

CROATIAN PARLIAMENT

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Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby adopt the following

DECISION ON THE PROMULGATION OF THE ACT ON SUPPRESSION OF UNDECLARED WORK

I hereby promulgate the Act on the Suppression of Undeclared Work, adopted by the Croatian Parliament at its session on 16 December 2022.

Class: 011-02/22-02/161

Reg. No.: 71-10-01/1-22-2

Zagreb, 20 December 2022

The President
of the Republic of Croatia
Zoran Milanović, m. p.

ACT ON SUPPRESSION OF UNDECLARED WORK

Subject Matter of the Act

Article 1

(1) This Act shall prescribe what is considered undeclared work, regulate measures to combat undeclared work, activities to encourage declaring of work, keeping records of inactive persons and liability for violations of the provisions of this Act.

(2) This Act shall also apply to a third-country national who does not have a legal stay in accordance with the regulation governing the conditions of entry, movement, stay and work of third-country nationals.

Compliance of the Act with the legal order of the European Union

Article 2

This Act shall transpose into Croatian law the following acts of the European Union:

Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 on minimum standards for sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30 June 2009).

– Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 implementing Directive 96/71/EC on the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System ("IMI Regulation") (Text with EEA relevance) (OJ L 159, 28 May 2014).

Definition of undeclared work

Article 3

(1) Undeclared work shall be defined in a narrow and broad sense.

(2) Undeclared work in the narrow sense is work that, given the nature and type of work and the authority of the employer, has the characteristic of an employment relationship, and is

not legally contracted or does not have a valid legal basis, or for which an appropriate registration for compulsory insurance in accordance with special regulations has not been established, and for the purposes of this Act includes the following forms of occurrence:

1. performing work without registration for compulsory pension insurance before the commencement of work, on the first day of commencement of work or to the appropriate working time, or

2. performing work without concluding an employment contract in written form or without a written confirmation of the concluded employment contract, or

3. performing work on the basis of other compulsory legal contracts concluded between the employer and a natural person when such work, given its nature and type and the authority of the employer, has the characteristics of the work for which the employment relationship shall be contracted, or

4. employing third-country nationals contrary to the provisions of the regulations governing the conditions of entry, movement, stay and work of third-country nationals.

(3) Undeclared work in a broad sense includes work that, according to its characteristics, represents the avoidance of obligations that the employer has in relation to the salary of workers, and for the purposes of this Act, includes the following forms of occurrence:

1. an employment relationship in which no increased salary is paid to the worker and no prescribed public expenditures are paid on the increased salary and from the increased salary, or

2. payment of a salary or part of a salary without calculation and payment of prescribed public expenditures.

(4) Undeclared work is prohibited.

Definitions

Article 4

(1) For the purposes of this Act, certain terms have the following meaning:

1. *a worker* shall mean a natural person determined by the general employment regulation

2. *an employer* shall mean a natural or legal person determined by the general employment regulation;

3. *a contracting entity* shall mean a natural person who is registered to perform an activity or a legal person who has concluded a contract with the work executor for the performance of work, in which the work executor performs that work, if that contract does not conceal any other legal work

4. *a work executor* shall mean a natural person who is registered to perform an activity or a legal person who has concluded a contract with the contracting entity for the performance of the work, who performs that work for the contracting entity, if that contract does not conceal any other legal work

5. *a self-employed person* shall mean a natural person who performs an independent activity and receives income from an independent activity that is taxed in accordance with the regulations governing the taxation of income and profit, or on this basis is compulsorily insured in accordance with the regulations governing compulsory insurance and a natural person who is also the sole member of the management board or the executive director of a company and who is not employed by that company and does not employ other workers

6. *a concealed employment relationship* shall mean the performance of work on the basis of other compulsory legal contracts concluded between the contracting entity and the self-employed person who is the work executor when such work, given its nature and type and the

authority of the employer, has the characteristics of the work for which the employment relationship is contracted

7. *a gross salary* shall mean the amount due to the worker for the work performed, which consists of the amount for the payment to the worker and public expenditures paid from the gross pay in accordance with the regulations

8. *a salary shall mean gross salary*

9. *a contractor* shall mean a service contracting entity who has concluded a subcontract with the subcontractor for the purpose of performing all or part of the work and services he or she has undertaken to perform in accordance with a previously concluded contract for another contracting entity, if that contract does not conceal any other legal work

10. *a subcontractor* shall mean a service provider who has concluded a contract with the contractor obliging him or her to perform all or part of the work or services, and is the employer of a worker who performs work for the purpose of fulfilling that contract, if that contract does not conceal any other legal work

11. *an inactive person* shall mean a person who is able or partially able to work, aged 15 to 65, who is not in employment relationship or who does not perform an independent activity, is not included in an education or training programme and is not actively seeking work

12. *a third country* shall mean a state that is not a Member State of the European Economic Area or the Swiss Confederation.

(2) The terms used in this Act which have a gender meaning apply equally to both the male and female gender.

Competence of the inspection bodies

Article 5

Supervision over the application of this Act shall be exercised by competent inspectors who are authorised under special regulations to supervise work and employment, and supervision over the legality, regularity and timeliness of calculations, registrations and payments of public expenditures shall be exercised by officials who are authorised under special regulations to perform tax supervision.

Presumption of the duration of the employment relationship

Article 6

When the competent inspector in the procedure of inspection supervision establishes the existence of undeclared work referred to in Article 3, paragraph 2 of this Act, it shall be considered that the worker who performed such work was continuously employed in full-time employment relationship with the employer for a period of six months preceding the day on which the supervision was performed and the fact of undeclared work was established, unless it is clear from the data available to the inspector in supervision that the previous duration of employment relationship was shorter or longer.

Procedure of the inspection

Article 7

(1) In the implementation of inspection supervision, the competent inspector shall, if he or she finds that the worker performed undeclared work for the employer, enter data on the worker in the record, the period during which the worker performed undeclared work in accordance with Article 6 of this Act and a description of the work performed by the worker.

(2) Within eight days from the date of determining the existence of undeclared work referred to in Article 3, paragraph 2, item 1 of this Act, the competent inspector shall issue a

decision ordering the employer to submit a registration for compulsory pension insurance starting from the date determined by the record as the commencement of work of the worker or which, in accordance with Article 6 of this Act, is the presumed date of commencement of work and to pay the amount of EUR 2650.00 for each undeclared worker in favour of the state budget of the Republic of Croatia, in accordance with the instruction on the manner of payment of budget revenues, compulsory contributions and revenues for financing other public needs.

(3) If, during the next six years from the first determination of the fact of undeclared work, undeclared work is re-established with the same employer during the following inspections, the competent inspector shall act in accordance with paragraph 2 of this Article, whereby the amount of the payment obligation shall be increased to EUR 6630.00 for each undeclared worker.

(4) Within three days from the date of delivery of the decision referred to in paragraphs 2 and 3 of this Article, the employer shall submit a registration for compulsory pension insurance and pay the amount referred to in paragraph 2 or paragraph 3 of this Article.

(5) If the fact of undeclared work is established in the same employer for the third time and every subsequent time within a period of six years from the first determination of the fact of undeclared work in accordance with Article 6 of this Act, the competent inspector shall, in addition to acting in accordance with paragraph 3 of this Article, prohibit the employer from performing activities in the supervised facility or premises by an oral decision in the record.

(6) The decision referred to in paragraph 5 of this Article shall be revoked within three days from the date of delivery of the proof to the competent inspector of the payment of the amount referred to in paragraph 3 of this Article, but not before the expiration of 30 days from the prohibition of performing the activity.

(7) The decision referred to in paragraph 5 of this Article shall be executed immediately by sealing business premises, facilities, devices and other equipment for work or in another appropriate manner, without issuing an executive decision.

(8) The employer to whom the oral decision referred to in paragraph 5 of this Article applies may, in written form, in accordance with a special regulation, request that the sealed premises be temporarily unsealed and, in the presence of an inspector, immediately exempt perishable foodstuffs and take other safety measures to prevent damage.

(9) An appeal against the decision referred to in paragraphs 2, 3 and 5 of this Article shall not be allowed, but an administrative dispute may be initiated.

(10) The executive decision referred to in paragraphs 2 and 3 of this Article shall be submitted to the competent body authorised to determine the right to pension insurance, to the competent body authorised to determine the right to health insurance and to the competent body authorised to calculate taxes and contributions for compulsory insurance according to the employer's registered office.

Procedure of the competent bodies

Article 8

(1) If the employer fails to file a registration for compulsory pension insurance within the period referred to in Article 7, paragraph 4 of this Act, the competent body authorised to determine the right to pension insurance shall, on the basis of the submitted executive decision referred to in Article 7, paragraphs 2 and 3 of this Act, ex officio, issue a decision on the recognition of the status of the insured, starting from the day specified as the commencement of work in the said decision.

(2) An appeal against the decision referred to in paragraph 1 of this Article shall not delay the execution of the decision.

(3) The competent body authorised to determine the right to pension insurance shall not issue the decision referred to in paragraph 1 of this Article or shall not act on the submitted registration submitted by the employer in accordance with Article 7, paragraph 4 of this Act for the period in which the worker is already registered for compulsory insurance.

(4) A registration for extended insurance under a special regulation shall not be considered a registration for compulsory insurance within the meaning of paragraph 3 of this Article.

Registration of third-country nationals

Article 9

For a third-country national for whom undeclared work has been determined in accordance with Article 3, paragraph 2, item 4 of this Act, when establishing the registration pursuant to Article 7, paragraph 2 and Article 8, paragraph 1 of this Act, compulsory pension insurance shall cease on the day for which the existence of undeclared work was determined during the inspection with the employer.

Obligations of the employer

Article 10

(1) The employer shall, within eight days from the date of execution of the decision referred to in Article 7, paragraphs 2 and 3 of this Act, pay a full-time salary in the amount of monthly gross median salary in the Republic of Croatia and a contribution for compulsory insurances to be paid on salary for each month of the assumed period of work referred to in Article 6 of this Act.

(2) The employer's obligation referred to in paragraph 1 of this Article shall also exist in the case referred to in Article 8, paragraph 3 of this Act.

(3) The employer shall be obliged to pay the amount referred to in paragraph 1 of this Article in such a way that the public expenditures paid out of the salary and to the salary are calculated and paid to the payment accounts in accordance with special regulations governing the collection of public expenditures and submit a report on the above in accordance with the regulations related to the calculation and collection of taxes and contributions, and the remaining part of this amount shall be paid to the transaction account of the worker.

(4) If the employer fails to fulfil the obligation referred to in paragraphs 1 and 3 of this Article, the body authorised to calculate public expenditures shall determine by a decision the total amount of the employer's obligation referred to in paragraph 1 of this Article on the basis of the submitted decision referred to in Article 7, paragraphs 2 and 3 of this Act.

(5) The body authorised to calculate public expenditures shall, in accordance with the regulations related to the calculation and collection of contributions, notify the Central Registry of Insured Persons and the body competent for determining the right to pension insurance of the established and paid obligations on the basis of the salary, based on the decision referred to in paragraph 4 of this Article.

(6) The amount of the obligation referred to in paragraph 1 of this Article shall be determined on the basis of the data of the Croatian Bureau of Statistics, which were the last officially published at the time of the determination of undeclared work referred to in Article 7 of this Act.

(7) An appeal filed against the decision referred to in paragraph 4 of this Article shall not delay the execution of the decision.

(8) The decision referred to in paragraph 4 of this Article shall be an enforceable document.

(9) The employer may not reduce his or her obligation to the undeclared worker by the amount he or she has already paid him or her, unless he or she has been paid in the manner prescribed in paragraph 3 of this Article.

Procedure in case of the concealed employment relationship

Article 11

If during the inspection the competent inspector determines the existence of a contractual relationship between the contracting entity and the self-employed person who is the work executor, and there are circumstances that indicate that there is a concealed employment relationship, he or she will inform the Ministry of Finance, the Tax Administration.

Publishing of violators

Article 12

(1) The competent inspector shall inform the Ministry competent for labour (hereinafter: the Ministry) of the conducted inspection supervision and determination of the existence of undeclared work and the measures taken.

(2) The Ministry shall establish and keep a list of employers whose record referred to in Article 7, paragraph 1 of this Act determined the existence of undeclared work during inspection supervision.

(3) The Ministry shall publish the list referred to in paragraph 2 of this Article on its website.

(4) Publishing of information about the employer within the meaning of paragraph 1 of this Article shall not be considered a disclosure of the inspection secret.

(5) The list of employers must clearly indicate that they are employers for whom the existence of undeclared work or a measure imposed on the basis of the authority of the competent inspection body has been established.

(6) The employer shall be removed from the list referred to in paragraph 2 of this Article after the expiration of a period of six years from the date on which the record determined the existence of undeclared work, or earlier if the fact of the existence of undeclared work determined by the record referred to in Article 7, paragraph 1 of this Act is successfully challenged in the special proceedings.

(7) The content, manner of entry and deadlines for publishing the data from the list referred to in paragraph 2 of this Article shall be prescribed by an ordinance of the Minister competent for labour.

Monitoring and records

Article 13

In order to facilitate the detection of violators and the suppression of certain forms of undeclared work, unified electronic labour records and records of inactive persons shall be kept.

Unified electronic labour records

Article 14

(1) Unified electronic labour records represent an information system in which data on workers employed by employers performing an activity from the list of activities for which it is mandatory to keep electronic labour records are stored.

(2) In addition to the data referred to in paragraph 1 of this Article, the unified electronic labour records shall also store data on self-employed persons performing work through digital labour platforms and other persons performing work through digital labour platforms in accordance with the general employment regulation (hereinafter: other persons).

(3) The data referred to in paragraph 1 of this Article shall be data on workers and working time.

(4) The data referred to in paragraph 2 of this Article shall be data on self-employed persons and other persons and the time during which they perform their work.

(5) The entities obliged to submit the data referred to in paragraphs 1 and 2 of this Article to the unified electronic labour records referred to in paragraphs 3 and 4 of this Article shall be digital labour platforms through which work is performed by self-employed persons and other persons and employers (hereinafter: entities obliged to submit data).

(6) Entities obliged to submit data shall:

1. keep the data referred to in paragraphs 1 and 2 of this Article using electronic devices, using appropriate software solutions that enable the connection and exchange of data with the unified electronic labour records in real time

2. enable an internet connection to connect and exchange data with the unified electronic labour records

3. obtain a digital certificate for electronic signature for the person authorised to keep the data referred to in paragraph 2 of this Article with the entities obliged to submit data.

(7) Unified electronic labour records in electronic form shall be kept by the Ministry.

(8) The Minister competent for labour shall prescribe the content of the data, the list of activities referred to in paragraph 1 of this Article, the manner of entering, exchanging and storing data and the manner of accessing data from the Unified Electronic Labour Records.

Records of inactive persons

Article 15

(1) The records of inactive persons in electronic form shall be kept by the Croatian Employment Service (hereinafter: the Employment Service) on the basis of the data from the records of the competent bodies of public authority set out in Article 16 of this Act.

(2) Croatian citizens, citizens of another Member State of the European Union, contracting states of the European Economic Area and the Swiss Confederation shall be kept in the records of inactive persons if they have a temporary or permanent stay in the territory of the Republic of Croatia and of third-country nationals with an approved temporary stay, long-term stay or permanent stay for whom the need for monitoring has arisen within the meaning of the regulations governing the assignment of a personal identification number.

Submission of data to the records of inactive persons

Article 16

(1) For the purposes of keeping the records referred to in Article 15 of this Act, the Employment Service shall be provided with the data from its official records by the Ministry competent for finance, the Ministry competent for science and higher education, the Ministry competent for agriculture, the Ministry competent for internal affairs, the Ministry competent for administrative and judicial affairs and the bodies competent for pension insurance and compulsory health insurance.

(2) The competent bodies referred to in paragraph 1 of this Article shall regularly submit data to the Employment Service.

(3) The Employment Service may, in addition to the bodies referred to in paragraph 1 of this Article, request data from registers and records and from other bodies of public authority.

(4) The Employment Service shall exchange data from the records of inactive persons with the competent inspection bodies, the competent tax body and the bodies competent for pension insurance and compulsory health insurance.

(5) In addition to the bodies referred to in paragraph 4 of this Article, other bodies of public authority may, in accordance with their authorities and competences, access data from the records of inactive persons on the basis of an agreement concluded with the Employment Service.

(6) The submission of data by the competent bodies referred to in paragraph 1 of this Article shall not be considered a violation of official or tax secret in accordance with a special regulation.

(7) The content and manner of submitting the data submitted by the bodies referred to in paragraph 1 of this Article shall be prescribed by an ordinance of the Minister competent for labour.

Deletion from the records

Article 17

The Employment Service shall cease to keep a person in the records of inactive persons if he or she is no longer an inactive person within the meaning of this Act or if, due to a change of circumstances, the characteristics referred to in Article 15, paragraph 2 of this Act are no longer fulfilled.

Liability in the subcontracting chain

Article 18

(1) The contractor shall be jointly and severally liable for the obligations that his or her subcontractor, as an employer, has towards his or her worker, for claims regarding due and unpaid salary for work performed or services provided, to which the worker is entitled.

(2) A worker to whom the subcontractor as an employer has not paid the salary for the work performed or services provided or part of the salary for the work performed or services provided referred to in paragraph 1 of this Article on the due date may request payment from the contractor within three months after the expiration of the period in which the employer, in accordance with the general regulation governing employment relationships, is obliged to submit a calculation of the salary he or she is obliged to pay him or her, and which he or she has not submitted.

(3) The contractor shall be liable to the worker up to the amount of the agreed salary for the work performed or services provided in order to fulfil the contract concluded between the contractor and his or her subcontractor.

(4) A contractor who has paid a salary to a subcontractor's worker on the basis of the responsibilities established in accordance with this Article shall be entitled to demand from the subcontractor the full amount paid instead of the subcontractor.

Exemption from liability

Article 19

The contractor shall be exempt from the liability referred to in Article 18 of this Act if he or she has taken appropriate actions to request and obtain from his or her subcontractor before the commencement or during the performance of work or the provision of services:

1. a list of all workers employed in the performance of service contract between the contractor and the subcontractor
2. for each individual worker referred to in item 1 of this Article: worker identification data, date of commencement and completion of work and services
3. during the duration of the contract between the contractor and the subcontractor, for each individual worker, at least once a month, proof of payment of salary and contributions for compulsory insurance paid on salary for the previous month.

Publishing of employers who are not in violation

Article 20

(1) When the competent inspection body determines in the procedure that the employer has not violated the regulations from the field of work registration and salary payment, it shall, if the employer consents to it, inform the Ministry thereof for the purpose of publishing on the list kept on the Ministry's website.

(2) Publishing of data on the employer within the meaning of paragraph 1 of this Article shall not be considered a disclosure of the inspection secret.

(3) Employer data shall be removed from the list referred to in paragraph 1 of this Article if the employer himself or herself so requests and if the competent inspection body submits a notice within the meaning of Article 12, paragraph 1 of this Act.

(4) The content, manner of entry and deadlines for publishing the data on the website referred to in paragraph 1 of this Article shall be prescribed by an ordinance of the Minister competent for labour.

PENAL PROVISIONS

Article 21

(1) A fine ranging from EUR 8090.00 to EUR 13,270.00 shall be imposed on an employer for a violation if the employer does not keep data on workers and working time using electronic devices, using appropriate software solutions that enable the connection and exchange of data with the unified electronic labour records in real time (Article 14, paragraph 6, item 1).

(2) A fine ranging from EUR 930.00 to EUR 1330.00 for the violation referred to in paragraph 1 of this Article shall be imposed on a natural person who is a sole proprietor and a person who performs another independent activity when he or she has committed the violation in connection with the performance of his or her sole proprietorship or independent activity.

(3) A fine ranging from EUR 920.00 to EUR 1320.00 for the violation referred to in paragraph 1 of this Article shall be imposed on the employer who is a natural person and the responsible person in the legal person of the employer.

(4) A fine ranging from EUR 8090.00 to EUR 13,270.00 shall be imposed for a violation of a digital labour platform as a legal person if it does not keep data on self-employed persons and other persons and the time in which they perform their work using electronic devices, using appropriate software solutions that enable the connection and exchange of data with the unified electronic labour records in real time (Article 14, paragraph 6, item 1).

(5) If the violation referred to in paragraph 1 of this Article is committed in relation to a minor, the amount of the fine shall be doubled.

TRANSITIONAL AND FINAL PROVISIONS

Article 22

(1) The Minister competent for labour shall, within six months from the entry into force of this Act, adopt the ordinances referred to in Article 12, paragraph 7 and Article 20, paragraph 4 of this Act.

(2) The Minister competent for labour shall, within six months from the entry into force of this Act, adopt the ordinances referred to in Article 14, paragraph 8 and Article 16, paragraph 7 of this Act.

Article 23

Inspection procedures commenced before the entry into force of this Act pursuant to Article 171 of the Pension Insurance Act (»Official Journal« No. 157/13, 151/14, 33/15, 93/15, 120/16, 18/18 – the Decision of the Constitutional Court of the Republic of Croatia, 62/18, 115/18, 102/19, 84/21 and 119/22) shall be completed pursuant to the provisions of that Act.

Article 24

This Act shall be published in the »Official Journal« and shall enter into force on 1 January 2023.

Class: 022-02/22-01/152

Zagreb, 16 December 2022

CROATIAN PARLIAMENT

The President
of the Croatian Parliament
Gordan Jandroković, m. p.