



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Discussion Paper - Ireland

**Agency cooperation in a small country –
optimising formal and informal approaches**

**Peer Review on “Joint operation groups between public
agencies – an effective tool against work-related crime
and social fraud”**

Oslo (Norway), 25-26 September 2017



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Directorate-General for Employment, Social Affairs and Inclusion

Peer Review on "Joint operation groups between public agencies – an effective tool to prevent and tackle undeclared work"

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1 Situation in the peer country relative to the host country

1.1 Scale and Nature of Undeclared Work

There is no legal nor standard policy-based definition of undeclared work (UDW) in Ireland, and the phenomenon is generally recognised as corresponding closely to the EU definition of "any paid activities that are lawful as regards their nature, but not declared to public authorities". It is generally seen as including undeclared (or under-declared) wages in formal enterprises, undeclared (or under-declared) payment for goods or services provided to a formal enterprise or household by a self-employed person, or undeclared (or under-declared) payment for goods or services provided by a person to relatives, friends or neighbours.

UDW is one feature of activity that characterises the "shadow", "black" or "hidden" economy, which are terms used interchangeably in Ireland as referring to economic activity which falls outside the legally regulated economy. UDW is principally motivated by a desire to avoid or evade taxation and other liabilities or to avoid the costs associated with complying with statutory employee rights or other regulatory obligations, while the other main forms of "hidden" economic activity in policy discussion in Ireland are working or operating a business while claiming social welfare payments for the unemployed, non-operation of the value added tax system, and smuggling or laundering and illegal sale of tobacco or other products to gain from the evasion of the relevant taxes and duties.

There have been numerous estimates of the scale of the shadow economy in Ireland and the extent of UDW, however there is no single standard definition of either and therefore no corresponding standard estimates. In one widely-cited international study¹, between 2008 and 2013 Ireland's shadow economy was estimated as equating to 12.7% of GDP annually (on average) over the period. Relative to 2016 GDP, that would represent a scale of activity of the order of just below €35bn, however improved economic conditions and other developments may have reduced its scale as a proportion of GDP in the intervening years. The Schneider/AT Kearney research placed Ireland lower than the EU overall, in terms of shadow activity relative to GDP, and with a proportion similar to other western European countries, although lower than typical in southern and eastern Europe. UDW was estimated as accounting for approximately €14bn of GDP in 2012 in a recent analysis, on the basis of it accounting for an estimated two thirds of all shadow economic activity².

1.2 Inter-Agency Co-operation as a Policy Tool

While the regulatory and organisational landscape in Ireland is multifaceted, inter-agency co-operation has become a central feature of the policy response to both shadow economic activity and UDW. As in other jurisdictions, centrally-involved organisations are the internal taxation/revenue authority (the Revenue Commissioners), the social welfare ministry (the Department of Social Protection), and the labour inspection and rights agency (the Workplace Relations Commission), however agency co-operation extends to sectoral and other specialist government bodies in appropriate contexts, while wider co-operative structures and fora involve for example advocacy groups, business representative organisations, and trades unions.

¹ "The Shadow Economy in Europe, 2013", AT Kearney and Friedrich Schneider, Johannes Kepler University, Linz, Austria, 2013

² "The role of the Irish National Labour Inspection System (National Employment Rights Authority -NERA) as part of a strategic policy response to undeclared work", Cronin, Maedhbh, 2013

2 Assessment of the policy measure

2.1 Institutional Context

The principal organisations and agencies responsible for addressing hidden economy activity and UDW in Ireland are the Revenue Commissioners, the Department of Social Protection and the Workplace Relations Commission.

The Office of Revenue Commissioners has a mission "to serve the community by fairly and efficiently collecting taxes and duties and implementing customs controls". It distinguishes between its role in taxation compliance, where its objective is to facilitate and make it easier and less costly for customers to comply with their taxation and related regulatory obligations and make the appropriate payments, and its role in confronting non-compliance, where it defines its role as "tackling non compliance in all its forms and, increasingly, employ(ing) modern technology to develop data analytics capability and risk assessment systems in order to identify risks posed by those who are not compliant". The Office is also responsible for administering the customs regime for imports and exports, and support efforts to control the movement of illicit drugs across borders. The Office is organised with both a national and regional structure, with over 70 offices nationwide and just below 6,000 (FTE) staff members.

The Department of Social Protection (DSP) is the government ministry responsible for social welfare provision in Ireland. Arising from recent reforms, the Department now has a key role in two major policy domains – the distribution and re-distribution of income to assure social cohesion and equity of economic outcomes, and the efficient operation of the supply side of the labour market, particularly around employment services and the labour market activation of unemployed and underemployed people. The Mission of the Department is "to promote active participation and inclusion in society through the provision of income supports, employment services and other services," and it employs some 6,700 people and a network of 125 regional and local social welfare local and branch offices.

The Workplace Relations Commission (WRC) is an independent, statutory body which was established in 2015. It has taken on the roles and functions previously carried out by the National Employment Rights Authority (NERA), Equality Tribunal (ET), Labour Relations Commission (LRC), Rights Commissioners Service (RCS), and the first-instance (Complaints and Referrals) functions of the Employment Appeals Tribunal (EAT). Among its principal functions are promoting the improvement and maintenance of good workplace relations, promoting and encouraging compliance with relevant enactments, providing guidance in relation to compliance with relevant approved codes of practice concerning workplace processes and protocols, providing information to members of the public in relation to employment, and delivering an inspection service in relation to employment rights compliance, and the provision of mediation, conciliation, facilitation and advisory services. Its Mission is "to deliver a quality customer service throughout Ireland, which is speedy, user-friendly, independent, effective, impartial and cost-effective, provide variable means of dispute resolution, redress and effective enforcement, and improve workplace relations generally", and it has approximately 200 staff based in five national and regional offices.

2.2 Cooperation in Practice

As with practice in the host country, inter-agency cooperation to address UDW in Ireland is evident both at the national and strategic levels, as well as the operational and local levels. To tackle hidden activity, UDW or other forms of non-compliance, the primary agencies each dedicate themselves to actions and initiatives that relate to education and prevention, deterrence, detection, control and recovery/resolution, and while collaborative activity and work may focus on any of these, the areas of detection and control are where it is perhaps most advantageous.

A High-Level Group of senior officials within the Revenue Commissioners and the DSP is in place that serves as a strategic collaboration for addressing social welfare fraud and tax non-compliance, while the DSP Special Investigation Unit (SIU), established in 1978 to detect and prevent social welfare fraud has a more operational role that it undertakes collaboratively with other agencies as required. The SIU concentrates on the hidden economy, in sectors where social welfare fraud is most prevalent, with an emphasis on direct intervention and engagement. The Unit collaborates closely with the WRC and other agencies, and for example it seconded 19 Gardaí (police) to in 2017 to assist with fraud investigation. Where serious cases of identity fraud or multiple claiming of social welfare payments were identified, these police officers were actively engaged in their detection and prosecution.

The SIU and the Revenue Commissioners combined resources in 1990 to establish Joint Investigation Units (JIUs) to jointly investigate social welfare fraud and tax and social insurance evasion, and they work closely with the WRC, An Garda Síochána (the national police force), and others as appropriate.

The Hidden Economy Monitoring Group is a forum of the key state agencies tackling hidden economy activity and UDW, as well as wider social partners (employers' representatives and trades unions) to exchange views and insights as well as propose new initiatives and ideas to combat such activity. It is chaired by the Revenue Commissioners.

Collaborative structures and fora also exist to address cross-border and international fraud and non-compliance. The Cross-Border Operational Forum for example comprises senior officials from DSP and the Department for Work and Pensions in Northern Ireland and the Northern Ireland Social Security Agency.

At a more operational level, the modalities which cooperation and collaboration extend to include data and information exchange and sharing, joint targeting and joint training, joint inspections and control activities, and ongoing communication and interaction concerning activity, planning, targeting, monitoring or results.

As with the Host Country, practice in Ireland and its success depends perhaps equally on legislative, policy and strategic direction, facilitation, and encouragement of cross-agency collaboration at national level, as well as the effective day-to-day engagement and cooperation of operational units and personnel in different agencies, and procedures and protocols which facilitate effective interaction and the personal relationships, trust, informality and flexibility which develops between the relatively small number of key actors and personnel involved from key organisations.

2.3 Challenges and Barriers

Four issues emerge as contemporary challenges and barriers to greater and more effective cooperation. Firstly, similar to the Host Country, inter-agency co-operation while effective and important, remains secondary to the primary goals and remits of individual hierarchical agencies, which may be sectoral or service-specific in focus. As such it can depend on goodwill and a cooperative ethos amongst officials, which is secondary to their core work. Secondly, and related to this, has been resource depletion in the agencies concerned (as in all public sector agencies that resulted from the budgetary adjustments necessitated by the economic recession). This has increased the reliance on goodwill and non-core effort to ensure effective collaboration. Thirdly, some aspects of relevant legislation are old and arguably in need of modernisation and reform to best enable agencies to work most effectively individually or in collaboration in the face of contemporary work practices (an example is employment agency legislation which dates from 1971). Fourthly, while data exchange, sharing, mining and analytics are undoubtedly growing and being utilised more widely and effectively in collaborative work, there may remain a level of legitimate data sharing and exchange that remains untapped for the purposes of collaborative work to combat hidden economic activity, UDW and other forms of work-related crime. This probably reflects increasing risk-

aversion in the face of wider data protection measures as well as protectionist cultures in key agencies with respect to data.

3 Assessment of the success factors and transferability

3.1 General

The Host Country paper highlights three success factors for policy measures in the area of hidden economy activity and UDW, namely that there is a strong strategic foundation for cooperation and inter-agency approaches, that information is exchanged, and that locally-deployed and operational personnel be afforded a degree of autonomy and flexibility in their work and their collaboration. Such success factors are arguably already inherent to the Irish system, and both States share other features such as agencies with similar remits dominating activity, a combination of formal and informal collaboration, a degree to which cooperation is novel and not yet fully institutionalised, and an emphasis on quantitative outcomes in monitoring efforts but with limited evaluation of impacts on work-related crime or UDW. Specific features of the Irish system that illustrate these similarities but that may also offer transferable lessons for other jurisdictions are briefly described below.

3.2 Legislation and Data Sharing

The Data Protection Act (1988) is the main piece of legislation in Ireland that deals with the protection of privacy of individuals with regard to personal data, and has provisions that address the rights of data holders, data use, disclosure, processing and security. Section 8 of the act sets out exemptions to the general disclosure restrictions, and include exemption where the disclosure is "required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of those restrictions would be likely to prejudice any of the matters aforesaid". This legislative provision enables data exchange across key agencies in joint efforts to control work-related crime and UDW.

Taxation and social welfare legislation also sets out the scope for information sharing amongst agencies responsible for addressing UDW, for example between the WRC and the Revenue and DSP. The 2005 Workplace Relations Act extended the number of official bodies with whom the WRC can exchange information, and with the approval of the Minister it can now enter into data sharing arrangements with 15 organisations or categories of organisation in Ireland, as well as overseas inspection and enforcement bodies.

3.3 Joint Training

Agencies regularly engage in joint training where responsibilities, operations or strategies overlap or where specific contexts and situations call for multi-agency responses. Trafficking for labour exploitation is an example, which while most directly a criminal offence and therefore a policing matter, their identification can be assisted by other agencies. In this case staff from the WRC deliver training to police officers on identifying severe forms of labour exploitation, while the WRC also received training from police officers on the key indicators of evidence of trafficking and forced labour.

3.4 Inter-Agency Agreements/Memoranda

Cross-agency cooperation and collaboration work are also typically framed under Memoranda of Understanding between two or more agencies, which identify areas of mutual interest and potential overlap, clarify regulatory functions, structures through which information may be exchanged and the protocols and processes that govern joint activity. As such they serve to formalise cooperation while providing the framework under which informal collaboration and mutual support can take place.

3.5 Joint Actions

Two examples of joint activity in the detection of work-related crime are "days of action" that take the form of jointly planned and undertaken inspections by teams from a number of agencies on a specific sector across various locations, and "streetscapes" involving joint inspections by teams from a number of agencies on a number of properties in a specific location at the same time. Such initiatives have involved agencies that include the Revenue Commissioners, DSP, WRC, the Health and Safety Authority, the Road Safety Authority, the Gardaí (police), the Department of Transport, the Navy, the immigration service, the Private Security Authority, and other Departments and regulatory bodies.

4 Questions to the host country in the Peer Review

- Work-related crime is reported as having different characteristics in different parts of the (host) country. How do geographical issues affect or influence both the problem, and the co-operative response?
- The report suggests that large and complex cases have increased the political salience of work-related crime and its priority policy status. Is it always specific cases of abuses that have generated political attention and a momentum for policy action, or has focus been generated from other sources (e.g. research, campaigns, knowledge of the costs, etc.)?
- Collaborative units in the host country are described as "co-located". What form does this "co-location" take in reality?
- The paper suggests cooperative efforts are in an early phase in the host country. Is this because the problem is seen as recent, has intensified, or that cooperation in addressing it has only recently been emphasised?

Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country relative to the host country

- No legal nor standard policy definition of undeclared work
- Phenomenon generally understood as and corresponds with EU definition
- UDW one feature of hidden economy activity
- One estimate is that UDW accounts for €14bn of GDP, at middle to low end of EU scale
- Inter-agency cooperation a central feature of the policy response

Assessment of the policy measure

- The taxation, social welfare and labour inspectorate agencies and authorities the most centrally active and responsible for addressing hidden economy activity and work-related crime
- Education, prevention, deterrence, detection, control, recovery/resolution each part of the policies of agencies
- National structures and fora in place, and in cases involve social partners as well as ministries and agencies
- National frameworks important, but local and operational approaches, informal arrangements, professional relationships, trust and flexibility are all effective tools in the co-operative effort
- Challenges relate to the hierarchical structure of agencies, their primary roles and resources, a need for legislative reform in places, and protectionist cultures regarding data

Assessment of success factors and transferability

- The three success factors in the host country (strategic foundation, information exchange, and local autonomy and flexibility) are well established and probably equally important causes of success in Ireland
- Specific features of Irish legislation support effective data sharing
- Joint (cross-agency) training is a regular feature of co-operative efforts
- Use of Memoranda of Understanding between agencies provides a clear framework and basis for formal and informal collaboration and mutual support
- Specific forms of co-ordinated action take place, involving several or at times a multiplicity of agencies, depending on the action and context

Questions to the host country in the Peer Review

- Work-related crime is reported as having different characteristics in different parts of the country. How do geographical issues influence both the problem and the co-operative response?
- The report suggests that large and complex cases have increased the political salience of work-related crime and its priority policy status. Is it always specific cases of abuses that have generated political attention and a momentum for policy action, or has focus been generated from other sources (e.g. research, campaigns, knowledge of the costs, etc.)?
- Collaborative units in the host country are described as "co-located". What form does this "co-location" take in reality?

- The paper suggests cooperative efforts are in an early phase in the host country. Is this because the problem has intensified, or that cooperation in addressing it has only recently been emphasised?

Annex 2 Example of relevant practice

Name of the practice:	Co-ordinated "Day of Action" to investigate potential exploitation of undocumented migrant workers on Irish fishing trawlers
Year of implementation:	2016
Coordinating authority:	Workplace Relations Commission (Inspectorate)
Objectives:	To investigate and detect any potential cases of labour exploitation in the fishing industry, with particular emphasis on any indicators of human trafficking.
Main activities:	<p>A newspaper report in November 2015 made claims of exploitation of undocumented migrant workers on Irish fishing trawlers. The next day the Irish Government established a high level inter-departmental Task Force, chaired by Minister for Agriculture Food and the Marine, to consider the issues raised. Reflecting the cross-Governmental responsibilities for the complex issues involved, membership of the Task Force was drawn from across relevant Government Departments and agencies, with a total of 13 different ministries and agencies involved.</p> <p>The Task Force went on to make numerous recommendations (which were adopted by Government) regarding prevention, monitoring, agency roles and responsibilities, a bespoke work permit solution for "atypical" workers, and the development of a specific memorandum of understanding between the numerous agencies with relevant responsibilities.</p> <p>All of the key agencies with inspection responsibilities intensified and developed their inspection activity over subsequent months and since. The Workplace Relations Commission for example established a Fishing Vessel Compliance Team, comprising six inspectors and a regional manager. It attended joint training delivered by the national seafood development agency, and up to October 2016 inspectors had undertaken 94 inspections of vessels that came within the aegis of the new bespoke employment permit scheme introduced in the sector.</p> <p>Two unannounced and co-ordinated "days of action" also took place involving simultaneous inspections of high numbers of fishing vessels concentrating on the fishing ports of Castletownbere and Howth. The activity was coordinated by An Garda Síochána (including trained officers from the Human Trafficking Investigation and Coordination Unit), the Revenue Commissioners, the Workplace Relations Commission Inspectorate, the Irish Navy and the Sea Fisheries Protection Authority. A range of compliance issues were inspected, as well as any evidence of human trafficking.</p>
Results so far:	No evidence of human trafficking or labour exploitation was found in any location, although other more minor breaches of various regulations were identified.

