

Exploring the nexus between legality, decent work and recovery

SUMMARY OF THE DEBATE

Illegality, which is becoming wide spread, and lack of respect of the rule of law are phenomena that are hindering the recovery of our economy. These are a threat to the correct implementation of the EU recovery plan and most of all they destroy jobs and make workplaces unsecure and dangerous.

1. The EU has policy frameworks that empower European and national institutions to fight any form of illegality, breach of fundamental rights and democratic drift. Such frameworks include the UN2030 Agenda with its SDGs 8 and 16, the European Charter of Fundamental Rights and the European Pillar of Social Rights (with its Action plan adopted in Porto, May 2021). One of the objectives of the European Labour Authority (ELA) is to enforce EU law, fight against the black economy and activate cross-border inspectorate actions. Finally, we expect that the EU framework for sustainable investments will ban all capital originating from illegal activities.
2. The size (or magnitude) of the phenomenon is difficult to quantify even if it is estimated that the undeclared economy is bigger than the certain EU budget lines (more than MFF and Next Generation together). The main source of illicit appropriation of workers' money (wages and income tax) comes from illicit financial activities, corruption and bribery. Workers' rights are also threaten by: criminal organisations, reckless employers that exploit loopholes in the legislation, weak administrations, and the lack of efficiency of judicial systems. T Such illegality is not recent, the first serious attempt of the EU to fight illegality in the world of work dates back 2007. However, the EU Semester and the Country Reports have shed light on the gravity of the situation, namely in countries where different forms of illegality are so spread to become a threat to sustainable development.
3. We have identified internal and external risks.
4. Internal risks are connected to: organised criminal organisations; corruption in public administrations; the lack of a culture of legality among employers; and, lack of public conviction that would create hostility towards those who commit these kind of crimes. Also, the lack of respect of the rule-of-law facilitates illicit behaviours in economy and society. Weakness and unpreparedness of local administrations are often also a risk. Often, the tools and instruments used by administrations governing the labour market obsolete when compared to those used by criminal organisations and illegal enterprises.
5. External factors are linked to economic and geopolitical risks. The Ukrainian invasion of Russia is the ultimate form of violence originating from non-democratic states, and home to criminal organisation and illicit behaviours. The level of accountability of big Russian corporations is incomparable to those residing in the EU. Moreover, capitals that have dubious or illicit origins find shelter in fiscal heavens. They not only deduce resources available to workers and governments, but they also contaminate the enterprises they invest in. Finally, in globalised economies, the spreading of the black economy creates unfair competition among workers, this directly threatens the European social model.

Internal and external risks are addressed with reforms and law-making that, often, is opposed by businesses and corrupted administrations, with the intention to delay or neutralise such reforms. Trade union rights are often downsized by a lack of efficiency in the judicial systems and the dominant position that unscrupulous employers and administrations gain from this situation. It is the employees who pay the bill, both economically and in terms of health and safety.

The ELA has a role to play, promoting clarity and information to ensure a correct implementation of EU law and empower labour inspectorates to fight undeclared work and violation of social legislation on the workplace. The ELA can gather information and data that help quantify and localise criminal actions, corruption and exploitation of work. In this regard, the ELA and the trade union movement should develop a close cooperation.

The fight against illegality is wide, it belongs to Member States and the EU institutions. Nonetheless, it is an issue the trade union movement should work on and act there where it can make a difference:

- Fighting illegal capital and be proactively denouncing companies that are financed with illegal capitals;
- Transforming the black economy into regular economy in which all employment relationships are declared, can benefit from laws and provisions of collective agreements, and all workers have access to social protection;
- Being proactive in ensuring the enforcement of the law and spreading a culture of legality to protect workers especially to ensure safe and healthy workplaces; and
- Zero tolerance to corruption and infringement of social rights, especially those that put the health of workers at risk (H&S, social protection, decent wages, etc.).

The instruments we can put in place include:

- Collective bargaining and social dialogue, creating legality devices (presidiiums) in companies and sectors at higher risks, also through action plans agreed with social partners at EU and national level;
- Promoting a culture of legality and enabling a reputational retaliation for those who perpetuate crime, operate in fiscal heavens and evade taxation, or do not apply social legislation;
- Banning capital from illicit activities from companies, thanks to a corporate governance enhanced with employee participation and sustainable finance constraints;
- Monitor and identify risks of different forms of illegality at country level, the illegality that could thwart the objectives of the RRF and structural funds, and be detrimental for working conditions and jobs, through the EU Semester and advancing country specific recommendations when necessary;
- Use EURES, the Undeclared Work Platform to monitor legality in labour mobility and establish a framework for regularisation of undeclared work of migrants and fight their exploitation;
- Build alliances with NGOs and organisations to flag illegality and spread a culture of legality; and
- Cooperate with institutions that have responsibility for enforcement of law and preserve legality such as ELA and EUROPOL.

The ETUC affiliates are invited to further elaborate on this topic. To this end a working session will be organised in the framework of the next Rethinking session with the aim to raise the relevance of this topic in the next EU Semester cycle (2023).