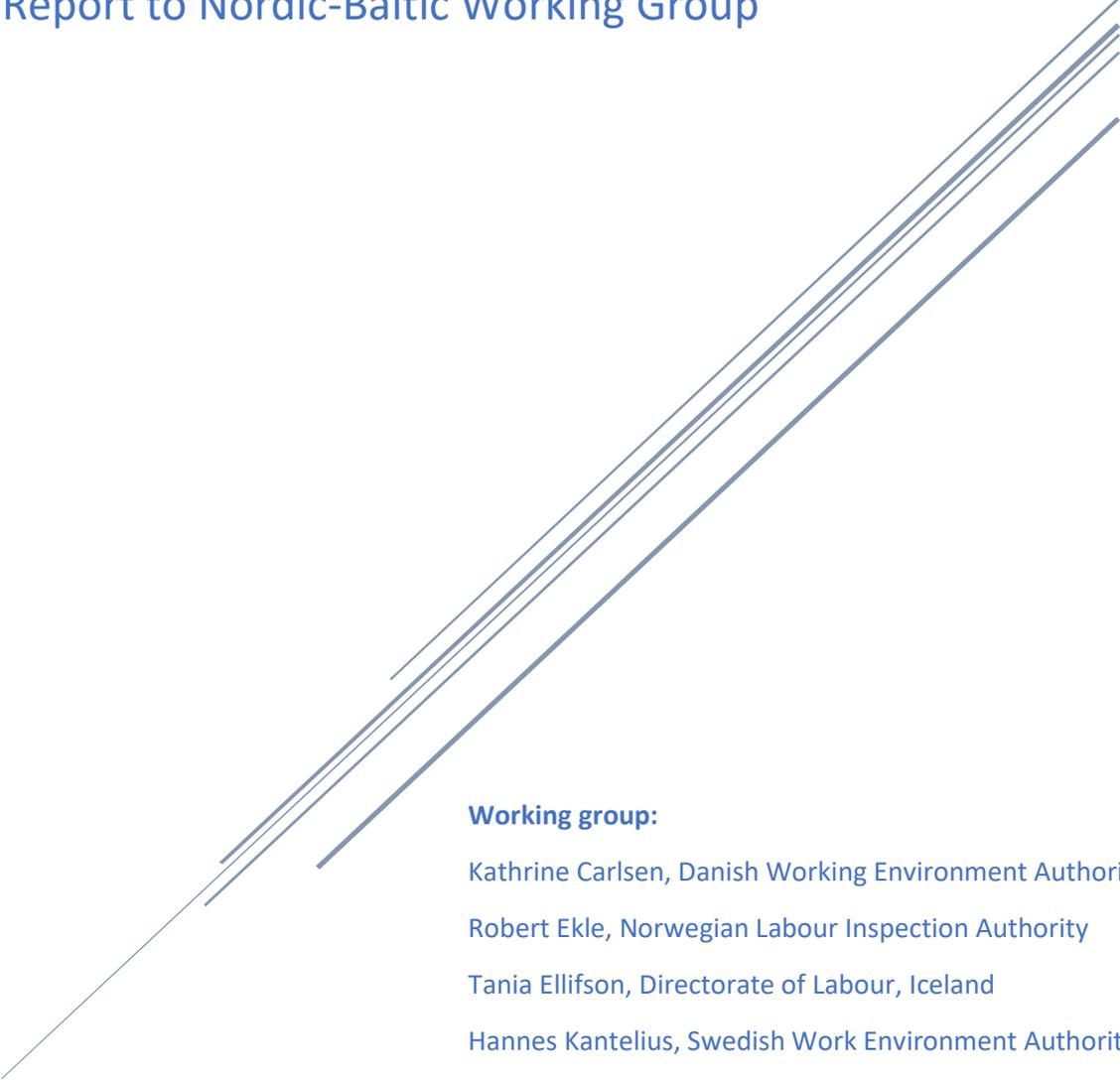


COMBATING UNDECLARED WORK; RECOMMENDATIONS, PROCEDURES AND CHALLENGES

Report to Nordic-Baltic Working Group



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Background and aim

In this project, the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), Estonia, and Latvia have worked together with the aim to share our knowledge and experiences on how to measure risks and effects when combating undeclared work (UDW). The work group is part of the larger project UDW Nordic-Baltic initiative and is referred to as working group knowledge – effect and analysis (WG Knowledge). This continuation project builds on the previous Nordic UDW-project, where a process was developed which measures each country's conditions for facilitating cross-agency cooperation to combat UDW¹. The Corona pandemic affected the whole of the project, and the initial aims of the work had to be adjusted. The aims for WG Knowledge is to:

- Test the produced process indicator which measures each country's conditions for facilitating cross-agency cooperation to combat UDW.
- Describe how they work with risk and effect indicators.
- Provide recommendations on how to facilitate cross-agency cooperation.

The work process

WG Knowledge started its work in the spring of 2019 with a start-up video meeting held on April 25. Two physical work meetings was planned, one in Stockholm and one in Copenhagen. The meeting in Stockholm was held on October 1–2 in 2019, due to the Corona pandemic the Copenhagen meeting planned for late April in 2020 had to be cancelled. Instead, video meetings had to be used to finalize the project.

Each country has prepared a country report building on a common structure and headings which are enclosed as appendixes. The country reports commence with testing the process indicator, and in later sections elaborates on the national contexts and conditions for combating UDW based on these headings:

- Currently used risk indicators and data for planning cross-agency inspections
- Currently used indicators and data for evaluating inspections
- Identified methods and success stories of good practices for combatting undeclared work
- Identified bottlenecks for cross agency and/or cross-border cooperation and/or inspections

In the next section, the process indicator is briefly described as a background to the following sections and to the country reports. The country results from testing the process indicator is then presented. Based on the country reports, some country specific success stories are described. Lastly some bottlenecks and recommendations are presented.

Recapitulating the process indicator

In this section, we do a brief recapitulation of the process indicator, which resulted from the earlier project. The process indicator can be helpful to measure or map the conditions and possibilities for cross-agency cooperation. With this indicator, key issues that might withhold or hinder cross-agency cooperation can be identified.

An important reason why cross-agency cooperation is efficient in tackling UDW is the concept of tactical sanctioning. The term 'sanction' encompasses all the available sanctions and reactions all

¹ See report from previous project: *Process indicator for combating undeclared work. Report to Nordic Working Group*. May 2018.

relevant agencies are permitted to impose, e.g. administrative fines, injunctions, worksite closures, penalty taxes or sentences. Tactical sanctioning is therefore crucial, as it describes the ability to apply all applicable laws and regulations against an offender engaged in UDW or other unlawful activity. To achieve tactical sanctioning against offenders engaged in UDW, the cross-agency teams need to have procedures in place on how to combine the sanctions available within each agency’s mandate.

The process indicator consists of items that each reflect conditions that are considered important for achieving the most efficient cross-agency cooperation as possible to combat UDW. In order to sort these prerequisites, we have identified three over-arching categories of conditions. These categories are (1) Governmental framework conditions, (2) Knowledge and intelligence, and (3) Operative procedure and sanctioning. Each of these categories are measured or mapped with several items. In total the process indicator consists of 15 items. The items are presented in a matrix in Table 1 below, and the rest of this section describes the categories in some detail.

Table 1. The matrix with process indicator items.

Category	Item #	Item	Score 0 = 'No' 1 = 'To some degree' 2 = 'Yes'	Score elaboration or further comment
Governmental framework conditions	1	Is combating undeclared work a stated goal for the government?		
	2	Is there an overarching governmental strategy on combating undeclared work?		
	3	Are there joint action plans for cross-agency inspections?		
	4	Are there joint cross-agency assignments from the ministries?		
	5	Is there a regular joint report on activities and effects from cross-agency efforts to combat undeclared work?		
	6	Are there national indicators for measuring undeclared work?		
	7	Is the legal framework adapted to combating undeclared work (i.e. sanctions)?		
Knowledge and intelligence	8	Do the existing legislations enable agencies to share and combine information?		
	9	Do agencies share and analyse strategic information?		
	10	Are there dedicated cross-agency staff for working with knowledge and intelligence?		
	11	Are there joint IT systems to facilitate knowledge and intelligence?		
Operative procedures and sanctioning	12	Are there co-located cross-agency inspection teams working together on a daily basis?		
	13	Are there cross-agency inspection teams which are not co-located but working together on a regular basis?		
	14	Are there cross-agency procedures on how to coordinate efficient sanctioning (“tactical sanctioning”)?		
	15	Are the roles and jurisdiction of each member in the cross-agency teams clearly defined?		

Category 1: Governmental framework conditions

The first category “Governmental framework conditions” contains seven items related to the governmental and legal level. For cross-agency cooperation to work efficiently, it is fundamental that the separate agencies are governed by the same goals and performance requirements to achieve efficient joint and coordinated actions. This requires top level political engagement and awareness of the issue of UDW in the government and the ministries governing the most relevant agencies. It also requires an overall strategy with common goals for the joint effort, including the introduction of shared cross-cutting strategic targets or key performance indicators (KPIs) across agencies, a joint-action plan to set more operationalized goals for both intended effects and measures, and common cross-agency assignments for further development towards efficient cooperation from the ministries. In order to be able to follow up and adjust the joint actions towards more efficient effects/outcomes, a regular common report from the accomplished joint activities is needed, describing both performance and effects in accordance with the goals set in governing documents. To be able to monitor development, there should also be national indicators measuring, or at least estimating, the volume of UDW on a regular basis and/or the number of employment relationships moved from the undeclared into the declared economy.

Finally, the legal framework should be adapted to the purpose of combating UDW through joint efforts. This entails the cooperating agencies being able to view their separate sanctions as a common toolbox which can be used in the most efficient manner possible in each case, i.e. by so-called tactical sanctioning as mentioned above.

Category 2: Knowledge and intelligence

The second category concerns knowledge and intelligence, which is important for finding and targeting offenders who constitute the largest threats regarding UDW. This is important to maximize the effects of the efforts to combat the phenomenon. Efficient action against UDW thus requires an intelligence-based approach. It also requires knowledge on how to target the individual offenders with the appropriate sanctions. In order to achieve adequate knowledge to this end, cooperating agencies must be able to share and combine the strategic and tactical information in their possession, such as taxation data, police intelligence or data from HSE inspections. Dedicated staff must be available for this task. It is also of vital importance that IT systems facilitate data collection and analysis.

Category 3: Procedures and sanctioning

The third category concerns operative procedures and sanctioning. There should be cross-agency inspection teams, preferably co-located in the same area for an optimal cooperative climate. If this is not possible, cross-agency inspection teams working together on a regular basis is the next best thing.

To achieve efficient and tactical sanctioning against targeted offenders, the cross-agency teams need to have procedures in place on how to combine the sanctions available in each agency. This is crucial, as the main gain of cross-agency cooperation is the ability to use a wider range of sanctioning tools than would otherwise be available to each agency operating on its own.

Testing the process indicator

One of the aims of this project was to test the process indicator that was developed during a previous project. In the country reports, each country presents its own scoring and elaborates on the results. Table 2 below shows how each country has scored itself.

Table 2. Testing the process indicator.

Country	Category score			Total score
	<i>Governmental framework conditions</i>	<i>Knowledge and intelligence</i>	<i>Operative procedures and sanctioning</i>	
Denmark	11 (14)	4 (8)	5 (8)	20 (30)
Estonia	7 (14)	4 (8)	2 (8)	13 (30)
Finland	11 (14)	6 (8)	3 (8)	20 (30)
Iceland	10 (14)	7 (8)	5 (8)	23 (30)
Norway	12 (14)	4 (8)	6 (8)	22 (30)
Sweden	10 (14)	5 (8)	5 (8)	20 (30)

As can be seen, some countries score more similar than other. However, it must be stressed that the scores of the process indicator in the country reports cannot and must not be viewed as an absolute truth. The scores could vary depending on which authority is doing the scoring, if the scoring is done in cooperation between staff from different levels within the organisation, in cooperation between different agencies, etc.

With this limitation in mind, the results do give an indication of how far each country have come in facilitating cross-agency cooperation in each category. Based on the elaborated scores in the country reports, it is our conclusion that the process indicator may serve as a useful tool. An intra-agency and inter-agency discussion on how to maximise the work against UDW, to identify bottlenecks or how to facilitate cross-agency cooperation can be based on the process indicator.

Conclusions and recommendations

The main result from this project, is that the process indicator may serve as a useful tool to measure or map the conditions and possibilities for cross-agency cooperation. On the very least, the use of the process indicator could be a starting point for cross-agency discussions on how to facilitate cooperation and maximise sanctioning impacts.

In the rest of this section, we use the categories of the process indicator to suggest some recommendations that could facilitate cross-agency cooperation or in other ways help to tackle UDW. The recommendations build upon some of the success stories and bottlenecks that has been identified in the country reports.

Recommendations regarding the governmental framework conditions

Recommendation: Cross-agency cooperation requires both top-down and bottom-up action to create the necessary push and pull factors that leads to effective cooperation.

Effective cross-agency cooperation needs to be driven from two directions, top-down and bottom-up. Top-down refers to the policy level or the political level. Policy makers must provide clear and concrete policies and goals which steer towards cross-agency cooperation and allocate the appropriate resources when and where they are needed. The cooperating agencies need to have a joint goal or

assignment to work towards and to unify the different agencies and their respective organisational cultures. It is not unusual for policy makers to make declarations or to have visions for sound competition and healthy working environment, these have to be made concrete through policy and decision making.

Bottom-up refers to the practitioners working in the agencies that are trying to tackle UDW. Unless support is provided from the policy level, the practitioners must try to find their own ways for cooperation. This process is painstakingly slow and relies upon building personal networks and contacts. It makes the cooperation both vulnerable to changes in staff, and it may also be in the legal grey area. The practitioners, or grass root staff, also needs to be acknowledged and supported in their commitment to tackle UDW.

Both the top-down and bottom-up work is necessary for creating an effective cross-agency cooperation. The policy level needs to get feed-back and knowledge from the practitioners, or the grass root-level, in order to formulate policy that give the needed push or pull for effective cross-agency cooperation.

A clear and firm stance from the governmental and policy making level on that combatting UDW is a stated goal, send signals to the UDW offenders and to the labour market. This could in itself be one part of the preventive measures which may help to combat UDW.

Recommendations regarding knowledge and intelligence

Recommendation: Sharing and combining of information should be a stated goal for cross-agency cooperation where the legal procedures and work processes require to be adapted accordingly.

Sharing and combining information (e.g. register data) in a structured way is key for cross-agency cooperation. It also is a bottleneck shared by most of the participating countries. The lack of information may be hindering cross-agency cooperation and/or cross border cooperation. Sharing data and information must not only be legal, within reasonable forms, but also be part of the working culture of all participating agencies. Different agencies have different traditions, attitudes, organisation/working culture etc. towards sharing information.

This could be solved by giving participating inspectors access to the cooperating agencies' data, albeit limited access. For example, by providing labour inspectors read-only access the tax authority's registers, labour inspectors can quickly utilize this information when the information is needed.

If joint databases or registries are being shared, the structure and definitions of the data needs to be understood by all participating agencies. It is vital to understand what the data contains and how it may be used both in more general risk assessments and when working with individual cases. This in turn calls for learning about the cooperating agencies' procedures, jurisdiction, competences, etc..

When information is shared to other agencies, it is imperative that feedback is provided regarding the usefulness of the information. Through the feedback the cooperating agencies may learn more about each other's information needs and make sure the proper information is shared.

Cross-border cooperation and exchange of information has been identified as one powerful way to combat UDW. Estonia and Finland have been cooperating since 2014. Cooperation between Estonian Labour Inspectorate and Regional Labour Inspectorate for Southern Finland has achieved good practices within the bilateral Cooperation agreement between the two agencies. Thanks to the cooperation, there is better understanding of both agencies' competence, tasks, and key persons. The

Estonian Labour Inspectorate has also signed an agreement with the Norwegian Labour Inspection Authority concerning cooperation and mutual exchange of information.

Recommendations regarding operative procedures and sanctioning

Recommendations: UDW inspections should be performed by designated cross-agency teams that possess the proper knowledge and training on both the UDW-phenomenon and on each other's jurisdictions, working methods, etc. so each authority can apply its own regulations.

In the previous project, the concept of tactical sanctioning was introduced as a success factor. However, this is difficult to achieve until the cross-agency cooperation has been developed in all the ways described so far. Instead, stressing the known UDW offenders may be the most effective way to disrupt their activities. When conducting joint inspections, all participating agencies should report the deficiencies found and enforce the proper sanctions. However, this presupposes that the authorities have knowledge of each other's assignments, working methods, regulations, sanctions etc.. If not, there is a risk that one authority's actions will complicate or make another authority's sanctioning more difficult or even impossible.

Effective co-operation between authorities therefore presupposes that there is consensus on the goal of the cooperation, and that joint methods and procedures have been developed that also provide scope for each authority's ability to carry out controls. Exchange of experience and also learning about each other's authorities are crucial to achieving this form of cooperation. The most effective way to achieve this is to have designated cross-agency teams that work together on a regular basis.

To effectively tackle UDW, the entire legal chain from control to prosecution needs to be dimensioned to handle complex and difficult-to-investigate cases. Joint government inspections are important, but just as important is that the results from the inspections can be handled quickly, efficiently and legally.

Final remarks

The UDW-phenomenon is costly in many ways, both for the affected countries and companies, but also for the humans who are victims of exploitation and trafficking. Tackling UDW is also costly and can easily drain the agencies' resources and manpower. It would therefore be preferable if UDW can be prevented and stopped as early as possible. Preventive work can be done in many ways, shapes and forms and was not the scope of this project. However, prevention can and should also be part of the cross-agency efforts to tackle UDW.