

Global Workplace Law & Policy

Informal Employment, New Forms of Work and Enforcement of Labour Rights

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In cooperation with the **Delegation of the Emilia Romagna Region to the European Union**, the **Marco Biagi Foundation** (University of Modena) organized a conference on “Employment and Jobs beyond 2020: Challenges and Perspectives for the European Union” in Brussels on 10 October 2019. In my presentation, I was invited to focus on “Informal employment”.

The informal employment question is, first of all, a major challenge for economies and labour markets throughout the world. More than 60 per cent of the world’s employed population are reported to be in the ‘informal economy’ (ILO Press release, 30 April 2018, www.ilo.org). This global problem needs urgent attention, both outside as within Europe.

The question of informality is complex and covers a wide variety of phenomena. Informal employment is often subject of analysis in policy, labour market and economic debate. However, a labour law approach towards informality gives an additional and useful perspective. It shows that informality on the labour market is a governance issue that is not only concerned with enforcement of laws but also with the design of labour law and, broader, social protection systems. A central finding in this context, is that an important link exists with the broader new forms of work debate. Informal work and new forms of work are both connected with a broader reflection and the need of defining or redefining labour law in light of the changing world of work.

Defining informal employment

Let us first look at the concept of ‘informal employment’. The idea of ‘informality’ has evolved over time. In its **Resolution concerning decent work and the informal economy**, adopted by the ILO in 2002, the “term ‘informal economy’ is preferred over the concept ‘informal sector’”. This is because the workers and enterprises in question do not fall within any given sector of economic activity. On the contrary, informal work appears and cuts across many different sectors. In that sense, it is better to see informal employment as **a job-based concept**, “defined in terms of the employment relationship and protections associated with the job of the worker.” (ILO, *Women and men in the informal economy: A statistical picture*, Third Edition, 2018, p.7). This also means that there may be work with informal characteristics in the formal sector or within the context of a formal enterprise.

The ILO adopted in 2015 the **Transition from the Informal to the Formal Economy Recommendation** (No. 204), where the term informal economy “refers to all economic activities

by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements (section 2.(a)). A recent study, from both the ILO and the OECD, defines “informal employment” as working arrangements that are *de facto* or *de jure* not subject to national labour legislation, income taxation or entitlement to social protection or certain other employment benefits (advance notice of dismissal, severance pay, paid annual or sick leave, etc.)” (ILO/OECD, *Tackling Vulnerability in the Informal Economy*, Development Centre Studies, OECD Publishing, Paris, 2019, <https://doi.org/10.1787/939b7bcd-en>, p.26.) This report also indicates that many informal worker are ‘own account’ workers (45%), although another and important part can be associated with the more regular status of employees (36%). A large group (16%) concerns family workers.

Informal employment as a global problem

It is clear that informal work is a major and **global problem**. The ratio of informal employment is much higher in emerging and developing countries than in developed countries. The share of informal work goes from about 18% of total employment in developed countries to 67% in emerging countries, to almost 90% in developing countries. (OECD/ILO (2019), see above)

Informal work is clearly not only a problem globally. It is also a **local problem**. Local context and circumstances play an important role. The occurrence of informal employment in developed countries, such as European economies, may show characteristics of the forms of informal work in the rest of the world, such as agricultural work or household work. But informal work also, fully or partly, **occurs in formal settings** and in many structured and strongly regulated branches of economic activity. According to both the ILO and the OECD, “the substantial share of informal employment in large formal enterprises may result from lack of recognition of the employment relationship or from contracts that provide no social protection and other benefits.” (OECD/ILO, 2019, p.38)

An issue of enforcement

A 2018 IMF Working Paper, the “**shadow economy**” is described. (L. Medina and F. Schneider, *Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?*, WP/18/17, 2018).

The ‘shadow economy’ is conceptually different and somewhat broader than the informal economy. For example, the shadow economy also includes illegal activities, while this is not covered by the informal economy concept. But there is clearly a strong association. According to IMF Working Paper, “the shadow economy is known by different names, such as the hidden economy, gray economy, black economy or lack economy, cash economy or informal economy.” (p.4) The analysis also makes clear that there is a strong **relationship between informal employment and the enforcement question** of labour and social laws. In the ‘shadow economy’, it is shown that reasons to stay under the radar of formality can occur because of different avoidance strategies: the avoidance of taxes, social security contributions, legal standards (such as minimum wages, maximum hours, safety or health standards), or to avoid complying with administrative procedures.

Opportunistic behaviour is obviously connected with informal employment. This is why literature has been focusing on **economic actor** approaches, but also on social actor approaches. The rational economic actor approach explains participation in the informal economy as a pay-off (the benefits

of informal work are weighed against the costs or risks of getting caught or punished). This analysis is complemented with a **social actor approach** which relates to tax morale and motivation to pay taxes. This may be connected with various personal and contextual circumstances (C. C. Williams and A. Kayaoglu. 2016. Tackling the Informal Economy in the European Union: A Social Actor Approach. *UTMS Journal of Economics* 7(2): p.135 /133–147).

The link with new forms of work

Seen in a labour law perspective, the relationship between informal employment and the question of ‘new forms of work’, including non-standard forms of employment, becomes apparent. These phenomena share a similar discourse and a comparable pattern of analysis. Workers in various new forms of work, deviating from the traditional standard of employment, suffer from lack of protection. Overall, in these cases, the application of labour legislation or social benefits is problematic.

This comes close to how the ILO’s **Resolution concerning decent work and the informal economy**, adopted in 2002 defines the issue: “In many countries, both developing and industrialized, there are linkages between changes in the organization of work and the growth of the informal economy. Workers and economic units are increasingly engaged in flexible work arrangements, including outsourcing and subcontracting; some are found at the periphery of the core enterprise or at the lowest end of the production chain, and have decent work deficits.”

Not only are **non-standard forms of work more affected** by informality than standard forms of work. (ILO, Informality and non-standard forms of employment, Prepared for the G20 Employment Working Group meeting 20-22 February 2018, Buenos Aires). Sometimes, these work forms show a degree of overlap. Non-standard work arrangements themselves include a wide range of variations, that go from regular employment contracts to forms of work outside normal working hours (e.g. shifts, weekends, part-time) or normal workplaces (e.g. home-based or outwork). This can also be associated with informal work. (Danielle Venn, Paper for the WIEGO meeting on “Measuring Informal Employment in Developed Countries” 31 October-1 November 2008, Harvard University, September, 2009, p.2) <https://www.wiego.org/publications/measuring-informal-employment-oecd-countries> Informal work is strongly related to precarious work and ‘informal conditions’ of work (Shelley Marshall, RMIT University, *IJCLLIR* 2018 (Vol.34/3)).

Governance of labour law

It is clear that informal employment is a governance issue. It is also a task for labour law. Labour law modernization is on the agenda since a long time. This is due to changing circumstances and the rapid evolutions in the world of work. Beyond standard forms of work, we have received flexible and non-standard forms of work, and later came more ‘new forms of work’. Informal work seems to arise at far end of this continuum, going from the standard to the outer limits of regulation. Very often labour laws have not been applied to new forms of work due to the lack of ‘fit’ between these new types of employment and the traditional rules of labour law that were designed for standard forms of employment. This is something to be considered when designing policies for informal work.

In terms of policy, strategies such as reinforcing labour inspectorates and enforcement strategies and increasing information are certainly advisable. But also the design of labour law is an issue and

to secure that employment regulations can be applied in situations where, otherwise, the rules would not fit the new realities. This is clearly demonstrated in the gig economy, where classical concepts of labour law, such as the worker notion, are challenged. Labour law thus needs to adapt and it can be doubted whether a one-size-fits-all approach would work.

In order to close the gap between formality and informality, ILO Recommendation 204 suggests broadening protection floors. A **social protection for all** strategy forms also part of the EU' social policy programmes and the Social Pillar strategy. A broad floor of rights remains thus an important policy goal. ILO Recommendation 204, however, recommends 'diversity with tailored approaches and the establishment of an 'appropriate legislative and regulatory framework'. In Europe, experiences may be used from different sectoral, regional or country perspectives. A comparative legal approach would be useful. Based on the EU's Social Pillar and member state experience with the new forms of work debate, informal employment may receive multiple governance ideas from the growing experience of contemporary labour law debate.

Bibliography/Reading suggestions:

- ILO, Employment Policy Department, *The informal economy and decent work: a policy resource guide supporting transitions to formality*, ILO, Geneva, 2013.
- ILO, *Women and men in the informal economy: A statistical picture*, Third Edition, 2018.
- OECD/ILO (2019), *Tackling Vulnerability in the Informal Economy*, Development Centre Studies, OECD Publishing, Paris, <https://doi.org/10.1787/939b7bcd-en>

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