

Directorate of Labour, Iceland

Nordic-Baltic Undeclared Work Project

Country Report

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Introduction

The Directorate of Labour Iceland is responsible for the implementation and execution of Acts No. 45/2007 on Posted workers and the Obligations of Foreign Service Providers and 139/2005 on Temporary Work Agencies. The purpose of the Acts is to clarify lines and strengthen supervision regarding the validity of Icelandic collective agreements and other terms and conditions of employment, regardless of whether the company is Icelandic or foreign. The legislation is intended to further ensure that foreign nationals who come to Iceland temporarily on behalf of foreign companies, are working in a legal manner. The legislation takes into account the provisions of the EEA Agreement and EU directives on trade in services, promotes equal competition between Icelandic and foreign companies, and is intended to combat social dumping.

Testing the process indicator

Table 1. The process indicator

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

1. Is combating undeclared work a stated goal for the government?

Combatting undeclared work became a stated goal for the Icelandic government in February 2019 after a journalist released an exposé of the exploitation of unskilled workers of foreign origin in Iceland. The Minister of Social Affairs ordered a working group to be formed which included members from several governmental surveillance authorities, ministries and social partners, to compile a collaboration report regarding the actions and legislations considered necessary to be able to effectively combat social dumping and labour market crime. The report was presented to the Minister on the 31st of January 2019.¹ One of the actions that was taken was the formation of the 'Labour Crime Committee' consisting of members from the Police, Directorate of Labour, Directorate of Occupational Safety and Health and Directorate of Internal Revenue.

Score = 2

2. Is there an overarching governmental strategy on combating undeclared work?

The above-mentioned report was compiled by surveillance authorities adhering to the Ministries of Justice, Social Affairs, Economic Affairs and Finance, Industry and Innovation and the Prime Minister's office, and the social partners.

The report led to the formal formation of a collaboration working group consisting of members from The Directorate of Labour, The Administration of Occupational Safety and Health, Iceland Revenue and Customs, who are responsible for the imposition of sanctions at an administrative level, and the Police who handle criminal cases. The working group meet regularly to share and discuss intelligence regarding individuals and companies suspected of labour market crime from all ends of the spectrum, from unreported posted workers and minor tax evasion to forced labour and possible human trafficking.

While some of the new legislations and legislation amendments have been implemented, many of the practices and legislations suggested in the report are still to be put into place. It should also be noted that no funding has been issued to carry out the abovementioned work.

Score = 2

3. Are there joint action plans for cross-agency inspections?

The above-mentioned collaboration working group continuously share and analyse intelligence and plan targeted joint inspections.

Annually, the Police hold an action week (J.A.D) in cooperation with Europol with varying themes, i.e. HORECA, construction, prostitution, involving inspection teams from most governmental surveillance authorities. Generally, cross-agency inspections are performed on an ad-hoc basis and the police are encouraged to collaborate with labour inspectorates in both planning carrying out the inspections during the week

Score = 2

4. Are there joint cross-agency assignments from the ministries?

So far, no formal assignments have been issued.

¹ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=c6a38acb-2567-11e9-942f-005056bc530c>

Score = 1

5. Is there a regular joint report on activities and effects from cross-agency efforts to combat undeclared work?

So far, no official reports have been published. Although, a joint report is compiled at end of each inspection regarding each agency's activities, observations and further actions taken.

Score = 1

6. Are there national indicators for measuring undeclared work?

Currently there are no formal indicators in place, although the Police do produce an annual risk assessment report² which reflects briefly upon labour-market crime.

Score = 0

7. Is the legal framework adapted to combating undeclared work (i.e. sanctions)?

Yes, most labour-market surveillance authorities are permitted to impose non-criminal sanctions such as per diem fines, temporary work-place closures and administrative fines. However, it is the general consensus among the authorities that the sanctions that they are permitted to impose need to have a harder and longer-lasting impact.

Score = 2

Category 2- Knowledge and Intelligence

8. Do the existing legislations enable agencies to share and combine information?

Yes, most agencies are legally permitted to share and combine relative information.

Score = 3

9. Do agencies share and analyse strategic information?

Yes, please refer to questions 1, 2 and 3.

Score = 2

10. Are there dedicated cross-agency staff for working with knowledge and intelligence?

Yes, please refer to questions 1, 2 and 3.

Score = 2

11. Are there joint IT systems to facilitate knowledge and intelligence?

Some agencies have access to other agencies' IT systems, however a central IT system to facilitate knowledge and intelligence does not exist. There are however many options in building upon IT frameworks that are already in use by some or all the agencies involved. There are great advantages in investing in better use of IT systems between the agencies.

Score = 1

² <https://www.logreglan.is/wp-content/uploads/2019/05/Skip.-gl%C3%A6past.-endanleg-2019.pdf>

Operative procedures and sanctioning

12. Are there co-located cross-agency inspection teams working together on a daily basis?

No

Score = 0

13. Are there cross-agency inspection teams which are not co-located but working together on a regular basis?

Yes, please refer to questions 1, 2 and 3.

Score = 2

12. Are there cross-agency procedures on how to coordinate efficient sanctioning (“tactical sanctioning”)?

So far, formal procedures on tactical sanctioning do not exist, however the working groups in place do discuss impending sanctioning procedures.

Score = 1

13. Are the roles and jurisdiction of each member in the cross-agency teams clearly defined?

Yes. During work-place inspections the roles of each agency are clearly defined during the pre-inspection briefings.

Score = 2

Summary

Iceland has only in recent years begun experiencing a dramatic increase in foreign workers. In 2014, only five foreign service providers posting a total of 91 workers were registered to The Directorate of Labour. These numbers rose to 115 foreign service providers posting 1107 workers in 2018. Accordingly, 22 temporary agency workers were registered to The Directorate of Labour, working for 1 temporary work agency. In 2018, 41 temporary work agencies were registered to the directorate with 3582 workers. The number of work-permits applications for non-EU nationals has also steadily increased from year-to-year. In 2016, 1778 applications were processed. In 2017, 2158 applications were processed and in 2018, 2433 applications were processed. In 2016, foreign workers made up 10,7% of the Icelandic labour market, while in March 2019 this number increased to 19,6%.

With the steady increase of foreign workers, the government and it’s surveillance authorities have required to adapt their practices in order to tackle undeclared work, and every year with the continuing increase of vulnerable workers entering the labour market, surveillance authorities have realised the importance and necessity of cross-agency cooperation. While large steps have been made, further organisation and procedures and increased funding must be put in place in order to have any real impact on labour market crime.

Currently used data and risk indicators for planning inspections.

Currently, targeted cross-agency inspections are evaluated and planned from intelligence usually gathered from The Directorate of Internal Revenue and The Administration of Occupational Safety and Health as they have the broadest surveillance of the labour market. A company's lack of compliance to rules and legislation regarding taxation, will usually indicate a lack of compliance of rules and legislation pertaining to other agencies.

Another reliable indicator that a company is non-compliant with rules and legislation across other agencies are unregistered posted workers. The user-undertaking's responsibility to ensure that the undertaking he is purchasing services from has reported to the relevant authorities is clear, according to Icelandic legislation.³ (Article 11 of Act No. 45/2007 on Posted Workers and the Obligations of Foreign Service Providers)

Other indicators include:

- Third-country nationals working on site
- Temporary agency workers on site
- Foreign nationals who have not been issued with a national ID number
- Workers employed as bogus self-employed individuals
- Companies well-known to surveillance authorities due to previously imposed sanctions due to repeated non-compliance

Currently used data and indicators for evaluating inspections.

After cross-agency inspections have been performed, a combined report is compiled where each agency enters information regarding their actions performed, intelligence gained, on-going analysis and general opinion of the inspection. This information is recorded and is intended to be able to create effect indicators in the future. As this formal cross-agency collaboration is relatively new, official effect indicators have not yet been created.

Each participating authority records their own intelligence obtained from inspections, tip-offs and other sources and creates a database, which in-turn is used to evaluate the information and create road maps of the possible offenders and determine future actions required to be taken.

Identified methods and success stories of good practices for combatting undeclared work.

It is agreed that good communication and cooperation between agencies is essential in combatting undeclared work. It has also been recognised that the inclusion and cooperation of the social partners are an essential element in combatting undeclared work, as they are the front-line troopers in obtaining intelligence and recognising breaches of workers' rights and companies who may not be operating in compliance to relevant legislation, and therefore gaining profits from unfair competition. Surveillance authorities have over the years, enjoyed an active cooperation with the labour unions. However, with a rapidly growing labour market they have had to reach out to

³ <https://www.government.is/library/04-Legislation/Act%20on%20Posted%20Workers%20and%20the%20Obligations%20of%20Foreign%20Service-Providers%20No%2045%202007%20as%20amended%202018.pdf>

business associations and operators and encourage them to blow the whistle on others who may be gaining profits from unfair competition. This has been increasingly evident in the tourism industry, which has expanded dramatically in recent years.

As tourism is a mobile sector, with workers travelling around the country and never stopping in the same place for very long, tracking offenders has proven to be somewhat problematic. However, with the assistance of business associations and compliant businesses who also strive for fair competition and a healthy labour market, the identification of possible offenders has become somewhat more possible.

Over the summer months, from May until October, Iceland Revenue and Customs and The Directorate of Labour posts inspectors at the Norræna ferry docking point at Seyðisfjörður to analyse the commercial vehicles entering the country. Any vehicles of interest are stopped and inspected, and their operators are required to provide information regarding their intended operations in Iceland. If their operations fall under the scope of relevant legislation, they are issued with a notice to amend any infractions.

Another valuable resource is the Boarder Police's analysis unit at the Keflavík International Airport, who are able to detect possible offenders entering the country. Should they detect offenders who are not suspected of committing criminal offenses but are suspected of offences at an administrative level, they are able to relay information to the relevant authority for further analysis.

Material published by the labour unions intended to inform workers of their rights on the Icelandic labour market is widely distributed. The content, distribution platforms and languages in which it is published is constantly under analysis to ensure that it is relevant to recognised vulnerable sectors and reaches a broad-as-possible audience.

Identified bottlenecks for cross agency and/or cross-border cooperation and/or inspections.

As sanctions imposed at an administrative level are only intended to force companies to operate in accordance to relevant legislation, their impact can be somewhat of a 'slap on the wrist' and do not seem to have any lasting effect on offenders who are focused and determined on gaining higher profits by not operating in a legal manner. It is only when their operations become criminal that any real impact can be made, and having cases investigated as criminal cases often takes a long time. By the time that they are investigated, the company has usually declared bankruptcy and the owners are have commenced operations as a new company. Although, amendments to the General Penal Code⁴ (Act no. 14/1940, Article 262, paragraph 4) were made in June 2019 in an effort to ban convicted offenders of serious tax evasion of controlling the operations of a company for up to three years, it has been observed that offenders are able to pass by this by signing over the company to a so-called 'Undertaker' who bears the brunt of the company's liquidation.

The sanctioning procedures of non-compliant foreign undertakings who temporarily post workers in Iceland are especially problematic as these cases must be investigated and dealt with as quickly as possible due to their short operating periods in Iceland. The most effective sanction in these cases has proven to be the temporary suspension of operations. However, according to strict

⁴ <https://www.government.is/lisalib/getfile.aspx?itemid=dd8240cc-c8d5-11e9-9449-005056bc530c>

public administration legislation, the company must be issued with a formal notice and a reasonable deadline to amend any infractions. Should the company not comply, a further deadline must be issued along with a warning of intended imposition of sanctions. Only after the company has been issued with at least three warnings, are temporary work-place closures permitted to be imposed, and by which time the workers have usually packed up and left.

Conclusion

While Iceland has greatly improved their cross-agency cooperation in combatting not only undeclared work, but also labour market crime, further actions, legislations and proper organisation must be put in place to be able to fully achieve a healthy labour market. We must not only look to our neighbouring countries for guidance, but also connect with them to ensure that our issues with undeclared work are not just passed on to the next country, but completely abolished at the door, and only with a declared mission and funding from our policy makers will this be even remotely possible.

The phenomenon of undeclared work and combatting its existence is essential to not only ensure worker safety, redeem otherwise-lost taxation revenue and promote a healthy labour market and fair competition, but also to ensure that the 'Nordic model' prevails.