



HOW THE STATE LABOUR INSPECTORATE ENSURES SAFE AND LEGAL PARTICIPATION IN THE LABOUR MARKET

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SUMMARY

The Relevance of the Audit

Every person has the right to freely choose his/her place of work and business, as well as the right to be provided with appropriate, safe, and healthy working conditions, to receive fair payment for work performed and social security in case of unemployment¹.

Reduction of the shadow economy is one of the priorities of the Government of the Republic of Lithuania, which is currently engaged in conducting a reform of the fight against it. In 2017, the scope of the shadow economy of Lithuania was 25.5 per cent.² Undeclared work distorts the state of the labour market and creates the preconditions for unfair competition. In 2018, there were 2,100 illegally (unlawfully) employed persons in the country.

The abundance of fatal accidents at work is reducing the attractiveness of professions which are currently in the highest demand. In cases where employers fail to ensure compliance with health and safety requirements in the workplace, employees may develop occupational diseases. In 2015, Lithuania was in the penultimate – the 27th – place in the EU with regards to the incidence rate, which was 3.3, as compared to the 1.83 EU average, of fatal accidents at work per 100,000 employees. In 2018, the above rate dropped down to 2.8.

¹ Article 48 of The Constitution.

² available on the Internet at: https://www.vmi.lt/cms/about-vmi/-/asset_publisher/hU6yeb4bVUJN/content/vmi-skelbia-mokesciu-moketoju-samoningumo-ir-seselines-ekonomikos-lygio-vertinimo-tyrimo-rezultatus.

In order to assess whether the State Labour Inspectorate is effective in performing the control and prevention of unsafe and undeclared work within its scope of competency, the National Audit Office conducted a public performance audit of this area.

The Audit Objective and Scope

The objective of the audit was to assess the effectiveness of the control and prevention of unsafe and illegal work.

The key questions of the audit were as follows:

- are inspections carried out on the most risk-prone economic entities?
- are the inspections, carried out by the State Labour Inspectorate regarding safe and legal work, purposeful?
- are the outcomes of the actions taken by the State Labour Inspectorate being assessed?
- is prevention being strengthened and are the outcomes of preventive measures being assessed?
- is the Ministry of Social Security and Labour successful in ensuring that the State Labour Inspectorate strives for better results in the areas of employee safety and undeclared work?

Audited entities:

- the State Labour Inspectorate under the Ministry of Social Security and Labour, because it performs the control, and the prevention of the violation of, the Labour Code of the Republic of Lithuania, laws which govern the health and safety of employees, and employment relations, as well as other regulatory acts; carries out the prevention of accidents at work and the development of occupational diseases³;
- the Ministry of Social Security and Labour, because it is the founder of the Inspectorate, as well as responsible for the development of labour policy and the arrangement, coordination, and control of the implementation thereof⁴.

Audited period – 2015-2018. In order to more effectively assess the changes in indicator values, data from 2019 was also used.

The audit was carried out in accordance with the Public Audit Requirements and the International Standards of Supreme Audit Institutions. A more detailed description of the scope and methodology of the audit is provided in Annex No. 2, Audit Scope and Methods (p. 35).

³ Article 4 of the Law on the State Labour Inspectorate.

⁴ Page 7 of the Rules of the Ministry of Social Security and Labour, approved by Resolution No. 892 of the Government of 17 July 1998.

Key Results of the Audit

Even though the State Labour Inspectorate did implement some changes and take certain measures to increase the variety of methods of public control with regards to the health and safety of employees, as well as issues related to undeclared work, the procedures intended for the control of safe and legal work are only marginally effective, because not all of the controlled economic entities are subjected to risk assessment, and the assessment of the outcomes of, and the feedback on, the control performed, which provides valuable information on the implemented control activities, is insufficient. The outcomes of some of the preventive activities are not considered for the purposes of improving performance and reducing the expenditure on control.

1. While the inspections of undeclared work are performed by selecting the most risk-prone economic sectors, the assessment of the risk level of entities or objects is insufficient, and there are more entities selected in the area of the health and safety of employees than could reasonably be inspected

Scheduled inspections of undeclared work are performed in properly identified economic sectors which are the most prone to risk, yet the risk level of specific objects and natural persons is not being assessed in accordance with the approved methodology⁵. In such cases, the heads, or inspectors, of territorial divisions have performed the selection of economic entities or objects for inspections at their own initiative. The Inspectorate has emphasised that it is currently having difficulties with regards to the determination of the risk level of self-employed persons, which leads it to disagree with the conclusions of the auditors regarding the assessment of the risk level of natural persons. Entities for scheduled general inspections of the health and safety of employees are being selected by the information system of the State Labour Inspectorate, which selects far more entities than has been specified in the action plans of the territorial divisions of the SLI. Final decisions regarding specific entities to be inspected are adopted by the heads of divisions. This leads to the risk of conflicts of public and private interest, of which the Special Investigation Service had informed the State Labour Inspectorate in 2014. It was determined that employees responsible for selecting entities for inspection were not provided with any training in such. This leads to the occasional failure to select the most risk-prone entities and objects for control procedures (pages 12-17 of Sub-Section 1.1).

2. The performance of inspections in accordance with the most complaints leads to the loss of opportunity to inspect the most risk-prone entities

The examination of complaints is described in the Law on Public Administration⁶. In 2018, there were 1,334 complaints in the area of undeclared work, and 847 complaints in the area of the health and safety of employees. On average, during the period between 2015

⁵ The Methodology for the Risk-Assessment of Economic Entities, and the Description of the Algorithms and Criteria for the Assessment of Risk Related to the Health and Safety, as well as Undeclared Work, of the Employees of Economic Entities, approved by Order No. V-335 of the Chief State Labour Inspector of 27 August 2013.

⁶ Article 14 of the Law on Public Administration.

and 2018, the Inspectorate had inspected approximately 95 per cent of the complaints received each year. Approximately 40 per cent of the above inspections were effective. Complaints accounted for approximately 54 per cent of all unscheduled inspections. During 2015-2018, the share of unscheduled inspections grew from 33.8 per cent to 36.3 per cent, even though the cap set for such by the Inspectorate was 35 per cent. As the number of complaints increases, and inspections are being carried out in accordance with their greatest number, i.e., as the share of unscheduled inspections grows, inspections become concerned with more than only the most risk-prone economic entities. Inspections of the health and safety of employees are being carried out in only 6.8 per cent of the most risk-prone entities (pages 17-21 of Sub-Section 1.2).

3. Assessment of the effectiveness and impact of the control of undeclared work should be improved, and more use should be made of the opportunity to receive feedback from entities on the quality of the inspections conducted in the areas of undeclared work, and the health and safety of employees

The State Labour Inspectorate assesses the effectiveness of the control of undeclared work by comparing the determined number of persons engaged in undeclared work against all inspections. Given that more than one person engaged in undeclared work can be identified within the scope of a single inspection, the effectiveness of control would be better reflected by the ratio between inspections which have determined a violation(s) and all inspections conducted in the area of undeclared work. This method of calculating the value of the above indicator is recommended both by the Ministry of the Economy and Innovation⁷, and the European Platform Undeclared Work⁸. The effectiveness of the control performed in this area, calculated by the Inspectorate in 2018, was 49.1 per cent, while the same calculated by the auditors pursuant to the aforesaid recommendations was 28.6 per cent. It should be noted that in 2015-2018, pursuant to both of the calculation methods, effectiveness increased 1.9 fold (pages 17-21 of Sub-Section 1.2).

During the audited period, the State Labour Inspectorate did not have a single indicator for gauging the impact of the control of undeclared work, even though representatives of the European Platform Undeclared Work have recommended the establishment of at least one indicator, depicting the share of identified cases of undeclared work validated following the performance of inspections⁹. This is an important indicator for assessing the impact of the control of undeclared work (pages 22-25 of Sub-Section 1.3).

The State Labour Inspectorate is conducting public surveys regarding the visibility of activities, but fails to make use of the freely accessible feedback system *inspect.ukmin.lt* to identify the shortcomings, and to improve the quality, of inspections carried out in the

⁷ How to Implement and Apply the Effectiveness Indicators of the Activities of Supervisory Authorities (available on the Internet at: http://eimin.lrv.lt/uploads/eimin/documents/files/Prieziuros%20instituciju%20pertvarka/Rekomendacijos_rodikliai.pdf). According to recommendations, the effectiveness indicator should be calculated by assessing the ratio between inspections conducted in the respective area of control which have identified a violation(s) and all the inspections carried out therein.

⁸ Preventative approaches for tackling undeclared work, focusing upon tax rebates and notification letters, prof. Collin C. Williams, 12 May 2019, Brussels, p. 6.

⁹ European Platform Undeclared Work. Mutual Assistance Project: Improving the performance of the State Labour Inspectorate of the Republic of Lithuania in tackling undeclared work. Synthesis Report: findings, guidance and recommendations, 2018-07-11.

areas of undeclared work and the health and safety of employees (pages 22-25 of Sub-Section 1.3).

Given insufficient assessment of impacts and the lack of data on the quality of the inspections performed, operational improvements become problematic (pages 22-25 of Sub-Section 1.3).

4. The State Labour Inspectorate had exceeded its planned performance assessment criteria each year

Even though, during the period between 2015 and 2018, the State Labour Inspectorate had exceeded the values of the main three performance indicators each year, the Ministry of Social Security and Labour failed to consider the performance of the Inspectorate during the previous year and to ensure more realistic planning. The value of one of the indicators was changed only after receiving notes from the Office of the Government. The failure to set realistic targets leads to difficulties in planning the resources necessary to achieve them (page 25 of Sub-Section 1.4).

5. The planning of prevention is insufficiently purposeful, and the impact of all of the measures thereof is not being assessed

The European Union emphasises the importance of preventive measures, because they are useful in reducing the need for the most resource-heavy control activities¹⁰. During the period between 2018 and 2019, following agreement between all the relevant authorities and the development of an interinstitutional plan of prevention¹¹ in the area of the health and safety of employees, as well as the subsequent consistent implementation thereof, the State Labour Inspectorate saw growth in the amount of attention and resources available to the prevention of unsafe work.

The State Labour Inspectorate is implementing preventive measures and looking for ways of reaching a wider audience, but fails to assess the impact of all the measures implemented. This leads to the failure to make use of the opportunity to select and implement the most effective measures (pages 26-30 of Article 2).

Changes during the Audit

During the period of the audit, the State Labour Inspectorate performed the following activities.

- In 2019, the Inspectorate planned¹² to dedicate almost 45 per cent of its time to activities related to consultation, the provision of information, and the education of the public.

¹⁰ European Platform Undeclared Work. Risk Assessments for More Efficient Inspections, 14–15 June, 2018, Madrid, Spain, 1, 2 p.

¹¹ The National Employee Health and Safety Action Plan for 2017-2021, approved by Order No. A1-256/V-584 of the Ministry of Social Security and Labour, and the Ministry of Health of 22 May 2017.

¹² Priority Activities for 2019. Available on the Internet at: https://www.vdi.lt/Forms/Tekstas1.aspx?Tekstai_ID=2109 [as of 10 January 2019].

- During the audit, the SLI approved a procedure for the selection of anonymous complaints¹³.
- For the purposes of strengthening internal control, necessary to reduce instances of corruption, all vehicles of the territorial divisions have been equipped with GPS devices that come with the option of drawing up journey logs which reflect the route and the time spent at standstill.
- At the end of the audit, the State Labour Inspectorate had approved a procedure¹⁴ which provides that both scheduled and unscheduled inspections of specific economic entities shall be conducted by a sole inspector, provided that the head of the respective territorial division, or a person authorised thereby, has determined that, for the purposes of the relevant inspection, the competency, experience, knowledge, and skills of the inspector to be appointed are sufficient. According to representatives of the Inspection, this change should increase the effectiveness of inspections regarding issues related to the health and safety of employees. The auditors are of the opinion that, in order to ensure transparency, criteria should be put in place regarding specific instances where inspectors are to perform inspections on their own.
- During the audit, the Inspectorate had approved two values for the assessment of the effectiveness of the control of undeclared work, namely – the comparison of the number of persons engaged in undeclared work to the number of inspections, and the comparison of the number of instances of undeclared work to the number of inspections. We will henceforth observe whether the above indicators are actually used for the purposes of planning and assessing annual performance.

Recommendations

To the Ministry of Social Security and Labour

1. In order to ensure the improvement of the performance of the State Labour Inspectorate, the annual action plans thereof shall be approved only after (the 3rd and 4th key audit results):
 - 1.1. setting actual values of the indicators used for the assessment of the control of undeclared work, and the health and safety of employees, having regard to the performance of the previous year;
 - 1.2. approve the value of the effectiveness of control, namely – the ratio between inspections which have identified a case(s) of undeclared work and the total number of inspections conducted in the area of undeclared work;

¹³ Description of the Procedure for the Recording, Assessment, and Inspection of the Anonymous Reports Received by the State Labour Inspectorate under the Ministry of Social Security and Labour of the Republic of Lithuania, approved by Order No. EV-78 of the Chief State Labour Inspector of 20 March 2019.

¹⁴ The 28 August 2019 Order No. EV-248 “Regarding the Amendment of Order No. V-362 “On the Approval of the Description of the Procedure for the Arrangement of the Internal Control of the Organisation, Performance, and Implementation of Inspections Conducted by the State Labour Inspectorate of the Republic of Lithuania” of the Chief State Labour Inspector of the Republic of Lithuania of 04 December 2015”.

- 1.3. ensuring that performance is assessed and planned in accordance with the aforesaid indicators.
2. In order to make more rational use the resources of the State Labour Inspectorate, ensure that the planning of the activities thereof is geared towards the strengthening of the prevention of undeclared work, which could be accomplished by establishing specific measures (the 5th key audit result).

To the State Labour Inspectorate

3. In order to increase the impact of control and to avoid potential instances of corruption and conflicts of private interest, update the risk-assessment system and conduct inspections in the most risk-prone economic entities (the 1st and 2nd key audit results).
4. In order to establish evidence-based management, assess the impact and effectiveness of control procedures:
 - 4.1. determine and regularly assess the indicator related to undeclared work, depicting the share of identified cases of undeclared work validated following the performance of inspection (the 3rd key audit result);
 - 4.2. when calculating the effectiveness of the control of undeclared work, establish an indicator which compares inspections that have identified an instance(s) of undeclared work to all inspections conducted in the area of undeclared work (the 3rd key audit result).
5. In order to obtain the data necessary for improving the control of undeclared work and the health and safety of employees, assess feedback received following the performance of an inspection (e.g., by using the free *inspect.ukmin.lt* feedback system) and use the acquired data for decision-making, as well as for improving performance (the 3rd key audit result).
6. For the purposes of conducting preventive activities in a purposeful manner, assess the usefulness of implemented measures, so that priority is given to the most effective ones (the 5th key audit result).

The measures and terms for the implementation of recommendations are provided on pages 31 -33 of “The Plan for the Implementation of Recommendations”.