market, in this way considerations for facilitating those in receipt of the benefit in obtaining a legal additional source of income to the RMI may also have played a part.

A further socio-legislative measure for combating undeclared labour is offered by the possibility of releasing the self-employed from National Insurance contributions. Within the frame of the law of 1<sup>st</sup> August 2003 for the promotion of economic initiative, exemption in the first 12 months of business may be granted.

#### *c) Measures Regarding Employment Rights of Foreigners*

Non-EU foreigners staying in France without a work and residence permit are forced to perform undeclared labour to survive (Terray 1999). One of the measures to address this problem is to regularise this mostly illegal population. The latest large-scale regularisation of immigrants without residence permit took place in 1997. At that time about 90,000 people were legalised. Other than in neighbouring Spain, the current political climate does not allow for such a measure that would probably have an impact on the amount of undeclared labour performed by reducing, if it is not the demand for, the supply of illegal workers.<sup>7</sup> Longitudinal studies have notably shown that illegality is perceived and envisaged by the migrant “as a necessary step on the road to legality, in the hopes of future occupational and/or geographical mobility” (OECD 2000: 63). In the case of EU foreigners from new Member States, France has agreed, as the majority of the old EU Member States, to a temporal limitation for the free movement of workers. While this measure was intended to protect national labour markets, evidence suggests that its results have been mixed if it comes to undeclared labour, as workers from these countries are forced to work illegally or as posted workers or self-employed in the framework of the provision of services (Kahmann 2006). With regard to this group, government has decided in March 2006 to ease the free movement of workers in 61 trades in six industries, including certain trades in construction. The European Commission had recommended this measure as a way to combat undeclared labour.

#### *d) Measures Regarding the Simplification of the Administrative Environment*

It may finally be mentioned briefly that the legislative has been attempting for some years to dismantle administrative routines and requirements for the purpose of facilitating the founding of enterprises. Among the procedural simplifications there is also the fact that the URSSAF offers a service, which permits on-line calculation of social security contributions due. The tax authorities have equally provided on-line tools for declaration.

<sup>7</sup> According to official estimates by the French Government at present between 200,000 and 400,000 people are living in France without the right to stay. Currently, regularisation takes place on a case-to-case basis.

## 6.2. *Enforcement measures*

Measures relating to the enforcement of existing regulation have concentrated on the reform of the labour inspection and the legislative instruments at its disposal.

As to the labour inspectorates, since the year 2004 the work of the competent authorities has been structured essentially by the demands of the two-year plans of the Ministry for Labour on Housing Development and National Cohesion. In these the will of the Government is reflected to align the work of the supervisory authorities with a sharper focus (sectors of industry, target groups) and to integrate them into the priorities of Government policy. Further importance was attached to the increase in the effectiveness of the apparatus in the sense of better co-ordination of the supervisory activities of participating institutions.

The 2004-2005 two-year plan provided for the concentration of supervisory activities in four sectors: agriculture, theatre and media production, the hotel and catering as well as the construction industry. Transsectorally it required in particular the focusing of the supervisory activities on labour without the right to stay and on transnational service providers. To what extent the main focuses reflected the real significance of these phenomena or the political priorities of the Government (the struggle against illegal immigration; the European constitution referendum), is open to discussion. The administrative measures concluded in the plan targeted the revaluation of the resources of the supervisory authorities. Therefore the number of labour inspectors was increased. Also the possibilities for the exchange of information between the employment offices (ANPE) provided with supervisory authority, the unemployment insurance funds (UNEDIC) and the URSSAF were legally extended. This included the abolition of the occupation related obligation to maintain secrecy for these funds.

The activity report of the DILTI for the years 2004-2005 notes the following central problem areas for construction: firstly the falsely declared sub-contractor activity of foreign posting companies; secondly violations against the legal and collective-agreement provisions for working hours and pay; thirdly the non-declaration of an employment relationship or activity and fourthly the false use of a labour and social legal status (trainee, self-employed labour) (3<sup>ème</sup> Comité national de lutte contre le travail illégal 2004: 12). The main focus of respective activities for the supervisory bodies included for the construction industry:

- the permanent supervision of the large national construction sites;
- particular supervisory measures on those sites which displayed a particularly high density of sub-contractor work;
- stricter supervision in the area of house building where economic dynamics are greatest;
- stricter supervision in the area of maintenance and renovation, since here the scarcity of the workforce is particularly marked.

As a success the authorities could chalk up the increase, brought about by legal action, in social insurance contributions by 42% to 176 million € in a period of three years. Likewise they managed to raise significantly the number of checks at posting firms.

For the current 2006-2007 two-year plan the industry focus will be maintained. Six transsectoral aims come up (Commission nationale de lutte contre le travail illégal 2006):

- Intensification of supervisory activities;

- Implementation of the newly created sanction possibilities, which the legislator created by decree with effect from 1<sup>st</sup> January 2006. These aim at containing violations of the law in the area of sub-contractor activity and transnational service provision;<sup>9</sup>
- Combating fraud by transnational service providers and employment of foreigners without a work permit;
- Development of information and prevention, among other things through the inclusion of management and labour in public campaigns;
- Making the supervisory bodies aware of the widespread practices of circumventing labour status (through bogus trainees);
- Better evaluation of campaigns and their results, among other things through the computerisation of tickets.

Finally, the catalogue of punitive measures was extended further so that enterprises acting against the law could be excluded from receiving public subsidies, assistance for further training, or for engaging employees. In the opinion of the DILTI, the extension of the means of punishment under administrative law is to be understood as a reaction by the administration to the inadequate use of sentences by the jurisdiction. This view is supported by Terray (1999). According to the author, the non-pursuit of offences in court with regard to illegal labour and the weak punishment of such offences is common practice and clearly limit the impact of any new legislative measures.<sup>8</sup> The establishment of the general liability of contractors was seen as particularly difficult by the DILTI.

Another type of limit to the enforcement approach was indicated by the FFB interviewee. She asked herself if they had not already reached a considerable level beyond which no further effect of deterrence could be noticed. Mozère (1999: 66) points to a more general limit of the enforcement approach in undeclared labour. As an unintended side-effect, continued criminalisation risks to reinforce the social ties between its principal players that form the very basis of informal activity.

## 7. Good Practices

At the initiative of the central actors among construction industry employers<sup>10</sup> in October 2005 an information campaign was started as a preventive measure, which aims at making existing legal regulations in connection with domestic and foreign sub-contracting more widely known. This creation of priorities is in accordance with the perception expressed during the interviews that practices regarding undeclared labour were concentrated in this

<sup>9</sup> The decree of 13th August 2004 sets out the supervisory duties of the main contractor in respect of compliance with statutory health insurance regulations by sub-contractors. Section V of the law for the promotion of SMEs (*Loi du 2 août 2005*) provides to that extent an increase in sentences for enterprises to which undeclared labour was transferred by employees, as for a period of 5 years access to public funds for labour, training and further training is denied. The law ratifies likewise the validity of collective agreement and statutory regulations for foreign posting companies and gives details of a series of provisions for the posting of employees.

<sup>8</sup> Terray's (1999) analysis of DILTI data from 1997 shows that out of 10,000 tickets issued in 1997, around 20% were pursued at court. In 1996, 2,143 out of 2,456 legal actions resulted in condemnations. 515 prison sentences with or without probation were pronounced. The average surcharge was 5,500 Francs (825 Euro). With regard to illegal immigrants, the author believes that the persecution rate is relatively high to keep up insecurity and fear amongst illegal workers and, at the same time, relatively low to guarantee the continuous provision of a sufficient number of these workers to illegal employers.

<sup>10</sup> This included: Caisse de Surcompensation du BTP (CNS BTP), Chambre Nationale de l'Artisanat des Travaux Publics et des Paysagistes (CNATP), Confédération de l'Artisanat et des Petites Entreprises du Bâtiment (CAPEB), Entreprises Générales de France-BTP, Fédération Française du Bâtiment (FFB), Fédération Nationale des Travaux Publics (FNTP), Fédération des SCOP BTP.

area. It is directed at sub-contractors, clients and contractors. The employers associations reacted above all to the changed legal situation and the spread of the practice of posting in the construction industry. The DILTI and the trade unions were included in the initiative. The co-operation produced in essence two documents. The flyer on sub-contracting and undeclared labour in the construction industry (*Sous-traitance et travail illégal dans le BTP. Que dit le droit? La charte du BTP*) is distributed by the regional labour and employment authorities, the chambers of commerce and the URSSAF. The regional branches of the employer associations also pass on these brochures to their members. The CAPEB, for example, recommends to its members to attach the document to every sub-contractor contract concluded. In this document included there is also a charter (*La charte du BTP*) that lists a number of good practices to prevent illicit sub-contracting. It notably advises contractors and clients to check the registration, to be wary of low prices, to use identity badges for workers, and to verify the technical and human capacity to deliver in time of the enterprise involved. Moreover, main contractors are recommended to demand a precise estimation, a detailed prescription in the contract of the job to be performed, and the authorisation of the subcontractor to subcontract himself. A second document specifically produced for clients, builders and sub-contractors, explains existing legal regulations in the form of questions and answers. This can be obtained both through employer associations and online from the Ministries. To what extent this has contributed to the reduction of irregular practices, cannot yet be said.

It may be added that according to the CGT interviewee only the trade unions CGT and FO supported the flyer by their signature and only the CGT participated in the drafting. Recently, the construction unions have agreed to the proposal of the DILTI to produce a leaflet destined to the employees concerning the risks of undeclared labour. Nonetheless, the impression prevails that apart from a general discourse and with the exception of the CGT the French construction trade unions at present do not attach much importance to the phenomenon.<sup>9</sup>

A further entrepreneurial initiative concerns the introduction of a pass with the name of the employee, his/her social insurance number and the name of the company, which construction workers always have to carry with them. This measure is supported above all by the FFB construction workers' association and has had some pilots in recent years. A new campaign in this area is planned via the Paid Holiday Fund. Since participation is on a voluntary basis and at present not even supported by all employer associations, it has to be assumed that its spread will be limited. The CGT interlocutor had fundamental doubts about the effectiveness of the measure: in reality information about checks spread in no time to everybody on site and the workers concerned were quickly nowhere to be found.

On the trade union side, the CGT has elaborated a manual on how to limit undeclared labour in subcontracting chains (CGT 2004). In this document the CGT invites the workers' representatives in the committees for health and safety and working conditions CHSCT, to demand systematically their right to information from management in respect of names of the sub-contractors and type of works to be carried out. Works' councils are also invited to claim their continuing rights to information (e.g. regarding the number of employees appointed by sub-contractors) and in the event of sufficiently suspicious circumstances to call in the Labour Inspectorate. The right of industrial action allows trade unions to bring relevant cases before the labour courts in so far as an affected employee does not make an appeal. What is more, CGT (like CFTC) calls for a right of access for trade unions or for individuals authorized by

---

<sup>9</sup> In the CFDT, the issue of undeclared labour plays an important role in the federation in charge of agriculture. Here, an ongoing campaign concerning the rights of seasonal workers has been developed.

the trade unions to construction sites, in order to be able to carry out independent checks. CFDT, however, is opposed to such a measure as unions do not have the competences, capacities and legitimacy to exert such a right. In legislative terms, the CGT calls for a ban on sub-contractor chains or their limitation to 2 or 3 levels, since the development of undeclared labour proceeds in proportion to the spread of sub-contractor structures.

**References:**

- ACOSS, *L'évaluation de l'économie souterraine. Un recensement des études. ACOSS Stat Etude no. 08*. Paris: Agence centrale des organismes de sécurité sociale, 2003.
- Andriamanampisoa, J., *Modellisation de l'offre et de la demande du travail illégal sur le marché français*, [http://team.univ-paris1.fr/seminaire/2003\\_Andriamanampisoa.pdf](http://team.univ-paris1.fr/seminaire/2003_Andriamanampisoa.pdf).
- Campinos-Dubernet M., 'The Rationalisation of Labour in the Construction Industry: The Limits of Orthodox Taylorism', in: *The Production of Built Environment*. London: Bartlett International Summer School 1985 Proceedings, 1986, 117-129.
- Campinos-Dubernet, M., Grando, J.-M., Möbus, M., Margirier, G., *Le BTP en Europe: Structures industrielles et marché du travail*. Paris: Plan Construction et Architecture, 1992.
- CAPEB, *Impact et cout de la TVA à 5,5% applicable aux travaux d'entretien du logement*. Paris: Confédération de l'Artisanat et des Petites Entreprises du Bâtiment, 2005.
- Castells, M., Portes, M., Benton, L., *The Informal Economy: Studies in Advanced and Less Developed Countries*, Baltimore and London: John Hopkins University Press, 1989.
- CGT, *Travail illégal - Droits à faire respecter: Les propositions de la CGT*. Paris: Confédération Générale du Travail, 2004.
- Commission nationale de lutte contre le travail illégal, *Bilan du plan national contre le travail illégal 2004-2005 et perspectives 2006-2007*. Paris: Ministère de l'emploi, de la cohésion nationale et du logement, 2006.
- Courtois, S., Labbé, D. (eds.), *Regards sur la crise du syndicalisme*. Paris: L'Harmattan, 2001.
- Cremers, J., Donders, P. *The Free Movement of Workers in the European Union*. The Hague, Reed Business Information, 2004.
- Cremers, J., *Undeclared Labour in Construction: Preparatory Research*. Draft paper, Utrecht, January 2006.
- DAEI, *La construction en Europe*. Paris: Direction des Affaires Economiques et Internationales, 2004a.
- DAEI, *L'activité des entreprises françaises de construction*. Paris: Direction des Affaires Economiques et Internationales, 2004b.
- DILTI, *Travail illégal. Connaître la législation*. Paris: Délégation interministérielle à la lutte contre le travail illégal, 2005a.
- DILTI, *Analyse de la verbalisation du travail illégal en 2004*. Paris: Délégation interministérielle à la lutte contre le travail illégal, 2005b.
- Dupré, I., Druker, J., *Conventions collectives et organismes professionnels à l'heure de l'Europe dans le BTP*. Paris: Plan Construction et Architecture, 1998.
- EUROSTAF, *Les acteurs du BTP en France*, Paris: EUROSTAF, 2000.
- FFB, *Bâtiment 2015. Une étude prospective de la Fédération Française du Bâtiment*. Paris: Fédération Française du Bâtiment, 2005.
- INSEE, *Enquête mensuelle dans le bâtiment, mars 2006. INSEE Conjoncture, Information Rapides, no.99*. Paris: Institut National de la Statistique et des Etudes Economiques, 2006.
- Kahmann, M., 'The posting of workers in the German construction industry: Reponses and problems of trade union action', in: *Transfer*, no. 2/2006, 183-196.
- Laé, J.-F., *Travailler au noir*, Paris: Métaillié, 1989.
- Marie, C.-V., 'A quoi sert l'emploi des étrangers', in: D. Fassin, A. Morice, C. Quiminal, *Les lois de l'inhospitalité*, Paris: La Découverte, 1997, 145-175.
- Mazeaud, A., *Droit du travail*. Fourth edition. Paris, Montchrestien, 2004.
- Meunier-Baffa, M., *Droit social. Politique d'emploi, politique sociale*. Paris, Editions du Juris-Classeur, 2003.
- Ministère de l'emploi, de la cohésion sociale et du logement, *Décret pris pour l'application de l'article L. 325-3 du code du travail. Rapport au Premier Ministre*, Paris, Ministère de l'emploi, de la cohésion sociale et du logement, 2006.
- Ministère des Transports, de l'Equipement, du Tourisme et de la Mer, *Le point sur plusieurs aspects de l'emploi dans le BTP à la fin 2005*, [http://www.btp.equipement.gouv.fr/article.php3?id\\_article=330](http://www.btp.equipement.gouv.fr/article.php3?id_article=330), 2005.
- Mozère, L., *Travail au noir, informalité: liberté ou sujétion?* Paris: L'Harmattan, 1999.
- OECD, *Combating the Illegal Employment of Foreign Workers*. Paris: Organisation for Economic Co-Operation and Development, 2000.
- OFCE, 'La TVA: Instrument d'une politique de l'emploi?', in: *Lettre de l'OFCE*, no. 230, February 2003.
- Regioplan, *Undeclared Labour in Europe: Towards an Integrated Approach of Combating Undeclared Labour*. Amsterdam, 2001.

- Sereut, F., 'Le travail noir à la cote', in: *Alternatives Economiques*, no. 224/2004.
- Sionneau, A., *Comment réduire le travail au noir dans la construction européenne?* Paris, Fédération Française du Bâtiment, 2000.
- Terray, E., 'Le travail des étrangers en situation irrégulière ou la délocalisation sur place', in: E. Balibar, M. Chemillier-Gendreau, J. Costa-Lascoux, E. Terray, *Sans-papiers: L'archaïsme fatal*, Paris: La Découverte, 9-34.
- Voswinkel, S., Lücking, S., Bode, I., *Im Schatten des Fordismus. Industrielle Beziehungen in der Bauwirtschaft und im Gastgewerbe Deutschlands und Frankreichs*. München und Mering: Rainer Hampp Verlag, 1996.
- Willard, J.C., L'économie souterraine dans les comptes nationaux, in: *Economie et Statistique*, Nr. 226, November 1989.

**Interlocutors:**

- Pascale Dessen, responsible for European social affairs in the Fédération Française du Bâtiment (FFB). Interview on 11th April 2006.
- Alexandra Rettien, responsible for international relations in the Building Federation of the CFDT trade union. Interview on 5th April 2006.
- Maylis Roques, responsible for the construction industry as well as culture and media at the DILTI. Interview on 5th April 2006.
- François Vallés, Single Chief Executive of the Building Federation of the CGT trade union and representative in questions of illegal work. Interview on 6th April 2006.
- Karine Dufour, social corporate lawyer, dealing with European social affairs in the *Fédération Nationale des Travaux Publics* (FNTP). Interview on 7th April 2006.
- N.N., Labour Inspector in Paris, responsible among other things for the construction industry. Interview on 21st April 2006.