

*Undeclared Labour in the Construction Industry*

Country report - **Spain** - June '06  
LABOUR FOUNDATION FOR THE CONSTRUCTION INDUSTRY  
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## 1. METHODOLOGICAL NOTE

This report is based on an analysis of secondary information sources. Furthermore, in view of the lack of documentary sources on undeclared work in the construction sector, we carried out interviews with a key construction trade union informant who had an in-depth knowledge on this sector and with the Secretary General of the National Confederation of Construction (CNC), the employers' organisation for the industry. We held several meetings with experts in the Construction Labour Foundation FLC (Fundación Laboral de la Construcción).

Our investigation took place in April 2006.

Within the framework of this project, we arranged interviews with:

- Director of the Studies' Board of the Economic and Social Council (CES),
- General Inspectorate for Social Security and Irregular Employment (Ministry of Labour).

## 2. INTRODUCTION AND DEFINITION OF UNDECLARED LABOUR

To date, undeclared work in the construction sector has not been the subject of exclusive study. Nor does it appear to have been recently studied in-depth in the context of the Spanish global economy, since in guideline 9 (on combating undeclared labour) of the National Action Plan for Employment for 2003, drawn up by the Ministry of Labour and Social Affairs, and with reference to the present situation of declared labour, it was stated that, "there are no current figures on undeclared labour in Spain". The different interests held in undeclared labour from the part of the government and investigators cause this lack of data. Since the 90's, the government has not conducted any research with the specific objective of investigating undeclared labour, or, more specifically, the shadow economy.

However, undeclared labour has come into the limelight again as a result of the Ministry of Labour and Social Affairs' efforts in 2005, when it commissioned the Economic and Social Council (abbreviated to CES in Spanish; this is a government consultant body that studies social and economic affairs) to draw up a report on undeclared labour in Spain. This new initiative is partly driven by the Council of the European Union's resolution, calling on Member States to address this issue and work together to improve the situation.<sup>1</sup>

With regard to the concept of undeclared labour, the most commonly used term for this in Spain is irregular work. In this respect, Luís Toharia defines an irregular worker as a worker who is declared as employed but holds an irregular situation with the social security system.<sup>2</sup> The worker's situation in the social security system is a key factor in defining whether a worker is undertaking undeclared work, i.e., if he/she contributes to the social security system and if such work corresponds to the appropriate labour regime (general employees' regime, self-employment regime, etc.).

More recently, Enrich Sanchis<sup>3</sup> discussed unpaid work and black labour. This author considered the definition of undeclared work in Spain, distinguishing between:

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<sup>1</sup> According to a CES spokesperson the work has not yet started.

<sup>2</sup> Toharia, L., *El mercado de Trabajo; teorías y aplicaciones*. Alianza Universidad Textos, Madrid.(1993).

<sup>3</sup> Enric Sanchís, "Trabajo no remunerado y trabajo negro en España" en *PAPERS Revista de Sociología*, n.75 (2005)p. 85-116.

- All activities that are defined as illegal by virtue of their very nature, forming part of the criminal economy.
- Conventional productive activities that are carried out in infringement of fiscal and labour laws.

The second definition matches more closely the definition given in the European Commission's communication for undeclared work,<sup>4</sup> as "any paid activities that are lawful as regards their nature but not declared to the public authorities".

Therefore, in this report, undeclared work shall be understood as any paid activities that are lawful as regards their nature but not declared to the public authorities either in full or part. It should be remembered that regular workers who also do moonlighting undertake the majority of undeclared work in Spain.

When this definition is applied to the construction sector, the following different forms of work can be classified: foreign workers without work permits, regular job holders and moonlighting, workers who receive social benefits without having a right to the same, work undertaken on a small scale by individual workers, teams with intermediaries, subcontract chains (last link in the chain) and also, possibly, workers subject to free provision of services abroad. According to some key informants, in the construction sector, these are the forms of work where there is paid work that is undeclared in full or part.

In this report, we will first look at the general situation of the shadow economy, in order to then describe the situation of undeclared labour in the construction sector (magnitude and characteristics). Secondly, we will then describe the legislation and the public authorities that are involved in the prevention and eradication of undeclared work. Finally, we will consider undeclared labour policies, and good practices identified in the construction sector.

### **3. UNDECLARED LABOUR AND THE SHADOW ECONOMY IN SPAIN**

In general, there are very little data available at present on undeclared labour in Spain. This explains why the European Commission's report in 2004 does not offer data for Spain, and why the experts' reports presented to EIRO<sup>5</sup> do not offer any figures on the magnitude of undeclared labour.

According to Schneider the shadow economy accounts for 22.5%<sup>6</sup> of the GDP, which places Spain in fourth position in the European Union (EU-15). Using various Spanish statistical sources, estimates have been made of the magnitude of undeclared work: figures for the 90's range from 10 to 22%.<sup>7</sup>

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<sup>4</sup> Comisión Europea: Comunicación de la comisión sobre trabajo no declarado, Bruselas, COM (98)- 219.

<sup>5</sup> Observatorio Europeo de Relaciones Laborales (EIRO). Albert Recio (UAB), Questionnaire for EIRO thematic feature on industrial relations and undeclared work – Case of Spain (2004).

<sup>6</sup> Size of the shadow economy (in % GDP) using currency demand method. Friedrich Schneider, The size and Development of the shadow economies of 22 transition and 21 OECD countries, June 2002.

<sup>7</sup> Encuesta de Condiciones de Vida y de Trabajo (Ministerio de Economía y Hacienda, 1985), Encuesta sociodemográfica (I.N.E.,1991), Encuesta FOESSA (FOESSA, 1993) y la Encuesta del CIS "Actitudes y Comportamientos de los españoles en la economía sumergida (CIS, 1997).

A report written by CC.OO. (“Comisiones Obreras” Trade Union Confederation) on the shadow economy, indicates that according to investigations conducted in the 80’s and 90’s, the shadow economy was present in sectors with reduced capital intensity, individual employment in basic technologies and according to its possibility of decentralising production.<sup>8</sup> Other authors highlight that irregular work is found more frequently in the following scenarios: amongst labourers with only basic skills, many small businesses, where there are low rates of trade union membership and where personal channels are used for securing job contracts.<sup>9</sup>

Furthermore, a report<sup>10</sup> written by the Economic and Social Council (CES), regarding the Toledo Agreement, points out that there may be a marked relation between irregular or hidden activities and formal activities. It is therefore easier to understand why the majority of undeclared work occurs in activities that are not completely hidden. In 1997, José Manuel Molina, ex-president of the Senate’s Labour and Social Security Commission, decided to organise a study from a social point of view, in order to delve deeper into this problem. The experts who wrote the study described Spaniards’ attitudes to the shadow economy. In general, the study concluded that part of the population is quite tolerant towards undeclared labour. It was found that the principal reason for working without a contract or social security was that persons could not find any other type of work to substitute the undeclared work. This indicates that the most vulnerable groups of workers undertook a large part of undeclared work at that time. Other reasons for doing undeclared work came much further down the list: greater flexibility with regard to hours, compatibility with other activities, paying less tax, or taking advantage of the trick of receiving unemployment benefit at the same time as working. Employers tended to take on irregular labour to save paying social security costs and taxes. Others mentioned that it was easy to dismiss illegal workers, and that irregular labour was simply a way of avoiding the limits imposed by contractual laws. The above poll found that one in twelve permanently employed undertook additional work that was not declared to the Tax Office.

The CIS (Sociological Research Centre) has continued studying labour-related issues. In 1999 it carried out a poll on the labour market, with the following results:

- 13% of workers who were employees did not have a contract
- 60% of interviewees stated that they had worked more than 40 hours weekly
- 29% had not been paid any extra amount for this overtime.<sup>11</sup>

Following the CIS studies, in 2001, a poll amongst the unemployed was performed. Interviewees thought it was a common practice to receive unemployment benefit at the same time as working, and the reasons for this lay in the insufficient unemployment benefit and the authorities’ lack of control.

Conclusion: there is a significant proportion of shadow economy and undeclared labour according to official data and opinion polls. In the light of CIS poll results, society appears to be ambivalent towards the shadow economy, since it disapproves these

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<sup>8</sup> Unión sindical de Madrid-Región de CC.OO. “Economía sumergida”. Ediciones GPS-Madrid. Colección de estudios. 1994.

<sup>9</sup> Hernández Pascual, C, Regulación, flexibilidad y segmentación de los mercados de trabajo (1993)

<sup>10</sup> CES, Informe por propia iniciativa, sobre la economía sumergida en relación a la quinta recomendación del pacto de Toledo.(1999)

<sup>11</sup> Centro de Investigaciones Sociológicas. Estudio 2321 Actitudes y opiniones de los españoles ante el mercado de trabajo, 1999.

practices but also tolerates them with the argument that it understands the reasons why people resort to this type of labour.

#### **4. UNDECLARED LABOUR IN THE CONSTRUCTION SECTOR**

Despite the fact that different European sources (DG for Labour and Social Affairs, European Commission) indicate that construction is one of the sectors with the highest rate of irregular employment, some Spanish references estimate that other areas of work, such as domestic service, clothes and footwear manufacture, leather production, personal services and agriculture have an even higher level of irregular workers.<sup>12</sup>

However, other sources believe that in general, the construction sector is one of the sectors with the highest incidence of undeclared labour, together with agriculture, clothes and footwear manufacture, restaurants and domestic service.<sup>13</sup> According to the same sources, interior renovation work is the area with the highest rate of undeclared labour within the construction sector. Although no sources solely base their investigations on undeclared work in the Spanish construction sector, official statistics show that certain variables related to a higher incidence of this phenomenon are characteristic for the construction sector<sup>14</sup>:

- Subcontracting has grown significantly since the 90's.
- Companies are small-sized and there is weak implantation of trade unions in these companies.
- Productive activity is of a seasonal nature.
- Vulnerable workers are employed, particularly in irregular job creation through immigrant workers' contracts.

Other factors that might have stimulated the growth of undeclared labour in the construction industry are the growth of activity and employment during the last 6 years. Besides, the low qualification of some new small entrepreneurs and their lack of knowledge about the law and rules to set a new company could lead to undeclared practices in some trades.

In 1986, a study undertaken by the Ministry of Economy and Finance estimated that there was a 20% rate of hidden employment in the construction sector<sup>15</sup>, which was close to the national figure (21.9%). Continuing the estimate of undeclared work, the FLC made a study of employment data from the Active Population Poll (abbreviated to EPA in Spanish) and data on Social Security Registration. The first source reflects the number of employed persons in the construction sector using a polling method, and the second is a workers' register, regardless of their professional situation, and therefore is a better reflection of declared labour. For several reasons, including the circumstance of doing a formal alongside an informal job, we can clearly do no more than make an estimate. It should also be noted that according to the Ministry of Economy and Finance calculations, 66% of irregular labour is accounted for by employed workers who do not pay into the Social Security system in the national economy as a whole.

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<sup>12</sup> Enric Sanchís, "Trabajo no remunerado y trabajo negro en España" Universitat de Valencia. Departament de Sociologia i Antropologia Social.

<sup>13</sup> Albert Recio (Universidad Autónoma de Barcelona) Cuestionario para EIRO cuestiones temáticas sobre relaciones industriales y el trabajo no declarado – el caso de España.

<sup>14</sup> Fundación Laboral de la Construcción. Informes recogidos de diversos proyectos sobre formación y condiciones de trabajo (2004 – 2006)

<sup>15</sup> The figure gives the share of irregular jobs in the total working population in construction.

**Table 1.** Difference between EPA employment figures (2005 methodology) and social security registration (2001-2005).

	2001	2002	2003	2004	2005
<b>EPA</b>	1.876.300	1.980.200	2.101.700	2.253.200	2.357.200
<b>SSR</b>	1.725.100	1.822.600	1.907.200	2.013.655	2.186.981
<b>difference</b>	151.200	157.600	194.500	239.545	170.219
<b>%</b>	8	8	9	11	7

Using this procedure to estimate undeclared labour, approximately 11% in 2004 and 7% of workers in 2005 carried out undeclared (not registered) labour in construction. Therefore, taking into account the fact that this phenomenon also occurs amongst registered workers (most of undeclared work is done by registered workers), then the figure will be somewhat higher, possibly attaining 20% (as indicated in the Ministry of Economy's report). For the whole economy the estimate has been lower during the same period, ranging from 3% in 2001 to 6% in 2005.

This form of estimating undeclared work is a valid index for comparing certain groups in the construction sector. For example, the analysis performed by the FLC using the same procedure, shows that immigrants represent the highest percentage of non-registered workers, followed by self-employed persons, who in turn have a higher percentage of non-registered workers than employees.

According to the informants who were consulted, undeclared labour in the Spanish construction sector is principally related to:

- Individual workers who carry out renovation work, repairs and maintenance in private homes in an informal context (and/or formal).
- Foreign workers without work permits principally on small and medium-sized building sites.

These two parameters are the most significant forms of undeclared labour. Irregular work is also found in pyramids of subcontracting, but most times at the end of the chain.

In Spain, the differentiation based on the two dichotomies in the document “Undeclared labour. Preparatory research, January 2006”, would be as follows:

- **Informal context – individual work** would be irregular workers (not registered with the social security system) on small building sites.
- **Formal context – individual work** would account for workers undertaking declared labour at the same time as irregular labour, i.e. moonlighting (principally self-employed persons).
- **Informal context – group work** would be represented by unregistered workers' units who secure work through a go-between (illegal agency or registered self-employed person) who organises the supply of labour.
- **Formal context – group work** (pyramid of subcontracting), would be represented by the fact that the subcontractor does not inform the contractor that this group is working on the site, resulting in a grey area that is difficult for the contractor to control in long subcontracting chains. Bogus self-employed persons are also relevant in this context.

If we use the typology of undeclared construction labour included in the document “Undeclared labour in construction. Preparatory research, January 2006” then undeclared labour in Spain would be principally represented in the **marginal informal** category, and in general it would have the principal main characteristics of the scheme given on page 9 of the aforementioned document, with some differences of note with regard to skill level. In Spain there is a greater emphasis on illegal work carried out by local, unskilled workers that are not registered, and informal undeclared labour undertaken as moonlighting in addition to declared work (in the latter case workers are usually skilled workers). “Handymen” would be included in this category (individual workers in an informal context).

**Table 2.** Principal specificity of undeclared labour in marginal informal work.

<b>Skill level</b>	In some cases these are skilled workers
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The next most significant typology would be **unofficial enterprises**, and the characteristic form would be workers’ units that are not registered within the social security system, with a low level of organisation but with some degree of specialisation. Most illegal immigrant labour belongs to this group. Another characteristic of this group is that there is a go-between who “illegally” supplies the workers, and this go-between may take the form of an illegal agency or a self-employed person. In Spain temporary job agencies are prohibited in the majority of construction work (as it is considered a high risk sector).

**Table 3.** Principal specificity of undeclared labour in unofficial enterprises.

<b>Skill level</b>	Workers’ units are the most common case of undeclared group labour in Spain. In many cases they have some degree of specialisation.
<b>Position on the labour market</b>	These units principally work through go-betweens (an illegal agency or a self-employed person)

In general, the **official enterprises’** typology described in the scheme matches the Spanish situation. Undeclared labour is particularly present in small and medium sized enterprises, because large enterprises have developed administrative mechanisms to control subcontractors and the workers that they use. This control is carried out by keeping a register and by visibly labelling the workers, for example on their helmets. However, despite this control, irregular forms of labour can occur (in the grey area of reduced control). In these large enterprises there is a stronger trade union presence, which helps to maintain very low levels of irregularity. It should be added that in the official enterprises’ group there is a significant presence of undeclared labour through paid overtime that is not declared.<sup>16</sup> In large enterprises, the incidence of undeclared labour is probably limited to hiding a certain amount of undeclared overtime. The more common undeclared labour in small and medium sized enterprises is mainly seen in the form of undeclared overtime, undeclared parts of wages, absence of contracts, especially in more temporary and less skilled work, and particularly significant amongst legal and sometimes illegal immigrant workers.<sup>17</sup>

<sup>16</sup> ISTAS - Instituto Sindical de Trabajo, Ambiente y Salud – CC.OO. “Trabajadores con contrato precario”.

<sup>17</sup> CC.OO, El trabajo sumergido en la comunidad de Madrid (1994).

**Table 4.** Example of irregular practice on some large sites

**Case :** Few cases have been discovered where the same job defined under one contract is filled by more than one immigrant because, according to some sources, the change in persons is not noted by the employer (foreign blacks, Asiatic workers, etc.)

**Table 5.** Specificity of undeclared labour in the form of official enterprises in Spain

The typology defined in the preparatory document is quite similar to the characteristics of official enterprises in Spain.

In subcontracting, undeclared labour also occurs as a result of **free provision of services in Europe**. This is mainly the case of enterprises that come from Portugal, that are subject to the labour terms laid down in the General Agreement for Construction in Spain. Since these workers are employed by a Portuguese enterprise, in many cases the terms of the agreement are not fulfilled. This is a form of undeclared work in the sense that it is believed that some of these enterprises do not comply with sector regulations. However, the view of the informant from the employers' side is that in Spain free provision of workers has produced the displacement of qualified workers, mainly from Portugal, which are not particularly subject to an undeclared form of work. It must also be highlighted that this form of workers movement is very difficult to control as the workers are employed by a foreign company.

From a geographical point of view, undeclared labour is proportionally more widespread on small sites in rural areas, in the residential outskirts of large cities, and in Mediterranean coastal regions. The reasons that undeclared labour is found in these zones lie in cultural values and economic structure, since in many regions along the coast, construction plays a major part in the economy at a direct and indirect level.

It was explained earlier that the most vulnerable workers account for some undeclared labour. In Spain this is true in construction in relation to immigrant workers and other groups that encounter problems on the labour market, especially young persons (older than 18). Both groups have a more pressing need to gain access to the labour market and to find their first job.

**Table 6.** Undeclared labour in the form of “labour insertion” in construction

**Case:** In some activities and territories, undeclared work serves as a first step towards workers joining the sector for the first time (immigrants and some young persons). Workers benefit from gaining access to the labour market and for the employer it provides a test period for the new worker. Sometimes the irregular economy is used by new companies to set a business easily and with the time they become declared.

Illegal immigrant workers form the most vulnerable group and are attracted by the existence of jobs that have been refused by the local population. Immigrant workers account for about 20% of this sector and according to estimates, a third of these workers are not registered with the social security system. They suffer worse working conditions

than the rest.<sup>18</sup> These conditions and the illegal status of some immigrants make them inclined to take on undeclared work.

A second group is made up of self-employed workers who have multiple employment. Their principal job forms part of the official economy, and at the same time they undertake undeclared work (especially in repair, renovation work, etc). Furthermore, in the construction sector there is quite a significant group of self-employed workers who pay social security contributions under the employees' regime, and vice versa employees who pay contributions under the self-employment regime.<sup>19</sup> This is what we refer to by the term bogus self-employed persons. According to the labour inspectorate the number of bogus self-employed (included site manager self-employed and building worker self-employed) has risen recently. This is explained in the framework of general decentralisation of production and organisation of work in the whole economy.

Total undeclared labour is found amongst the so-called “handymen”, normally with a low skill level. This group of individual workers are not registered with the social security system and therefore do not declare anything.

Some workers' units that depend on a go-between are also in an irregular situation, as mentioned earlier. They almost always get jobs through a go-between (an illegal agency or self-employed person). They tend to be vulnerable workers.

Another group of workers can be classified as those who receive unemployment benefit at the same time as undertaking undeclared work. This social benefit fraud is much more common in construction and agriculture than in other sectors, because of the seasonal nature of these two sectors. Of every 100 irregular workers in the construction sector, 18.9 fall into this category<sup>20</sup>.

Finally, there is the group of employees who work for small and medium sized enterprises, forming part of long subcontracting chains. They are involved in a variety of irregular practices (undeclared hours, envelope wages). The incidence (proportion) of hidden labour is less relevant than in other groups. From the employers' view, subcontracting is not the cause but the bad use of this form of work organisation. According to the labour inspectorate, large chains of subcontracting sometimes tend to create situations of undeclared work in the last parts of the chain, as the benefit margin is much reduced and the only way to survive as a worker or small company is to work undeclared.

**Table 7.** Profiles of undeclared labour in the Spanish construction sector

- Sub-sector: renovation, maintenance and repairs, building jobs in individual households. Long subcontracting chains, to a lesser extent.
- Customer: private.
- Professions and trades: bricklayer, finishers, installers (plumbers, electricians, etc.).
- Technology: low intensity with regard to capital and machinery.
- Project size: the majority are small (up to 10,000 euros and from 10,000 to 1,000,000).
- Market sectors: private homes.
- Employee characteristics: age (young), gender (men), immigrant workers, low or medium level of education.
- Undeclared professional situation: illegal immigrant, non-registered worker (as self-employed person or in workers' units through go-betweens), self-employed persons with declared labour alongside undeclared labour, some employees in long subcontracting chains (undeclared overtime, etc.).

The table below summarises the different forms of undeclared labour in construction in Spain (Table from the annexe in the CLR preparatory research).

**Table 8.** Undeclared labour. (Overview of findings in earlier research – Old Member States).

	<b>Share of the construction labour population</b>	<b>Main forms (in order of importance)</b>
Spain	7-20% *	<ol style="list-style-type: none"> <li>1. illegal foreign workers</li> <li>2. irregular job next to regular ones</li> <li>3. informal non-registered</li> <li>4. bogus self employment</li> <li>5. social benefit fraud</li> <li>6. cash in hand</li> <li>7. long subcontracting chains</li> </ol>

\* Estimate based on employment data and new social security registrations, data from the Ministry of Economy and Finance, and CIS polls.

To sum up, the table below shows the most common type of relation between type of building work / enterprise, form of undeclared work and groups of workers involved.

**Table 9.** Relation between site, form of undeclared work and group of workers

<b>SITE</b>	<b>FORM INVOLVED</b>	<b>MAIN GROUP OF WORKERS</b>
Subcontracting chain (Small and medium size companies)	1,4,6,7	Illegal foreign Bogus self employed Salary workers Intermediary – informal group
Small sites (individual houses)	1,2,3,4,6	Self employed Bogus self employed Intermediary – informal group Illegal foreign
Small interior reforms	2,3,6	“Handyman” Self employed

## 5. EFFECTS OF UNDECLARED LABOUR IN THE CONSTRUCTION SECTOR

The main causes of undeclared work found were: saving costs, social values (low awareness level), characteristics of the industry (complexity, abuse of subcontracting, temporary activity and migrant workers as a vulnerable group). The effects are:

### *Competition and sector image*

Reduction of productivity costs affects competition amongst companies. This is much more serious in the case of individual workers that are not registered with the social security system and therefore hardly declare anything. Furthermore, since they are less controlled, there is greater incomppliance with collective agreements, and this in turn affects health and safety, and building quality. This leads to negative effects for the image of the sector, which is one of the biggest problems in attracting new workers.

### *Economic productive value: social and sectoral provisions*

There is not a very high incidence of undeclared labour in terms of productive monetary value, since the largest part of economic production comes from the large and medium-sized buildings sites where there is proportionally less fraud derived from the hidden economy. In this respect, certain taxes related to productive value are not particularly jeopardised. However, social security fraud does have negative effects on the economy in general (services and social provision), and also on the sectoral actions on the part of the FLC, due to reduced income from fees. This situation affects solidarity mechanisms and actions developed by the Foundation related to vocational training, health and safety, and improvement in employment conditions.

### *Health and safety at work*

There are two different opinions on the incidence of undeclared labour on workers' health and safety.

- The first opinion (key informant from the labour inspectorate) is that it is more difficult to enforce safety regulations in the shadow economy and therefore there are greater risks derived from probably worse working conditions. These more precarious conditions are equally likely to occur on small sites (where the risk is supposedly smaller than on large sites), because even in house building or renovation there are health and safety risks for workers (for example work at height).
- However, one trade union informant mentioned that the adverse effects on health and safety are probably not so great in terms of severity of accidents, since employers do not want to take big risks, and therefore, when high risk activities have to be carried out, the employer registers his workers within the social security system. This phenomenon is applicable to enterprises (groups of workers) but not to individual workers who are not registered with the social security system, or to self-employed persons who carry out declared work alongside informal work.

### *Workers' training and skills*

The general opinion is that workers that undertake undeclared work have lower skills for several reasons: 1) irregular workers have no rights to attend continuous training programmes; 2) individual non-registered workers are characterised by a low level of skills because they are not required to provide professional certification and base their competitive value on reduction of production costs rather than on quality. This is not the case for self-employed workers who carry out declared and undeclared work.

## 6. INFORMATION ON APPLICABLE LABOUR LAWS ON UNDECLARED LABOUR IN CONSTRUCTION, COMPETENT AUTHORITIES AND MEASURES

From a legislative point of view, there are two areas from which undeclared labour and the shadow economy are governed and controlled: labour authorities and tax authorities. This section will therefore commence by discussing the relation between legislation, control functions and measures used by labour authorities and then by tax authorities. The field of collective negotiations will then be discussed, followed by legislation on bidding and contracts in public works. These two latter areas are of little relevance in the prevention and control of undeclared labour in Spain.

### 6.1 Legislative aspects

Since the 90's new "*atypical*" forms of work have been developed in labour laws, with the aim of creating more jobs and also partly to promote the transformation of undeclared labour into declared labour. However, there is no evidence that this has actually occurred in the economy in general or in the construction sector in particular. Furthermore, since 1997, permanent contracts have been promoted, as well as cost reductions in dismissals.

*Laws on subcontracting* are of particular interest in the construction sector. The workers' statute (the fundamental law on labour rights) permits productive decentralisation, providing it respects the guarantees that are provided to prevent violation of workers' rights. The statute states that the principal enterprise that enters into contracts and subcontracts for works or services that form part of its own activities, shall be jointly liable for any non-payment of wages and social security contributions, and shall have subsidiary liability in social security obligations and responsibilities in the event of insolvency. At present a law is being debated in Congress that will further govern subcontracting. The objectives sought by this bill are to reduce temporary contracts and accidents, and promote compliance with all types of regulations. It is expected that there will be a reduction in undeclared labour as a result of limiting the amount of subcontracting and increasing the control of the same.

*Organic law 14/2003*, regarding the rights and liberties of foreigners in Spain and their social integration, covers the legalisation of non-EU workers. The law is developed by Royal Decree 2393/2004 that lays down the control and preventive mechanisms regarding undeclared labour, including the requirement of holding a work visa and residence permit before a foreigner can start to work. One new point in this law is that there is now a visa to enable a foreigner to seek work by permitting free movement in Spain for a period of three months, in order to find a job. During this time, the foreigner may even register at public job centres. *Extraordinary legalisation processes* are also worth mentioning here. The 2005 process provided two paths towards legalisation: length of stay (for foreigners who had been in Spain for a consecutive period of at least three years), and length of employment (for foreigners who had worked in Spain for at least two years consecutively).

In relation to EU workers, Law 45/199 should be mentioned, whereby EU workers may travel in order to provide *transnational services*. The basic principle established by this

law is that within this scope of application, employers who move workers temporarily to Spain must guarantee to comply with certain working conditions for these workers, as provided in Spanish legislation: working hours, minimum wage, non-discrimination between temporary and part-time workers, health and safety at work, etc. These conditions are governed by the collective agreement for construction.

The competent authority that grants the administrative authorisation to issue foreigners' work permits is the Provincial Delegation of Labour and Social Affairs (the Ministry). It is responsible for granting or rejecting work permit applications.

The Labour and Social Security Inspectorate (falling under the Ministry of Labour and Social Affairs) is responsible for controlling all forms of undeclared labour, particularly in relation to irregular employment and social security fraud, and to monitor all other labour regulations, including collective agreements. Therefore, it is responsible for controlling the most typical forms of undeclared work. The sanctioning regime implements economic fines for the employer and worker alike, and also employs another series of measures for illegal foreigners (return to border, deportation and expulsion from Spain). It is also responsible for ensuring companies' compliance with labour regulations under the regime for free provision of transnational services.

The majority of the measures in the labour regulatory system (2003 – 2006)<sup>21</sup> apply to the economy as a whole, since there are almost no specific measures for the construction sector. According to the Ministry of Labour and Social Affairs<sup>22</sup>, the measures that have been applied since 1997 to promote permanent contracts, have led to progress in the surfacing of undeclared labour, eliminating or reducing obstacles in the activity and permanent contracts.

The Labour and Social Security Inspectorate, for its part, takes on-going action against irregular employment with regard to foreigners and Spaniards alike, identifying enterprises that do not appear in the social security system, non-registered workers and those who unduly receive social benefits. In 2003 the Labour and Social Security Inspectorate launched a special action on non-compliance with the obligation to register in the social security system in sectors which have the highest incidence of fraud. The construction sector was not included in these sectors in 2003. However, the 2005 control plan focused on the sectors of construction, agriculture and textiles. The inspection authorities acknowledge that there is a significant offer of irregular jobs in construction, although there is no specific plan for the sector for 2006.

In the past (in the 90's), it should be mentioned that specific instructions were issued to inspectors working in the construction sector to identify fraud in social security and unemployment benefits, and in labour relations taking place under the guise of a hire contract or works contract (bogus self-employed persons). Furthermore collaboration has been established between the Labour and Social Security Inspectorate and the State Employment Public Service, by means of a Collaboration Agreement on employment and unemployment benefits for the year 2004 thereafter in order to control payment of unemployment benefits to undeclared workers.

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<sup>21</sup> Planes Nacionales de Acción para el empleo y documentos de la inspección de trabajo (2003-2006)

<sup>22</sup> Plan Nacional de Acción para el empleo (2003).

Incentives for entering into permanent contracts with disfavoured population groups (women, young persons and persons over the age of 45) also form part of the fight against undeclared labour.

Information and awareness campaigns were also launched during this period, in collaboration with social actors in order to increase social awareness of this problem.

## 6.2 Fiscal aspects

The Tax Office (Ministry of Economy and Finance) controls tax fraud and is in charge of ensuring that the national fiscal system is applied effectively. Amongst its control instruments is the Fraud prevention plan. This plan contains a specific section on the construction sector. The plan states that the principal risk in the building phase is hidden income, and this can occur on major building sites and also in minor renovation work on premises and houses.

In some cases, fictitious costs are presented by means of entering false invoices in accounts, or invoices that state a higher consideration than the real one.

In large or medium sized construction enterprises, in some cases extraordinary income is hidden.

In some small enterprises, employers simply say that they do not keep books or documents that inspectors can use to verify accounts, and in the case of small enterprises that undertake renovation work, it is common not to give a customer an invoice.

Although the production of buildings can be considered as labour intense, developers often have a relatively small workforce, and it is the contractors and subcontractors that supply considerable volumes of labour and are subject to obligations regarding income tax withholdings (IRPF). It has been observed that there is a tendency to transfer the obligation to pay in the income withholdings to non-compliant companies, that have a short operational life and no capital solvency, and this leads to considerable loss of Tax Office revenue.

### *Measures in fiscal-related aspects*

First, the income tax reform implies a reduction in the range of income tax rates on work, particularly for workers with a low income.

A new fiscal law came into force in 2004, and one of its principal objectives was to strengthen the Tax Office's means of fighting against fraud and tax evasion, by means of new regulations on legal fraud, infringements, and fiscal sanctioning.

Specific fiscal measures in the construction sector:

- **Monitoring of building works** from the very start, with prior information collection, planning of intensive and co-ordinated actions, particularly amongst large enterprises.
- Obtaining of information from councils and professional associations, at least on major reformation work and building works, with regard to **building permits awarded**, which will contain details of the works to be undertaken and budgets for the same.
- Verification of invoices in the event of suspected **risk of false invoices**, or stating larger considerations than the actual consideration.
- Studies and reports to facilitate the application of indirect estimation in the case of **subcontractors** that do not keep books or present such documents.

Co-ordinated action plans are regularly launched by the Ministry of Economy and Finance together with the Ministry of Labour and Social Affairs, in order to identify and control cases of shadow economy.

### 6.3 Sectoral aspects of construction

There is a collective agreement in force for the period 2002-2006 that applies to all enterprises and workers in the sector. The agreement governs wages, terms of contract and dismissal, total working hours, holidays, maximum overtime, health and safety, etc.

To date, undeclared labour has not been the subject of collective negotiations or an issue of general concern on the part of social actors. However, there are several aspects, such as subcontracting, types of contract and working hours that have an indirect influence on undeclared work, and these aspects do indeed form the subject of collective negotiations. In any event, the clauses in the agreement that discuss these issues are focused more on labour risk prevention and preventing precarious employment.

### 6.4 Public contract aspects

Royal Legislative Decree 2/2000 that approves the Contracts Law, states that one of the criteria for demonstrating technical solvency is the declaration of the company's mean annual workforce, stating, where appropriate, the degree of employment stability amongst personnel. The same applies here as in the collective agreement; it is focused more on controlling precarious employment than reducing undeclared labour.

**Table 10.** Labour-related measures

- **LEGISLATION:** Measures to bring down labour costs. Bonuses for contracts
- **LABOUR INSPECTORATE:** actions in relevant territories and sectors. The **construction** sector was a priority area for inspection in 2005, but there is no specific plan.
- **IMMIGRANTS:** legalisation of immigrant workers, with consequences for the **construction** sector. The extraordinary legalisation process in 2005 had particular incidence in this sector.
- **JOINT MEASURES:** collaboration in certain plans between ministries and public institutes (Ministry of Economy, Ministry of Labour, INEM (National Employment Institute)).
- **COLLECTIVE NEGOTIATIONS:** In the field of collective negotiations in the **construction** sector, aspects that have been negotiated only indirectly affect undeclared labour. The latter is not an issue in collective negotiations.

**Table 11.** Fiscal-related measures

- **FISCAL INCENTIVES:** for the creation of small businesses.
- **MEASURES THAT ARE SPECIFIC TO THE CONSTRUCTION SECTOR:**
  - Monitoring of works from the very start.
  - Obtaining information from councils
  - Actions on suspected false invoices and verification of the same.
  - Actions regarding subcontractors that do not keep or present accounts.

**Table 12.** Measures at industry level (collective agreement) and in public contracts

The two regulations do not influence prevention or control of undeclared labour, but focus more on preventing precarious employment.

### 6.5 Effects of labour and fiscal measures

It is difficult to quantify the effects of official government measures. In fact, there is often no monitoring at all, and it is difficult to obtain information on this aspect in the construction sector. According to employment plans, 63.905 jobs came to the surface in the global economy as a result of inspections in 2004.

FLC has studied the variation between employment according to the EPA (Active Population Poll) and the Social Security Register, as an indicator for the surfacing of employment in the construction sector.

**Table 13.** Difference between variation in employment (EPA – 2005 methodology) and variation in new social security registrations.

<b>CONSTRUCTION</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>EPA</b>	6,1	7,2	4,6
<b>SSR</b>	4,6	5,6	8,6
<b>difference</b>	1,5	1,6	-4,0
<b>SPANISH ECONOMY</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>EPA</b>	2,9	2,7	4,2
<b>SSR</b>	1,1	1,2	1,5
<b>difference</b>	1,8	1,5	2,7

In the construction sector, the relative growth (%) of new registrations in the social security was higher than jobs were created (EPA) in 2005. This difference was greater in the construction sector than in the global economy. Therefore, considering this indicator it appears that a real change in the trend took place in 2005, bringing some undeclared work in the shadow economy into light. The extraordinary legalisation of foreigners in 2005 is the process behind these figures (see section on good practices).

In the trade unions' opinion, the actions planned in the National Action Plan for employment in 2004 had very weak contents. They therefore believe that the public authorities should launch more decided actions, in order to control fraud, and also to encourage the surfacing of undeclared labour, as well as developing active sectoral policies.<sup>23</sup>

In the employers' opinion the complexity of the sector makes it (too) difficult to fulfil enforcement of laws in the construction sector.

<sup>23</sup> CES, Memoria socioeconómica 2004

## 7. GOOD PRACTICES

a) Awareness campaign in Murcia on irregular work in general (the construction sector represents a major share of the regional economy; about 16% of jobs). In 2004 the Board of Labour and Social Policy for the Murcia Region launched an advertising campaign to encourage workers and employers to declare economic and labour activities, called “Say no to the shadow economy”. The message was based on the economic and social benefits reaped by companies from declaring their activities. According to the results of the public opinion poll carried out by CIS (Sociological Research Centre), this type of campaigns gives results in preventing undeclared labour.

b) Good practices in construction enterprises like:

- Some companies train workers in their country of origin and then the workers come to Spain to work legally, with a work contract that has already been signed. This solves two problems: a legal job, and optimum workers’ skills (e.g. a Galician enterprise in Morocco).
- Within the panorama of increased subcontracting, large construction enterprises develop administrative mechanisms in order to differentiate regular and irregular workers on large building sites. These mechanisms consist of a series of conditions that each employee and company have to fulfil, by presenting certain documents such as work contracts, invoices, etc. Workers that have fulfilled these conditions then have to wear a card or sticker on their helmet. The contractor then carries out visual inspections and any workers that are not duly identified are sent off the building site. This prevents workers from exchanging jobs without control (depending on their ethnic origin), and all other types of undeclared labour.

c) Legalisation of immigrant workers employed by Spanish companies.

In the construction sector, immigrant workers account for 20% of the entire workforce. Furthermore, on 30 September 2005, 26.74% of all foreign workers registered in the social security belonged to the construction sector, representing 306.926 immigrants out of a total of 1.147.719 registered under the General Regime. In short, construction is the (entry) economic sector with the highest percentage of foreigners.

The extraordinary legalisation process of 2005 involved foreign workers who were already in Spain six months before the process came into force. They were eligible if they had a definite job offer for a term of least six months, and if they fulfilled certain requirements. The peculiar characteristic of this process was that workers had to demonstrate that they were in a labour relation, even if the employer had been reported. Employers were also told that they could register their workers without being sanctioned for having irregular workers.

This legalisation resulted in the introduction of new workers in the formal economy. In this respect, the Ministry of Labour and Social Affairs reported that *In 2005, the legalisation of immigrant workers has led to considerable surfacing of shadow economy; over 550,000 non-Spanish citizens have been registered with the Social Security, which is not only beneficial for them since they are now working legally, with all their corresponding rights and obligations, but it is also positive for many companies that have found an ideal way of legalising the irregular situation of some of their employees. The legalisation process has given rights to the majority of immigrants*

who have worked illegally up until now.<sup>24</sup> Other sources<sup>25</sup> reported *Almost 700,000 illegal jobs have been brought to the surface as part of the biggest legalisation process in Spanish history*. Some sources, such as CC.OO. trade union, quoted by the above newspaper on 6 August 2005, said that 22% of migrant workers were legalised. If we consider the same percentage for the construction sector, then 154.000 migrant workers were legalised. This figure is probably somewhat lower, but it is clear that these data reflect the efficacy of the measure for the immigrant collective, and also the great magnitude of undeclared immigrant labour in the construction sector among migrant workers in 2005.

This initiative is therefore the most effective measure that has been launched by the public authorities in relation to undeclared labour, and in the construction sector in particular. In fact, in 2005 the estimated percentage of workers who are not registered with the social security is about 7%, in comparison with a figure of 11% in 2004. It is highly likely that the immigrant legalisation process has brought about this change.

d) Planned project: the new law on subcontracting in the construction industry limits the number of subcontractors to three (“in a chain”) and is agreed between political parties, unions and employer’s organisations. Four points deserve to stand out:

- a third subcontractor will not be able to put in charge to a fourth one the task that has been entrusted to him,
- moreover, subcontractors will not be able to subcontract those activities, which basically involve manual labour work with no specialisation,
- the obligation to set up a “subcontracting book” has been established in order to registered subcontracting chains, dead lines and health and safety plans,
- finally, the workers’ representatives of the different companies taking part in the construction site must be informed about the contracts and subcontracts taking place in the site.

This new law will enter into force next year (2007). Regarding undeclared labour it is expected that the number of long subcontracting chains will diminish and there will be more control over bad practices (such as undeclared labour) on sites.

## 8. RECOMMENDATIONS

The recommendations made below reflect the opinions of the key informants on construction and of those of the Economic and Social Council on global economy.

From the trade union side:

- In order to enter into contracts with the public authorities, it should be obligatory to register and report all subcontracting.
- More specific work inspectorate campaigns, taking the peculiarities of the construction sector into account.
- Obligation to register or sign on when entering the site.
- Fiscal authorities should be permitted to execute a greater control of activities.

From the employers’ side:

- Access to the industry must be regulated to demand certain qualification (e.g. business law, the trade, OSH) as well as responsibilities for employers.

<sup>24</sup> *El Mundo*, 25 November 2005.

<sup>25</sup> Such as *El País*, 8 August 2005.

- Higher sanction effectiveness.

From the work inspectorate for the construction sector:

- Specific plans should be launched for the construction sector (taking into account its characteristics), focusing on activities and territories with the highest incidence of undeclared labour.
- Increase the awareness through campaigns.
- Involvement of the social partners, ONGs and local councils in the actions of labour inspection, so that the inspections become more effective and accurate.

The Economic and Social Council makes the following recommendations:

- To insist on measures focused on increasing the efficacy of sanctioning and control systems.
- To improve information on fraud.
- To adapt regulations to changes that are taking place in a more open, globalised economy (new types of work, improved administrative environment, support for eliminating obstacles in the development of activities).
- Simplification of procedures for creating companies.
- In order to promote regular labour, employers believe that the shadow economy is encouraged by the excessive predominance of the labour factor as a priority source of financing the system, and the consequent costs that are incurred in regular labour, in particular with reference to certain labour intense activities. For this reason, they believe that there should be a gradual reduction in the costs that are incurred in the labour factor. Trade unions do not support this measure, and believe the focus should be developed towards a model based on improved quality and added value of the commodities and services that are produced.

## **Key informants**

### TRADE UNION

Secretario de Seguridad y Salud Laboral de Metal Construcción y Afines - Unión General de Trabajadores (MCA-UGT).

### EMPLOYERS ORGANISATION

Secretario General de la Confederación Nacional de la Construcción (CNC).

### GONVERMENT SOCIAL AND ECONOMIC CONSULTATIVE BODY

Director del Gabinete de Estudios del Consejo Económico y Social (CES).

### GONVERMENT (LABOUR INSPECTORATE)

Subdirector General de la Inspección para la Seguridad Social y la Economía Irregular (Ministerio de Trabajo y Asuntos Sociales).