

# TRAFFICKING FOR LABOUR EXPLOITATION – TACKLING GROUP CASES



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# INTRODUCTION

The International Labour Organization estimates that forced labour in Europe today is affecting as many as 880 000 victims (1.8 per 1,000 inhabitants),<sup>1</sup> largely as a result of labour trafficking. National figures capture even a smaller proportion of the process. According to the EUROSTAT data on the number of victims of human trafficking identified in the EU countries, only around 23,000 cases were registered between 2008 and 2010.<sup>2</sup>

A number of different industries are affected by labour trafficking and forced labour, such as construction, hospitality, agriculture, domestic work, manufacturing, cleaning and catering.<sup>3</sup> In the formal economy, forced labour is likely to exist at the bottom of complex sub-contracting chains. Law-abiding businesses that operate within those industries are often undercut by rogue operators that generate their profits by violation of labour rights, and by engaging in criminal behaviour.

The report presents a range of cases from selected EU Member States – including Belgium, Czech Republic, United Kingdom, Finland, Sweden, Germany, Greece, Ireland, and Romania – in order to assess effectiveness of the existing anti-trafficking measures in tackling situations where large numbers of workers might have been exploited. It further explores alternative ways that may be applied to achieve redress for workers, such as group claims taken on behalf of larger groups of workers. The report provides examples of potential solutions and approaches. Different options for regulation and cooperation are presented. The report concludes that insufficient integration of labour approach into anti-trafficking action might result in gaps in legislation and policy and lack of effective tools to deal with highly abusive situations at and around the workplace.

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<sup>1</sup> ILO, Global Estimate of Forced Labour: Results and methodology, 2012, [http://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_181953/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_181953/lang--en/index.htm)

<sup>2</sup> EUROSTAT 2013 report [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415\\_thb\\_stats\\_report\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf)

<sup>3</sup> ILO, Global Estimate of Forced Labour: Results and methodology, 2012, [http://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_181953/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_181953/lang--en/index.htm)



# METHODOLOGY

The research for this report combined a mapping exercise with a case analysis. Cases were collected from national partners, including non-governmental organisations and trade unions.

Analysed cases come from a number of the EU states, providing a basic sample of the up-to-now mainly receiving countries (Sweden, UK, Germany, Greece, Belgium, Ireland) and of up-to-now mainly sending countries (Czech Republic, Romania). While these countries also represent different legal and employment relations systems, these elements were not analysed.

The cases occurred between 2010-2013 and cover several industries, including:

- agriculture
- restaurants
- retail services
- cleaning services
- forestry
- tarmacking

The report is structured into the following parts:

Section 1	<b>WHAT IS LABOUR TRAFFICKING?</b> examines elements of a definition of trafficking for labour exploitation
Section 2	<b>LABOUR APPROACH TO HUMAN TRAFFICKING</b> examines criminal and labour approaches to trafficking for labour exploitation
Section 3	<b>WHY TO LOOK AT GROUP CASES?</b> outlines the need to look at group cases of trafficking for labour exploitation
Section 4	<b>LABOUR MOBILITY AS A VULNERABILITY FACTOR</b> examines labour mobility as a vulnerability factor in situations of human trafficking
Section 5	<b>PREVENTION</b> examines prevention aspects of the anti-trafficking response in the area of labour exploitation
Section 6	<b>PROTECTION</b> examines protection aspects of the anti-trafficking response in the area of labour exploitation
Section 7	<b>ACCESS TO REMEDY</b> examines remedies, if any, available to those subjected to forced labour or trafficking, with a focus on compensation for lost wages
Section 8	<b>CONCLUSIONS – IN SEARCH FOR POLICY COHERENCE</b> examines policy coherence aspects of the anti-trafficking response in the area of labour exploitation.

## List of cases analysed:

Box 1:	Romanian workers in Greece (agriculture)
Box 2:	Cameroonian workers in Swedish forests (forestry)
Box 3:	Eastern European workers in Belgium (cleaning industry)
Box 4:	EU and Vietnamese workers in Czech Republic (forestry)
Box 5:	Eastern European workers in Belgium (cleaning industry)
Box 6:	Operation Netwing in the UK (tarmacking)
Box 7:	Romanian workers at holiday resort camp site in Germany (construction)
Box 8:	Vietnamese and Thai workers in Finland (restaurants and beauty services)
Box 9:	Bangladeshi workers at strawberry plantations in Greece (agriculture)

## List of annexes:

Annex 1	Case grid: Spanish e-commerce warehouse workers in Germany (retail sector)
Annex 2	Case grid: EU and non-EU bakery workers in Ireland (food sector)
Annex 3	Case grid: EU and Vietnamese forestry workers in Czech Republic (forestry)
Annex 4	Case grid: non-EU cleaning workers in Belgium (cleaning sector)
Annex 5	Case grid: Cameroonian forestry workers in Sweden (forestry)
Annex 6	Case grid: Romanian workers in Germany (construction)
Annex 7	Case grid: Moroccan circus workers in Ireland (entertainment sector)

# SECTION 1: WHAT IS LABOUR TRAFFICKING?

## Definition of labour trafficking

The first internationally recognised definition of trafficking in persons has been provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol) that has been adopted in 2000. This definition has been respected by the EU Anti-Trafficking Directive.<sup>4</sup>

### Definition of trafficking in persons requires three elements:

- an action (recruitment, transportation, transfer, harbouring or receipt of persons);
- a means (threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person);
- a purpose – purpose of exploitation – including forced labour or services, slavery or practices similar to slavery.

Labour trafficking often includes the recruitment of persons, by the use of deception, threat or use of coercion or by the abuse of vulnerability, for the purpose of labour exploitation, including forced labour. Internationally recognised definition of forced labour is provided by the ILO Convention No. 29 (1930)<sup>5</sup>

### Definition of forced labour requires two elements:

- lack of consent to work (involuntary nature of work);
- menace of penalty (coercion).

A person cannot be considered to have voluntarily consented to being trafficked and exploited (including in a forced labour situation) where consent was obtained through improper means (deception, threat, use of force, abuse of a position of vulnerability).<sup>6</sup>

Labour trafficking is a severe violation of human rights, prohibited by key human rights instruments.<sup>7</sup>

Labour trafficking is also a serious crime. It is prohibited, prosecuted and sanctioned through criminal laws at international<sup>8</sup> and European<sup>9</sup> level. The EU Anti-Trafficking Directive harmonises criminal laws of EU Member States in this aspect. It should have been transposed into national laws by 6th April 2013 and is now enforceable under EU Member States' national laws.

Lastly, freedom from forced labour and labour trafficking is a “fundamental right at work”, a subject of the core ILO Convention no. 29 (1930) and a recently adopted Protocol (2014) together with the accompanying ILO Recommendation no. 203 (2014).

<sup>4</sup> Definition of trafficking in persons is provided in the Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It is also repeated in Article 4 of the European Anti-Trafficking Convention (adopted by the Council of Europe) as well as by Article 2 of the EU Anti-Trafficking Directive 2011/36.

<sup>5</sup> Definition of forced labour is contained in Article 2 of the ILO Forced Labour Convention No. 29 (1930) and its Protocol (2014). Forced labour is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily”.

<sup>6</sup> Article 3 of the Palermo Protocol and Article 2 of the EU Anti-Trafficking Directive 2011/36.

<sup>7</sup> Forced labour is prohibited by the International Covenant of Civil and Political Rights (Article 8), the Charter of Fundamental Rights of the EU (Article 5) and the European Convention of Human Rights (Article 4).

<sup>8</sup> At the international level, criminalisation of labour trafficking is required by the UN Palermo Protocol (Article 5). All EU Member States, as well as the European Union are signatories to the Palermo Protocol.

<sup>9</sup> At the European level, criminalisation of labour trafficking is required by the European Anti-Trafficking Convention (Article 18) and by the EU Anti-Trafficking Directive 2011/36 (Article 2).

## Labour exploitation

Over the last 100 years the International Labour Organization has developed a body of 189 Conventions and 203 Recommendations defining minimum standards for what can be called a “decent work”. From this perspective, “labour exploitation” is everything that falls below these minimum standards, that is, the opposite of decent work. However, up to now there is no international definition of labour exploitation. This regulatory gap impacts on action against trafficking for labour purposes – exploitation remains subject to interpretation by national laws, which often also do not attempt to formulate a definition.

In practice, it is difficult to draw a clear line separating exploitation as a violation of labour rights from forced labour or human trafficking specifically. However, if elements of deception or false promises about terms of work are present – or elements of involuntary nature of work such as withholding of wages, induced indebtedness – labour exploitation will amount to a forced labour or labour trafficking situation. Consequently, in some cases, migrants or posted workers or agency workers working under harsh labour conditions can be considered victims of trafficking.

### Indicators of forced labour<sup>10</sup>

Lack of consent to work	Menace of penalty (coercion)
<ul style="list-style-type: none"><li>- Physical abduction or kidnapping</li><li>- Physical confinement in the work location, in prison or in private location</li><li>- Psychological compulsion, i.e., an order to work, backed-up by a credible threat of penalty for non-compliance</li><li>- Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.)</li><li>- Deception or false promises about types and terms of work</li><li>- Withholding or non-payment of wages</li><li>- Retention of identity documents or other valuable personal possessions</li></ul>	<p>Actual presence or credible threat of:</p> <ul style="list-style-type: none"><li>- Physical violence against worker or family or close associates</li><li>- Sexual violence</li><li>- (Threat of) retaliation</li><li>- Imprisonment or other physical confinement</li><li>- Financial penalties</li><li>- Denunciation to authorities (police, immigration, etc.) and deportation</li><li>- Dismissal from current employment</li><li>- Exclusion from future employment</li><li>- Exclusion from community or social life</li><li>- Removal of rights or privileges</li><li>- Deprivation of food, shelter or other necessities</li><li>- Shift to even worse working conditions</li><li>- Loss of social status</li></ul>

<sup>10</sup> Source: 2005 ILO, Report, Global Alliance Against Forced Labour



## Indicators of labour trafficking<sup>11</sup>

Category	Medium indicator	Strong indicator
Deceptive recruitment	Deceived about conditions of work; content or legality of work contract; travel and recruitment conditions, wages/earnings	Deceived about the nature of the job, location or employer
Coercive recruitment	Confiscation of documents Withholding of money	Violence of victims
Recruitment by abuse of vulnerability	Control of exploiters Economic reasons	
Exploitative conditions of work	Bad living conditions Hazardous work Low or no salary No respect of labour laws or contract signed No social protection Very bad working conditions Wage manipulation	Excessive working days or hours
Coercion	Threat to impose even worse working conditions Threats of violence against victim	Debt bondage Isolation Confinement or surveillance
Abuse of vulnerability	Dependency on exploiters Difficulty living in an unknown area Economic reasons Family situation Relationship with authorities/legal status	

## The “continuum” concept

Labour exploitation is a “continuum”, a process, with obvious forced labour cases at one end of the spectrum and more subtle forms of exploitation and coercion at the other.<sup>12</sup>

Ability to address earlier stages of the process, rather than situations that already culminated in forced labour and slavery-like conditions, remains decisive for successful prevention interventions. This ability is often weak in case of an isolated criminal justice approach that prevails in the adoption of anti-trafficking laws.

## Obligations of States

Governments have the obligation to respect, protect and fulfil human rights of people within their jurisdiction. Thus, the obligation to protect people from forced labour and trafficking is embedded in a wider range of States’ human rights obligations.<sup>13</sup> Failure to perform one of these three obligations constitutes a violation of such rights. Governments are thus responsible for developing adequate regulation, implementing action and effective monitoring to eradicate forced labour and trafficking.

The obligation to protect requires States to also prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with labour standards may amount to a violation of rights at work.

<sup>11</sup> Source: 2009 ILO/EU, Operational indicators of trafficking in human beings - Results from a Delphi survey implemented by the ILO and the European Commission (2009), available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf)

<sup>12</sup> ILO (2008) Forced Labour and Trafficking in Europe: how people are trapped in, live through and come out. Working Paper. By Beate Andrees, SAP-FL ILO, Geneva, pp. 38-39.

<sup>13</sup> See: Office of the High Commissioner for Human Rights, Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies (2005) paras 47-8.

International instruments relevant to forced labour and trafficking, including the EU law, refer to various forms of state responsibility for trafficking and forced labour:

### ***Obligations of prevention***

- addressing vulnerability;
- addressing demand;
- addressing complicity and due diligence.

### ***Obligations of protection and support provided to victims of trafficking<sup>14</sup>***

- immediate identification;
- no prosecution or detention;
- protection from further harm;
- material and psychological care and support;
- legal assistance

### ***Obligations of access to remedies***

#### **Obligations of effective law enforcement**

- obligation of criminalisation;
- asset confiscation (obligation to seize and confiscate proceeds of labour trafficking, using of confiscated assets to compensate support victims);
- criminalisation of consumers of services provided by victims of labour trafficking;
- criminalisation of legal persons.

## **Labour trafficking under the Protocol to ILO Forced Labour Convention No. 29 (1930) adopted in 2014**

The anti-trafficking framework has been recently strengthened by the adoption in June 2014 of the Protocol to the ILO Forced Labour Convention No. 29 (1930). The Protocol confirms that, apart from suppression of forced labour, also eradication of labour trafficking is obligatory under the ILO Forced Labour Convention.

The Protocol contains strong prevention measures: Article 2(f) requires addressing root causes and factors that heighten the risk of forced or compulsory labour. Article 2(d) points at the obligation to protect against abusive and fraudulent recruitment and placement processes – particularly protection for migrant workers. Article 1(2) of the Protocol calls for the involvement of labour actors in order to bring in other bodies than the police and immigration authorities that often are exclusively responsible for dealing with trafficking. Also, Article 2(e) of the Protocol requires States to support due diligence in the public and private sector. Lastly, the Protocol specifically requires providing remedies, such as compensation, to victims (Article 4).

States have pledged to extend rights to remedy to all victims, regardless of immigration status or presence in the national territory (Article 4.1 of the Protocol and Paragraphs 11 and 12 of the Recommendation). The authorities should be entitled not to prosecute victims for unlawful acts they may have committed as a consequence of being in forced labour, such as violation of laws on prostitution or immigration (Article 4.2 of the Protocol and Paragraph 7 of the Recommendation).

<sup>14</sup> The 2005 Anti-Trafficking Convention contains the first regionally accepted definition of a "victim of trafficking", leaving it no longer to the discretion of States to decide who may be entitled to protection and assistance (Article 4).

## SECTION 2: LABOUR APPROACH TO HUMAN TRAFFICKING

The labour approach to human trafficking recognises the push and pull factors for exploitative labour migration (such as demand for cheap labour and services) that make people vulnerable to forced labour in the private sector and their links to trafficking. It therefore recognises that measures to address the roots of trafficking and forced labour should also originate in the strengthening of labour market regulation.

Such measures include better integration of labour actors – labour administration, labour inspection, labour courts as well as trade unions; extending organising rights and protection of labour laws to all workers; licencing and monitoring of recruitment agencies; ensuring corporate accountability for violations; adopting a rights-based approach to migration and providing remedies and compensation for victims, (including for unpaid wages).

By creating mechanisms for support and redress before and not only after people end up in modern slavery situations, the labour approach has a significant preventative potential and underpins the social justice paradigm.

In terms of redress for victims, the labour approach should mean that in an environment that is complex and where a myriad of causes and contributing factors can obfuscate the real situation of a worker, the very situation of exploitation is to be looked at as the key determining factor when identifying the appropriate intervention. For example:

- Where labour standards only are breached, remedies are provided for by labour law;
- Where a situation of trafficking and forced labour occur, remedies are available both in labour and in criminal law;
- When exploited workers are recognised as victims of labour trafficking, tools available under anti-trafficking laws are adapted to deal with labour situation (e.g., in relation to assistance and compensation rights).

Consequently, no situation of exploitation should go unpunished, and practical responses and policy need to address the problem as an issue of both social – labour (and human) rights – and criminal justice. Otherwise, the causal relationship between forced labour and the impunity of perpetrators and ignorance to the rights of those exploited will remain.

Labour actors, including trade unions in strong alliances with NGOs, have a role both in preventing exploitative working conditions, improving identification, providing assistance to victims and improving prosecution of offenders.

This report found that often situations of labour trafficking are misidentified as instances of “poor working conditions”, cases of irregular migration (where workers are identified as irregular migrants instead of victims of trafficking) or situations that seem to be quite exploitative, but are “still better than what the workers are used to in their home countries.” As a result, many of the cases that show indicators of labour exploitation or coercion will be hard to classify as criminal offences. Exploited workers will not be recognised as victims of the crime and will not be assisted and offenders will not be prosecuted.

### Box 1: Romanian workers in Greece (agriculture)

*The case involved eight Romanian workers who were recruited as strawberry pickers for work in Greece. There were promised free room and board, contracts stating five-day working week and a salary of 22 EUR for a seven-hour working day and further 3 EUR for any additional hour worked.*

*However, once they arrived to their final destination in Greece, they were faced with different arrangements. Their mobile phones and passports were confiscated. They were forced to work twelve hours per day, seven days per week. They were not paid. When they made demands for payment of wages or return of documents, they were assaulted and verbally threatened with death threats.*

*Workers have reported abuses to the police in Greece and were assisted by local Greek NGOs. Upon their return to Romania, they also reported the incidents to Romanian police, with the assistance of the national IOM office and the Romanian National Agency against Trafficking in Persons.*

*No information was received by the workers about any legal action taken against the exploiters in Greece. In Romania, the case was not classified as a case of trafficking for labour exploitation. The prosecutor's office concluded that the recruitment was not a deceptive one and that exploitation cannot be demonstrated.*



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## SECTION 3: WHY LOOK AT GROUP CASES?

The criminal justice response to trafficking and forced labour is still dominated by a focus on sexual exploitation, and tools are developed accordingly. Policy instruments often are not able to take into account specific elements of trafficking for labour exploitation. Also, the predominating policy interventions aim to identify, assist and protect individuals. Consequently, the majority of strategies lack effectiveness in dealing with group cases and in backing up groups of victims.

Often, larger groups of workers are exploited by the same perpetrator concurrently (e.g., a group of workers exploited at the same time) or consecutively (e.g., different individuals or different groups exploited by the same perpetrator(s) over a period of time). Groups may vary in sizes – from smaller groups of a few persons to groups of, in extreme cases, hundreds of persons.

It is clear that legal proceedings alone are not always the best strategy, since they are time- and resource-consuming. Also, some categories of workers vulnerable to labour trafficking might be excluded from access to court (such as irregular migrants).

The interest in investigating new, collective strategies to prevent exploitative situations as well as to assist trafficking victims is growing. One worker might feel scared or intimidated to complain about his/her exploitative or coercive conditions of work. The group action against the exploiter might be more effective in preventing potential repercussions. Similar efforts were seen in cases where groups of workers took cases against employers for issues related to health and safety.

Accordingly, there are ways in which labour actors – trade unions in strong alliances with NGOs, labour inspection – could be better integrated in the anti-trafficking system in order to provide early warnings and to assist in enforcing the rights of groups of victims before cases of forced labour become entrenched practices of abuse.<sup>15</sup>

This report found a positive record of cases in which successful assistance or compensation to victims resulted from support offered by trade union organisations and their direct dialogue with the employer.

<sup>15</sup> See: ILO 2013, European Commission 2012, OSCE 2007.



## Box 2: Cameroonian workers in Swedish forests (forestry)

*This case concerned two leading Swedish forestry companies and a hired agent to recruit a number of nearly 50 migrant workers from Cameroon.<sup>16</sup>*

*Forestry companies followed official procedures for hiring migrant workers. This included submitting documents to the Swedish Migration Board (Migrationsverket) indicating proposed employment conditions together with the indication that the offer had been approved by the Swedish trade unions as in accordance with the sectoral collective agreement. Workers were supposed to earn 18 500 SEK (around 2 825 USD) per month plus 6 000 SEK per diem. Recruitment was performed by the subcontracted agent which acted as direct employer of the workers.*

*Upon the workers' arrival, conditions changed and the workers were made to sign new contracts obliging them to work for a very low piece-rate of 0,22 SEK a plant instead of for a monthly salary. To get anyway close to the monthly pay that had been initially promised, each worker would have to plant about 3500 plants per day – an unmanageable daily norm even for an experienced worker. They were also forced to pay heavy fees to the agents before being allowed to start working.*

*The case was taken up by the Swedish forestry workers union GS, affiliated to LO – The Swedish Trade Union Confederation.<sup>17</sup> GS negotiated with the companies and subcontracted agent concerned, initially with moderate success. As usual in such cases, end companies claimed they had no obligation to help workers with whom they were not in a direct employment relationship.*

*Negotiations were also taken up with the Swedish Employers Federation (SLA). The positive factor was that in this particular case the agent company that recruited the workers was also a member of the SLA. Affiliation resulted in better responsiveness to compensation demands and ultimately the agent company agreed to make partial payments according to initially promised rates of remuneration.*

*After months of waiting, and a series of hard negotiations by GS, the workers have finally received their promised wages and benefits in accordance with the collective agreement – but only for the work performed until the dispute. The contracts were not continued up to the previously agreed length.<sup>18</sup>*

*No criminal investigation took place and the workers were not identified as victims of labour trafficking.*



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<sup>16</sup> See: ITUC news "Sweden: Forced Labour for Cameroonian Migrant Workers" available at: <http://www.ituc-csi.org/sweden-forced-labour-for> (29.01.2013) and ITUC blog "Cameroonian Migrant Workers Exploited in Swedish Forestry Sector" available at: <http://www.ituc-csi.org/cameroonian-migrant-workers> (29.01.2013).

<sup>17</sup> See: SVT media release: "Glädje efter beskedet – de får sina pengar" available at: <http://www.svt.se/nyheter/sverige/gastarbetarna-ska-fa-sina-pengar> (24.01.2013). See also: Statement from LO Sweden: "Arbetsgivare ska inte ostraffat få utnyttja invandrad arbetskraft" available at: [http://www.lo.se/start/arbetsgivare\\_ska\\_inte\\_ostraffat\\_fa\\_utnyttja\\_invandrad\\_arbetskraft](http://www.lo.se/start/arbetsgivare_ska_inte_ostraffat_fa_utnyttja_invandrad_arbetskraft) (25.01.2013).

<sup>18</sup> See: Migration blog by Building and Wood Workers International "Cameroon Migrant Workers Receive Back Wages and Benefits" (available at: [www.bwint.org/default.asp?index=4693](http://www.bwint.org/default.asp?index=4693)) (12.02.2013).

## SECTION 4: LABOUR MOBILITY AS A VULNERABILITY FACTOR

Labour mobility often is a vulnerability factor in trafficking situations. The movement of labour in the EU includes migration (regular and irregular) from third countries. Immigration status and the position of migrants on the whole is commonly considered as a vulnerability factor for human trafficking and forced labour. Labour mobility also includes free movement of the EU nationals for performing work in another EU country. Such workers are protected under the labour laws of the host country against discrimination based on grounds of nationality. Another group of mobile EU workers includes those who perform work in another EU country as posted workers (“non-self-employed service providers”)<sup>19</sup> or as self-employed “service providers”<sup>20</sup>. Posted workers (many of them being temporary agency workers) as well as self-employed workers are not protected by labour laws of the host country. Self-employed workers have no social protection rights. Although posting of workers for the provision of services is supposed to offer a scheme for regular migration, in many cases of incorrect implementation it is found to create vulnerabilities to labour trafficking (Van Hoek&Houwerzijl 2011).<sup>21</sup>

This report found cases of workers posted for prolonged periods of time, working under extremely exploitative conditions, without health care, unaware of their rights, subject to physical and mental abuse, underpaid, or their wages withheld.

<sup>19</sup> Posting of workers (non-self-employed service providers) in the EU is regulated by the 96/71 Posting of Workers Directive.

<sup>20</sup> Posting of self-employed service providers in the EU is regulated by the 2006/123 Services Directive.

### Box 3: Eastern European workers in Belgium (cleaning industry) – trafficking of posted workers<sup>22</sup>

*The case concerns Bulgarian, Moldovan, Romanian and Kazakh workers employed by a company registered in Germany, owned by a German national of Kazakh origins. The subcontractor supplied cleaning services to a large multinational company operating in Belgium, owning a chain of restaurants located along main transport routes (highways, airports, etc.). Workers were recruited by the subcontracted company through adverts in local newspapers in their countries of origin. A large number of workers were subsequently brought to Germany (often only for one day) for the purpose of arranging their registration (residence address) and for arranging for some documentation aimed at creating the impression that they were subject to social insurance in Germany. Such documents were later used to justify that workers were posted from Germany to Belgium. In fact, no social protection contribution was paid in Germany and workers were not declared to the Belgian social security either. As a consequence, the workers had no social protection at all.*

*Workers were signing contracts in German. Many of them did not understand the German language. Contracts were classifying them as self-employed service providers or “freelance operators” or “learning entrepreneurs” in an attempt to bypass Belgian labour standards as well as social insurance obligations. Workers were unaware of both lack of social insurance or lack of labour contract. They thought they were engaged as regular workers, not self-employed “entrepreneurs”.*

*Upon arrival in Belgium workers were lodged in overcrowded accommodation provided by the subcontracted company. The employer organised their transport to the places of work. Work involved cleaning bathrooms on chain restaurants all over Belgium. Workers were required to work around 15 hours/day, for several weeks in a row, constantly in the move between different places of work.*

*Although they were initially promised wages like 1200 EUR/month, 300 EUR/week or 60 EUR/day, these wages, which are way below the Belgian legal wages, were not actually paid for a few weeks in the row, keeping the workers in economic dependence.*

*Due to their limited income, and to the long working periods, it was impossible to organise a normal life in Belgium –they also had no residence permit in Belgium and did not speak any Dutch, German or English.*

*The case was anonymously reported to the social inspectorate in Ghent (responsible for investigation of, among other matters, labour trafficking). Inspectors gathered extensive specialised evidence – both materials and testimonies from workers. The fact that the workers were very reticent, even scared, when making testimonies, pointed out that serious pressure was being put on them (some even refused to sign their testimony). The Ghent Criminal Tribunal convicted the subcontracted company for social fraud and labour trafficking. The end-user company was argued lack of knowledge of exploitation and lack of any direct relationship with them, therefore lack of liability.*

*However, the court found basis for extending liability for trafficking to the end company.*

*The judgement included the clause approving initiation of proceedings for restoration of unpaid wages. Unfortunately, in the meantime the contact with workers was lost making it unlikely that they would learn about the possibility to institute proceedings.*

*(for more details on the judgement with regards to corporate joint liability for labour trafficking, see further in this report, Section 5).*

<sup>22</sup> Summary of the case is available on the ITUC blog: <http://www.ituc-csi.org/joint-corporate-liability-in> as well as on the website of the Belgian Interfederal Centre for Equal Opportunities and the Federal Centre of Migration: <http://www.diversite.be/tribunal-correctionnel-de-gand-5-novembre-2012>. It is also available in the database of human trafficking case-law by the UN Office for Drugs and Crime (UNODC): [http://www.unodc.org/cld/case-law-doc/traffickingpersons/crimetype/bel/2012/case\\_no\\_20123925.html?tmpl=old](http://www.unodc.org/cld/case-law-doc/traffickingpersons/crimetype/bel/2012/case_no_20123925.html?tmpl=old)

# SECTION 5: PREVENTION

Effective strategies for prevention of forced labour and trafficking attack the root causes rather than the symptoms. Without effective prevention, investment in other critical areas, such as victim identification, protection and law enforcement, cannot fully solve the problem, as the new victims will simply replace those who are released.

Although the labour institutions could play the crucial role in prevention of labour trafficking, often the practice does not yet play up to the potential.

For example:

- Labour inspectors might not be allowed to inspect private households and so cannot intervene where labour trafficking involves domestic workers;<sup>23</sup>
- Labour inspectors might have limited capacity to enforce unpaid wages;<sup>24</sup>
- Labour inspectors might have capacity only to check employment or working conditions of workers with labour contracts – which will exclude whole groups of posted or self-employed (service providers) workers;
- In many cases labour inspectors complain about too flexible, imprecise and incoherent legislation (including on regulations on work time, on occupational health and safety and on legality of employment) that do not allow for effective monitor compliance.<sup>25</sup>

This report found that in some cases external barriers were combined with internal barriers, such as lack of sufficient awareness of the labour inspection of its role in preventing labour trafficking.

21 Van Hoek, A & Houwerzijl, M (2011) Comparative study on the legal aspects of the posting of workers in the framework of provision of services in the EU.

23 JRF (2012) Detecting and tackling forced labour in Europe available at: <http://www.jrf.org.uk/publications/detecting-tackling-forced-labour-europe>

24 EPSU (2012) A mapping report on Labour Inspection Services in European countries. A SYNDEX report for the European Federation of Public Service Unions

25 ILO (2010) Labour Inspection in Europe: undeclared work, migration, trafficking, WD No 7, Geneva, January 2010



#### Box Box 4: Migrant forestry workers in the Czech Republic (forestry)

*In 2009 and 2010 several interlinked companies – run by the same group of managers – employed hundreds of migrant workers in tree planting and other forestry work in Czech Republic. Workers came from a number of countries, including Vietnam, Slovak Republic, Ukraine, Mongolia, Romania and Bulgaria. They performed heavy manual labour in forestry. The companies were subcontractors of one of the biggest forestry companies in the Czech Republic. This end contractor company was awarded a major part of public tenders from the State Forestry Agency.*

*Workers worked between 10-12 hours per day, six or seven days a week. Commonly, they received no pay at all or only small amounts that were not always sufficient to buy food. They were subject to threats of reporting to the police and deportation (especially Vietnamese workers). Many of the workers were indebted in their countries of origin. The companies were aware of this fact. In case of accidents no health assistance was provided. There were reports about workers with heavy injuries being transported away from workplaces and abandoned with no assistance.*

*The language barrier was deliberately exploited by the companies for the purpose of deception. Vietnamese workers were made to sign a “training contract” in Czech; they were unaware that they were in fact “trainees” not employees. This resulted in lack of intervention from the part of the Czech labour inspection. Although clear indicators of forced labour and trafficking were in place, the labour inspection concluded that, having “trainee contracts”, the workers did not fall under their responsibility but under the responsibility of the Ministry of Education.*

*As far as criminal proceedings are concerned, an investigation was initiated in 2010. The case received support from NGOs including La Strada Czech Republic and pro-bono lawyers. Up to now, however, there has not been a single conviction for trafficking for labour exploitation. The companies changed names, and the end contractor company continues to receive the majority of public tenders from the State Forestry Agency. It is evident that criminal construction of trafficking in Czech law is insufficient to deal with labour exploitation cases. The legal team representing the workers is currently preparing to lodge a complaint with the European Court of Human Rights.*

*Up to now, the Czech forestry workers case remains a sad example of inefficiency of both criminal and labour law enforcement.*

This report found evidence for the need to improve capacity and mandate as well as awareness of labour inspection in order to allow successful identification and addressing of cases of trafficking and forced labour. Labour inspectors, if given sufficient remit, are well placed to provide early warnings of conditions that may degenerate into forced labour situations. Labour inspectors have better access to most workplaces than police and prosecutors and are in the position to carry out the initial investigations and intelligence gathering on the basis of which criminal prosecutions can later be brought.<sup>26</sup> Consequently, this report found that in cases where labour inspection was allowed to play its role, the quality of interventions rose dramatically and produced game-changing results.

This tendency featured in the case of cleaning workers in Belgium (for details of the case see: Box 3).

The case came to light through an anonymous report to the social inspectorate in Ghent<sup>27</sup>. Labour inspectors initiated an investigation of the case. They inspected repeatedly the locations, conducted thorough interviews with affected workers and worked jointly with both Belgian and German investigation teams (prosecutor, police, investigating judge) in order to clarify arrangements for posting of workers from Germany to Belgium (i.e., to verify the existence of social insurance in Germany). Detailed evidence was delivered on actual employment and labour conditions, including analysis of trafficking indicators. On the basis of the material gathered by the inspection, the court was able to deliver a detailed analysis of the labour aspect of the crime of trafficking.

Remarkably, in most cases of violations of labour laws, including trafficking cases, lack of a direct labour relationship with workers is a sufficient defence against the liability of the end contractor. Many cases of severe labour exploitation showing trafficking indicators remain unsolved when end employers claim lack of knowledge of abuses by their subcontractors or suppliers. In the Belgian case, however, the court found basis for extending liability for trafficking, arguing that abuses by the subcontractor would not have been possible without the end contractor “deliberately ignoring malpractices”. Outsourcing

<sup>26</sup> ILO (2008) Forced Labour and Human Trafficking. A Handbook for Labour Inspectors by Beate Andress, SAP-FL ILO, Geneva 2008

<sup>27</sup> In Belgium, labour inspection is divided between authorities specialised in monitoring working conditions (labour inspectorate) and authorities specialised in monitoring social security regulation, including employment of foreign workers and labour trafficking (social inspectorate).



was also found to be not an excuse for “deliberately ignoring exploitation of workers”. Not ending a contract after having a possibility to acquire knowledge about such exploitation was pointed at as a sufficient ground for being an accomplice of such exploitation. The end contractor’s defence of a lack of relationship with workers was called “pure cynism”.<sup>28</sup>

As a result, the company that recruited and delivered workers was convicted for trafficking for labour exploitation and fined 525 000 EUR. The end contractor was convicted for aiding and abetting the crime of trafficking and fined 99 000 EUR.

This strong and landmark judgement on due diligence and responsibility of companies along supply and sub-contracting chains was arguably facilitated by expert evidence gathering provided by the labour inspection.



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<sup>28</sup> The Court’s decision is available on the website of the Belgian Interfederal Centre for Equal Opportunities and the Federal Centre of Migration: [http://www.diversite.be/sites/default/files/legacy\\_files/Rechtspraak\\_jurisdiction/h12-11-05\\_c\\_Gent.pdf](http://www.diversite.be/sites/default/files/legacy_files/Rechtspraak_jurisdiction/h12-11-05_c_Gent.pdf). Unauthorised English translation is available on the ITUC blog: <http://www.ituc-csi.org/joint-corporate-liability-in->

## SECTION 6: PROTECTION

Available data on trafficking suggest that identification of trafficking victims remains very low.<sup>29</sup> Identification of victims of labour trafficking remains even lower, as often authorities responsible for identifying persons as victims are trained to detect primarily victims of sex trafficking.

This results in much lower access of victims of forced labour and trafficking to protection measures available under anti-trafficking laws, such as free accommodation, material assistance, access to medical treatment, free legal aid, translation services and the possibility of receiving a residence permit for the purpose of cooperation in criminal proceedings against traffickers.

Another gap in the identification and protection systems is the lack, so far, of many good examples of protection measures adapted specifically to labour trafficking situations, such as access to labour rights (including wage arrears and social protection), legal aid related to proceedings for compensation of unpaid wages, etc.

Lastly, protection measures are lacking to address a wider area of exploitation, and to ensure that vulnerable workers are identified before being subjected to worse forms of exploitation that amount to trafficking.

Labour trafficking cases remain hidden crimes. Not because they are not visible, but because often they are not recognised as crimes, for a variety of reasons, including lack of awareness, insufficient legal coverage of legislation, lack of knowledge or lack of political will.

Against this backdrop, it is becoming more and more important to develop strategies that will ensure that those who had been subject to trafficking for labour exploitation are given the protection and assistance they are entitled to. That is why lessons can be learned from cases where victims of trafficking for forced labour were properly identified and successfully assisted and traffickers and those who put workers in forced labour were prosecuted in criminal courts.

### Box 6: Operation Netwing in the UK (tarmacking)

*In 2011, a police raid was executed at a site of the family in Bedfordshire in England, based on allegations that they were holding men in forced labour. Twenty-three men who could be classified as “workers” were found on site. Some were recruited very recently, and some of them worked for the family for a number of years, in one instance up to 15 years. The victims had a number of health problems as a consequence of their ongoing exploitation, including fractures to ankle, thumb and ribs, malnutrition and scurvy.*

*Victims lived in squalid conditions, were forced to work in tarmacking of private roads, received little or no pay and were exposed to de-humanising treatment (control over their movement and meal times; their heads were shaved) and violence.*

*Fifteen of the victims supported the police investigation, and there were further witnesses that supported the trial. One of the key hurdles that needed to be overcome during the proceedings were the defendants claims that they “saved” the victims from being homeless on the streets or cured them from alcoholism by giving them a structured life and a roof over their head and that the cooperation of victims was bought by the police from victims by “giving them food, clothing and medical assistance”.*

*These claims were successfully rebutted when it was explained to the court that all that was provided to the victims was done so in complying with the requirements of the Council of Europe Convention on identification and protection of victims of Trafficking, that the Reception Centre (where the victims were initially received after rescue from the site) had only safeguarded their rights, as public authorities had a duty to do under ECHR, combined with an investigative obligation following a credible allegation.*

*The case has seen a total of 14 convictions and the highest sentence of 11 years of imprisonment under the s.71 of the Coroners and Justice Act (offence of forced and compulsory labour).*

<sup>29</sup> The UNODC data on THB for 2007-10 suggest that only 43 000 victims of trafficking were detected worldwide (UNODC 2012). This corresponds to the EUROSTAT data for Europe, that points at 5 535 victims of trafficking identified in 2010 for the 24 MSs that were able to provide such data.

While the above case was rather extreme in its facts, a number of lessons can be learned in terms of safeguarding a large group of exploited workers. Reportedly, the creation of reception centres and attending to the victims' basic needs immediately played a significant role in gaining their trust and preparing them to act as witnesses.

Although numbers of successful labour cases are growing, still it can be observed that even if proceedings are initiated, those who have suffered from forced labour and trafficking are rarely assisted in getting victim status and related entitlements.

This tendency featured in the already mentioned case of cleaning workers in Belgium (for details of the case see: Box 3). Although the sub-contractor and end-user company were both successfully prosecuted and convicted for the crime of trafficking, the issue of granting workers victim status has been overlooked. As proper identification is a prerequisite for assistance, none of the workers was assisted. During the time of proceedings (around four years), contact with all of them was lost and all of them most probably left Belgium. The lack of identification and assistance had a direct impact on access to remedy. Although the court judgement included the clause approving initiation of proceedings for restoration of unpaid wages, lack of contact with victims would make it very unlikely that they would learn about the possibility to institute proceedings.

It has to be underlined that irregular migrants, although most often the victims of most severe cases of exploitation, have the least practical access to protection measures. Importantly, the new 2012/29/EU Directive on establishing minimum standards on the rights, support and protection of victims of crime provides with harmonisation of laws in this area. This Directive does not explicitly establish safeguards for undocumented migrants, but it does clearly refer to the rights of all victims regardless of migration status or irregular employment status (informal work). It will now depend on the EU Member States as to how they will implement the Directive and if it would be possible to include specific safeguards to national-level legislation that would ensure that undocumented migrants as well as irregular workers will be able to report crimes against them without the fear of being deported or charged for regularisation (e.g., for unpaid social security fees).<sup>30</sup>

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<sup>30</sup> See: PICUM (2012) "Migration status as vulnerability factor in situations of human trafficking and exploitation" blog entry by Kadri Soova (23.10.2013) available at: <http://picum.org/en/news/blog/37341/>

# SECTION 7: ACCESS TO REMEDY

Effective protection of trafficked persons involves them being able not only to report grievances to competent authorities but, more importantly, to have access to justice and to obtain redress and compensation. Obtaining compensation for material and non-material damages is an important component of redress for victims.

However, compensation remains one of the weakest links in providing justice to victims of trafficking. Some of the key obstacles concern irregular migrants and relate to the lack of a firewall between access to court and migration status. Increasingly, it is argued that for labour rights enforcement to be effective, there must be a firewall between right of access to the court and migration status; otherwise, abuses are not reported and exploiters escape justice.

Other obstacles are related to the administration of justice.

This report confirmed that traditional criminal and civil procedures for obtaining compensation are often not well adapted for victims of labour trafficking in particular.

## Box 7: Romanian workers at holiday resort camp site in Germany (construction)

*The case involved around 50 Romanian workers recruited for work at holiday resort camp site in the region of Saarland, Germany. In 2012, the company owning the holiday resort succeeded in getting public funding from regional government to support construction of a new holiday village. The construction was contracted to a large French company with a large German company as general constructor and a Germany timber construction consortium as one of the subcontractors. This consortium was in relation with some 35 companies which together contracted about 400 workers working on the site.<sup>31</sup>*

*The Romanian workers were contracted by one of the smaller sub-sub-contractors to build a part of overall project – a set of summer cottage houses. They were recruited by a recruitment agency in Bucharest under promises of fixed jobs and salaries. But when they arrived in Germany, it appeared that conditions were different. They were offered work on self-employment basis, which meant no entitlement to sectoral minimum wage, pension contribution, holiday and sick pay. They were lodged on the construction site, at cottages they were building. They ended sleeping in unheated spaces in the middle of winter. They received no money for several months, ending in a situation when they were not even able to buy basic food. This continued for almost four months. At the end, the local community was organising support – food and assistance – to the impoverished workers.*

*The case was brought to the attention of the local press by a faith-based organisation active in the local community. Reports published in the local newspaper led to the public prosecutor's office launching the investigation related to withholding of wages. Also, an investigation concerning forced labour and trafficking was initiated. Unfortunately, these charges were soon dropped. The public prosecutor's office decided that the fact that workers were not physically confined to the workplace (e.g., some of them had their cars at their disposal) precluded classification of the case as trafficking for forced labour. The remaining indicators were not recognised as sufficient for criminal proceedings.*

*The case, however, generated significant public attention, also because of the fact that public funding was involved. Unfortunately, a complex sub-contracting chain at the construction site made it very difficult to administer responsibility. The general constructor (German construction company) admitted that it was responsible for the construction of the central unit housing, the reception, restaurants and the swimming pools, but said it had nothing to do with the holiday cottages. The subcontracted company (timber construction consortium) issued a written statement contradicting accusations and claiming that they could demonstrate no delays in paying their subcontractors, and that therefore they were also not responsible for withholding of workers' salaries and that they were also in no direct relationship with them. The case was taken on by trade union organisation in the construction sector IG BAU affiliated to the German Confederation of Trade Unions DGB. Negotiations finally resulted in the general constructor paying workers small amounts (500 EUR each) in order to cover most urgent living costs. This was immediately advertised by the company as a "humanitarian act" with consequent arguing against any liability due to lack of direct relationship with abused workers.*

<sup>31</sup> See also: ITUC Blog "Romanian workers exploited at construction site of a holiday camp in Saarland" (28.03.2013) available at: [http://www.ituc-csi.org/romanian-workers-exploited-at?var\\_mode=calcul](http://www.ituc-csi.org/romanian-workers-exploited-at?var_mode=calcul)



In case of attempts to obtain compensation through criminal courts, lack of appropriate identification of cases of labour trafficking and forced labour as crimes will preclude successful action. For instance, national laws in many countries still apply a narrow definition of means of coercion. Presence of coercion is required to establish offence of forced labour or trafficking for forced labour. Consequently, many cases of severe exploitation, where a number of strong trafficking or forced labour indicators are present but pure physical force is absent, will escape qualification. As the result, prosecution authorities and police would refuse to pursue labour trafficking cases due to such a narrow definition.

In civil proceedings, which can be utilised to claim compensation for forced labour situations, including for unpaid wages, one of the key obstacles comes from the burden of proof. Since the civil case involves two equal private parties and no involvement of the state, it is on the claimant (i.e., the worker) to prove the amount of damage and the causal link. Another problem is that it is often impossible to identify the offender (e.g., in a case of a chain of several sub-contractors) or the offender might not have resources to pay compensation.

The EU Anti-Trafficking Directive requires EU Member States to ensure that victims of trafficking have access to existing schemes of compensation to victims of violent crimes of intent.<sup>32</sup> In such case compensation is obtained from the state, not from the offender. The practical usefulness of this option to trafficking victims is often criticised. Problems include the fact that access to such a scheme is possible only after conclusion of criminal proceedings and conviction of the offender, which might take several years. Eligibility criteria are often very strict, including evaluation to what extent the victim cooperated with the police. Absence of physical injury will preclude eligibility since compensation only relates to violent crimes. Proof of damages still needs to be performed by the applicant. This research has not been able to ascertain any case where a person trafficked for labour exploitation was able to access such funding.

When it is unlikely that proceedings via civil or criminal court will be pursued, labour courts may provide a viable, and in some cases even a better, option of seeking redress for exploited workers. Also, group claims and collective bargaining directly with the employer are possible new strategies of facilitating access to compensation.

This is an area where trade unions have a great deal of expertise and have assisted workers in taking their claims, as shown in the case of Cameroonian workers in Sweden (see: Box 2); the case above (see: Box 7) and in the case below:

#### Box 8: Vietnamese and Thai workers in Finland (restaurants and beauty services)

*The case involved seven Vietnamese workers employed in a restaurant in Finland. Workers were obliged to work seven days a week, twelve hours a day for no pay. Trade unions (PAM) assisted workers in calculating their unpaid wages which, after applying minimum Finnish standards to hours worked, would have amounted to total to nearly 1 mil EUR. Workers were partially compensated but not to the full amount. Employer was convicted for human trafficking.*

*The other case involved some 20 Thai workers recruited by Finnish and Thai contractors to work in beauty parlours offering Thai massage. Workers – who were trained masseuses employed in a good hotel in Thailand – were individually approached and made promises of very good conditions if they came to Finland. They were promised a monthly salary of around 1 500 EUR, but they were intentionally not informed about average living costs in Finland. Contracts were signed in Thailand in the attempt to further exclude application of Finnish labour standards to workers' contracts. Upon arrival the conditions changed. Workers were required to accept long hours, ten to twelve hours a day, six to seven days a week. They were also required to perform different jobs across various activities of the employing company – in hairdressing salons where they were obliged to try to get new customers or substituting in the company warehouse when there was a shortage of labour. During two years of working in Finland, workers were not allowed to leave to visit their families back home. Finally, some of them contacted the trade union organisation Services Union United PAM, affiliated to the Central Organisation of Finnish Trade Unions SAK, and it was possible to negotiate some compensation for unpaid wages and for lost leave. Workers were also assisted in initiating civil proceedings in order to get more compensation. Trade unions also informed the police about the case, but no criminal charges were brought. The police replied that the workers themselves would have to file a case.*

<sup>32</sup> Article 17 of the Anti-Trafficking Directive. The Council Directive 2004/80 relating to compensation to crime victims requires Member States to provide in their national legislation for a compensation scheme for victims of violent intentional crime committed in their territories, including in cross-border situations.



Interestingly, the 2009/52 EU Employers Sanctions Directive provided for new safeguards potentially capable of strengthening access to compensation by victims of labour trafficking. This instrument requires the EU Member States to criminalise the employment of irregular migrants in cases of severe labour exploitation or in cases of labour trafficking.<sup>33</sup> In any case of employing irregular migrants, the employer should be liable to pay any outstanding remuneration, at the level no lower than minimum wage in a given sector.<sup>34</sup> Unless proven otherwise, employment is presumed to last at least three months.<sup>35</sup> Joint chain liability is required in case any intermediate subcontractor or the main contractor knew about employment of irregular migrants by the subcontractor.<sup>36</sup>

However, this research has not been able to identify any cases where sanctions were applied for employment of irregular migrants in severe exploitation situations or victims of labour trafficking.

#### Box 9: Bangladeshi workers at strawberry plantations in Greece (agriculture)

*The case involved hundreds of Bangladeshi workers employed at Nea Manolada, about 260km west of Athens, a huge zone of strawberry plants with thousands of migrant farm workers employed, many of them in atrocious working and living conditions.<sup>37</sup>*

*In April 2013 a large protest took place when about two hundred (mostly undocumented) agricultural migrant workers from Bangladesh gathered to demand wages unpaid for half a year from their employer. Workers reported being promised wages of 22 EUR a day. That would in theory mean less than 3 EUR per hour for an eight-hour daily shift. But the workers were hardly ever paid. They were at the same time systematically forced to work around 16 hours per day. "They keep telling us that we will get paid in a month, and this has been going on for more than a year," said one of workers "We don't talk about it because we are afraid that we will be killed or kicked out."<sup>38</sup>*

*In reply to the gathering of unarmed workers, three managers opened fire on a crowd, shot and hurt twenty-eight of the workers, four of them critically.<sup>39</sup> One of the workers reported: "When they pointed their guns at us, and there were around 200 of us gathered in that space, we thought they were joking. After all, we hadn't been paid for more than five months. (...) When they started firing and the shot and bullets began to fly, we all started howling and crying, 'Help', 'help'" (...) But they kept firing and there was blood everywhere, people lying head-down in the field as if they were dead."<sup>40</sup>*

*The case has been supported by the Greek Council for Refugees (a non-governmental organisation) and it was heard by the court in Patras in July 2014. Despite evidence of several labour trafficking indicators present, as well as the undocumented status of workers, none of the accused was charged with the offence of employment of irregular workers in situation of extreme exploitation (Employers Sanctions Directive). While charges included human trafficking, the defendants were not found guilty. The court has not applied either legislation transposing the EU Employers Sanctions Directive, or the Anti-Trafficking Directive. The points related to freedom of association and assembly were not raised either. Two defendants were found guilty for causing grievous bodily harm and as an accessory to causing grievous bodily harm respectively, but only received suspended jail sentences.<sup>41</sup> The decision by the lower court in Patras was later upheld by the Supreme Court in October 2014.<sup>42</sup>*

Overall, the cases illustrate an urgent need for policy change in order to grant informal workers, including irregular migrants, a legally recognised employment relationship with an identifiable and legitimate employer in the country where the work is performed. The scope of labour laws, including access to labour justice and compensation, should be broadened in order to cover all workers, regardless of residence status or formality of employment, and without discrimination. Broadening the scope of protective safeguards for third country nationals (such as giving a temporary residence permit and allowing for free legal counsel) to include not only regular migrants but also irregular migrants would prevent these categories of workers from remaining a "zero risk victim" and help combat impunity.

<sup>33</sup> Article 9 of the 2009/52 Directive

<sup>34</sup> Article 6(1)(a) of the 2009/52 Directive

<sup>35</sup> Article 6(3) of the 2009/52 Directive

<sup>36</sup> Articles 18(1) and 18(2) of the 2009/52 Directive

<sup>37</sup> See also: Statement by the Fundamental Rights Agency (19.04.2013) available here: <http://fra.europa.eu/en/news/2013/exploitation-migrant-workers-illegal-and-unacceptable> (accessed 01.12.2014).

<sup>38</sup> Reuters "Greece hunts foremen in shooting of Bangladeshi farm workers" (18.04.2013), available at: <http://uk.reuters.com/article/2013/04/18/uk-greece-shooting-idUKBRE93H0HS20130418>

<sup>39</sup> See: ITUC blog "Unpaid Bangladeshi Strawberry Pickers Shot by Employer in Greece" (18.04.2013) available at: <http://www.ituc-csi.org/unpaid-bangladeshi-strawberry>

<sup>40</sup> The Guardian "Greece's migrant fruit pickers: 'They kept firing. There was blood everywhere'" (01.09.2014) available at: <http://www.theguardian.com/world/2014/sep/01/greece-migrant-fruit-pickers-shot-they-kept-firing>

<sup>41</sup> See: ITUC Survey of violations of human rights "Greece - Court acquitted farmers who shot Bangladeshi strawberry pickers" July 2014 available at: <http://survey.ituc-csi.org/Court-acquitted-farmers-who-shot.html>. See also: PICUM Submission to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) (07.04.2014) available at: [http://www.ohchr.org/Documents/HRBodies/CMW/Discussions/2014/PICUM\\_CMW\\_DGD2014.pdf](http://www.ohchr.org/Documents/HRBodies/CMW/Discussions/2014/PICUM_CMW_DGD2014.pdf) (accessed 01.12.2014). See also: The Guardian "Greek court acquits farmers who shot 28 Bangladeshi strawberry pickers" (31.07.2014) available at: <http://www.theguardian.com/world/2014/jul/31/greek-court-acquits-farmers-shot-strawberry-pickers>

<sup>42</sup> See: Enikos Media "Greek court decision on Manolada shootings branded 'unacceptable'" (30.10.2014) available at: [http://en.enikos.gr/society/18208,Greek\\_court\\_decision\\_on\\_Manolada\\_shootin.html](http://en.enikos.gr/society/18208,Greek_court_decision_on_Manolada_shootin.html)

## SECTION 8: CONCLUSIONS – IN SEARCH FOR POLICY COHERENCE

The EU Anti-Trafficking Directive requires EU Member States to take up a number of actions in order to combat labour trafficking in Europe. Simultaneously, the EU Strategy 2012-2016 acknowledges that strengthening cooperation with labour actors, such as labour inspectors, in relation to the identification and referral of victims of labour trafficking.

The EU Anti-Trafficking Strategy seeks to align its anti-trafficking policy with other policy areas. In this context the Report concludes that insufficient integration of labour approach into anti-trafficking action might result in gaps in legislation and policy and lack of effective tools to deal with highly abusive situations at and around the workplace.

Existing policy instruments focus on identifying, assisting and protecting individuals rather than groups of victims. Such approach often makes it impossible to take into account specific elements of trafficking for labour exploitation and to explore collective responses, including collective action and collective bargaining. Both good practices as well as limitations – and possible solutions to limitations – should be investigated and analysed in more detail.

Labour mobility in the EU – migration from third countries, but also free movement of EU workers and, especially, new forms of employment arrangements such as posting of workers and posting of self-employed service providers – can create vulnerability to labour trafficking. It is important to note freedom to provide services, combined with insensitivity to labour trafficking, may lead to a further increase of trafficking and forced labour. Specific, relevant prevention, protection, and enforcement strategies need to be identified.

Prevention provisions cannot be understood solely as awareness raising, education and information. While these tools are useful, they will not in themselves prevent both individual as well as group cases of trafficking. Instead, prevention should be understood to include labour market-based measures, such as targeted responses to promoting equal opportunities, organisation and empowerment of vulnerable groups of workers, including in the informal economy and at-risk communities, and child protection. They should also link to safe migration for workers through fixing structural flaws in temporary migration programs, include measures to address the role of the private sector in better monitoring supply chains by allowing freedom of association for workers in supply chains, and establish accountability and liability mechanisms for the actions of suppliers and sub-contractors.

Protection and assistance is dependent on proper identification of victims. It should be emphasised that early identification is crucial to promptly assist, support and protect victims of trafficking and that it also enables police and prosecution authorities to better investigate and punish traffickers. Without early identification, victims of labour trafficking remain in a vicious circle of continuous exploitative arrangements or are treated as criminals and prosecuted or fined for actions linked to trafficking, such as illegal entry to the country of work, undeclared work (informal employment) or social fraud (infringement of laws related to social security contributions).<sup>43</sup> In this context, better integration of the ILO/EU Delphi criteria in programing, training and coordination of both criminal and labour law enforcement authorities, both at the EU level and at the country level, is urgently needed.

Compensation remains one of the weakest links in providing justice to victims of trafficking. Limits of criminal and civil claims as well as limits in access to state schemes of compensation to victims of violent crimes of intent for trafficking victims are well recognised and should be addressed. When it is unlikely that proceedings via civil or criminal court will be successful, labour courts may provide an alternative.

In practical terms, criminalising of forced labour and trafficking is not enough. Policymakers should better focus on addressing severe labour exploitation – excessive working hours, low wages, unsafe and unhealthy living and working conditions – endured by many workers today and leading in most cases to trafficking situations. These are problems that require structural

43 Undeclared work/sector (informal work/sector) encompasses jobs which are remunerated but hidden from the state – they are not recognised as normal income sources, and on which taxes and social security contributions are not paid. Often undeclared work is performed on self-employment basis.

reforms to the labour market, perhaps more than the application of criminal law per se. They also need bringing into play other instruments and actors, such as labour administration, labour courts and labour unions. In this context it should be underlined that labour inspection should not be used for the purpose of control of irregular migration. In other words, the role of labour inspectorate should be not to control lawfulness of the employment relationship but to control the conditions under which the work is performed and to protect workers in a climate of trust.<sup>44</sup>

Broadening of the coverage and strengthening the application of labour laws, including the informal economy, is crucial. In the area of EU migration law, there is a need for improvement in addressing migration status as a vulnerability factor in situations of labour trafficking and forced labour. It is visible that due to imperfect identification processes, the majority of trafficked persons are not recognised as victims of trafficking, and thus fall into the broader category of irregular migrants. On the other side, lack of legal migration opportunities further contributes to the trafficking and forced labour problem, which indicates that there should also be a stronger cohesion between EU migration and development policy.<sup>45</sup> Overall, in order to implement the integrated approach, the European States and the EU must give attention to the prevention of forced labour and trafficking and the protection and assistance to victims. Such attention should be equal to that already given to prohibition and prosecution of perpetrators. The labour approach – strengthening coverage of labour laws and strengthening of the role of labour inspection and administration – is desperately needed. Forced labour and labour trafficking need to be understood as caused by deficiencies in the regulation of labour markets and economy, rather than caused only by the individual vulnerabilities of victims.

The fight against forced labour and trafficking could be made more successful through the use of an integrated labour and human rights-based approach. The anti-trafficking framework has been recently strengthened by the adoption in June 2014 of the Protocol to the ILO Forced Convention no.29 (1930). The Protocol confirms that eradication of labour trafficking is obligatory under the ILO Forced Labour Convention to which all the EU Member States are Parties. Much will depend now on how fast the EU countries ratify the Protocol and whether policymakers and other stakeholders will take the new standards on board. The EU Commission should urge the States to ratify the Protocol with no delays, in order to make the work against trafficking in human beings more effective, coordinated and coherent.

<sup>44</sup> See, e.g., ILO Committee of Experts on Application of Conventions and Recommendations, in relation to implementation of the ILO Labour Inspection Convention no. 81 (Direct Request (CEACR) – adopted 2004, published 93<sup>rd</sup> ILC Session (2005) Labour Inspection Convention, 1941, (No. 81) – Italy (Ratification: 1952).

<sup>45</sup> ACP-EU Joint Parliamentary Assembly 100.012/07/fin, Resolution on Migration of Skilled Workers and its Effect on National Development, 2007. See also: Rijken, C (2009) A Human Rights-Based Approach to Human Trafficking in the EU\* .

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# ANNEXES

## *Annex 1 Case grid: Spanish e-commerce warehouse workers in Germany*

Spanish e-commerce warehouse workers in Germany	
Year	2013
Country of destination	Germany (Bad Hersfeld)
Country of origin	Temporary workers from all over Europe, including newly recruited from Spain
Industry	Services
Company	Internet retail company warehouse
Description workplace	Temporary work in internet retail warehouse. Large multinational company. Workers housed by the company. Company provides also transport to work
Profile of workers	Migrant workers from EU countries
Type of recruitment	No information
Type of contract	Temporary work. No information if seasonal work or posted work schemes were used
Supply chain	Supply of services at company-provided accommodation – sub-contracting of a private security firm
Labour trafficking indicators	
ACTION elements of trafficking in persons definition	
Recruitment	Recruited in Spain
Transportation/transfer	No information
Harbouring (housing)	Accommodation provided by the employing company
Receipt	No information
MEANS elements of trafficking in persons definition	
Coercive/deceptive recruitment/recruitment with abuse of workers' vulnerability	Workers earned less than they were originally promised before leaving their home countries to come to Germany. Promises of possibilities of indeterminate contracts with the company were used to induce obedience and acceptance of substandard working and living conditions.
Abuse of vulnerability/power in performing work	Imposed long working hours, bad working and living conditions. Control over private life.
Coercion	Excessive monitoring in the workplace and in provided accommodation. Intimidation by guards. Body searches and arbitrary searches at private quarters.
Confiscation of documents	No information
Debt bondage	No information
Violence on victims	Omnipresent surveillance, para-military symbols, intimidation by security guards. Employees of the security firm put at liberty to invade workers' privacy at company hostels. The omnipresent security members, with shaven heads, wearing leather jackets and big boots, appeared to have free rein to check the workers' accommodation, entering bedrooms and kitchens and perform unlimited security checks to make sure workers are not taking bread rolls from the canteen.

PURPOSE elements of trafficking in persons definition (labour exploitation, forced labour)	
Exploitation	Excessive hours, high norms, low wage, bad living conditions
Excessive working hours	Cases of work 15 days in a row, walked up to 17km a day
Bad living conditions	The workers lived in cramped houses with omnipresent security.
Hazardous work	No information
Low or no salary	No exact information
No social protection	No information
Wage manipulation	Workers earned less than they were originally promised before leaving their home countries to come to Germany.
Other	n/a
Victim assistance	
Identification as victims of THB (Trafficking in Human Beings)	No
Assistance	Some support measures
Control measures/ involvement labour inspection	No
Actors involved in assistance (trade unions, NGOs, etc.)	Media support (documentary in German TV, various publications in German and European news services). Support from German trade unions Ver.di. Support from the local public.
Deportation	No information
Proceedings	
Criminal FL/THB	No
Labour (compensation)	No
Other	No
Conviction/responsibility - subcontractor	No
Conviction/responsibility - employer	No
Were workers compensated	n//a
Analysis	
What constituted good practice/what worked well	Media coverage generated public attention and four days later the company in question announced that it had ended its relationship with the security firm "with immediate effect".
What constituted bad practice/what did not work as well	Despite coercion elements present, no investigation of forced labour or trafficking. No criminal, labour or civil proceedings. No investigation of employment conditions.
What changes were instituted as a result	No information

## Annex 2 Case grid: EU and non-EU bakery workers in Ireland (food sector)

Annex 2 Case grid: EU and non-EU bakery workers in Ireland (food sector)	
Years	Between 2009-2014 (But the majority of workers would have been up to six months.)
Country of destination	Ireland
Country of origin	Including both EU and non-EU nationals
Industry	Restaurant
Company	Paris Bakery and Pastries Ltd.
Description workplace	Café, Restaurant, Bakery and Wine Bar.
Profile of workers	Male and Female, from 20-45 (The majority in late 20s to early 30s.)
Type of recruitment	Variety of methods. Some were recruited from France, others in placement, word of mouth and direct applications to the employer.
Type of contract	A majority had permanent contracts but a few had none.
Supply chain	No information
Labour trafficking indicators:	
ACTION elements of the trafficking in persons definition	
Recruitment	Deceived about payment, deceived about conditions of employment
Transportation / transfer	No information
Harbouring (housing)	No information
Receipt	No information
MEANS elements of the trafficking in persons definition	
Coercive/deceptive recruitment/ recruitment with abuse of workers' vulnerability	Withholding of wages
Abuse of vulnerability/power in performing work	Lack of knowledge of law, lack of language skills, economic reasons
Coercion	No
Confiscation of documents	No
Debt bondage	No
Violence on victims	No
Isolation	No
PURPOSE elements of the trafficking in persons definition (labour exploitation, forced labour)	
Exploitation	Yes
Excessive working hours	Yes
Bad living conditions	No
Hazardous work	No
Low or no salary	Yes
No respect for laws or contract signed	Yes
No social protection	Yes
Wage manipulation	Yes

Victim assistance	
Identification	Not referred under trafficking legislation
Assistance	Provided by MRCI in seeking compensation, legal claims and social protection
Control measures/involvement labour inspection	No
Actors involved in assistance (trade unions, NGOs, etc.)	MRCI, legal professionals, trade unions
Deportation	No
Proceedings	
Criminal FL/THB	No
Labour (compensation)	Yes, the victims brought their claims before the employment redress mechanisms; awards granted, enforcement through insolvency claims.
other	No
Conviction – subcontractor /employer	No
Conviction - contractor	No
Were workers compensated	Still in the process of enforcement of Labour Courts decision; the workers have not received the monies to date.
Analysis	
What constituted good practice/what worked well	Good collaboration with the legal teams in seeking compensation for the breaches of their employment rights. Good collaboration with trade unions. Good awareness-raising exercise. Very high level of public support and media attention.
What constituted bad practice/what did not work as well	Legislation in Ireland does not protect employees from employers claiming insolvency. Labour inspection failed to identify exploitation.
What changes were instituted as a result	Work is continuing to change law regarding insolvency.

### Annex 3 Case grid: Migrant forestry workers in Czech Republic (forestry)

Annex 3 Case grid: Migrant forestry workers in Czech Republic (forestry)	
Year	2009-2010
Country of destination	Czech Republic
Country of origin	Vietnam, Slovak Republic, Ukraine, Mongolia, Romania and Bulgaria. La Strada's and CMKOS (Romanian trade union organisation)'s estimation was that there might have been around 1500 – 2000 trafficked persons.
Industry	Forestry
Company	Big forestry company with chain of sub-contractors recruiting and contracting workers and organising work and accommodation. End contractor company was awarded a major part of public tenders from the State Forestry Agency.
Description workplace	Hard manual labour in forestry. Workers housed by sub-contracted companies in accommodation close to the forest.
Profile of workers	Migrant workers from EU countries
Type of recruitment	No information
Type of contract	Self-employment, "trainee contracts". No information if seasonal work or posted work schemes were used.
Supply chain	Big forestry company with chain of sub-contractors recruiting and contracting workers and organising work and accommodation
THB indicators	
ACTION elements of the trafficking in persons definition	
Recruitment	Recruitment by sub-contracted companies directly contracting workers or by further subcontracted companies
Transportation/transfer	No information
Harbouring (housing)	Accommodation provided by sub-contracted companies directly contracting workers
Receipt	n/a
MEANS elements of the trafficking in persons definition	
Coercive/deceptive recruitment/recruitment with abuse of workers' vulnerability	False promises of wages, workers offered employment contracts which in reality were "trainee contracts"
Abuse of vulnerability/power in performing work	Deliberate use of lack of knowledge of language – contracts were signed in Czech.
Coercion	Threats of use of force: while the workers wanted to leave, stop working or report the case to the police, threats of physical liquidation and beating were used. Presence of security forces at workplace. Threats of deportation of workers from Czech Republic.
Confiscation of documents	No information
Debt bondage	Workers indebted in countries of origin. Employer had knowledge about it
Violence on victims	Reports of using physical force, intimidation, life threats



PURPOSE elements of the trafficking in persons definition(labour exploitation, forced labour)	
Exploitation	Excessive hours, high norms, low or no wage, bad living and working conditions, no health assistance in case of injuries
Excessive working hours	10-12 hours a day of hard physical labour, every day a week. No leave or breaks
Bad living conditions	Cramped houses, very bad living conditions
Hazardous work	Hard manual labour with sharp equipment. No occupational safety. Frequent accidents. In case of accidents, no health assistance provided, injured workers abandoned after being transported at distance from the worksite.
Low or no salary	Low salaries, not paid
No social protection	No social protection, arrangements to exclude workers from protection of labour and social protection regulation (self-employment, trainee contracts)
Wage manipulation	Workers earned less than they were originally promised before leaving their home countries to come to Germany.
Other	n/a
Victim assistance	
Identification as victims of THB	No
Assistance	Support measures from La Strada CZ. Legal assistance by pro-bono lawyers.
Control measures/involvement labour inspection	Labour inspection classified case as falling under remit of Ministry of Education ("trainee contracts")
Actors involved in assistance (trade unions, NGOs etc)	La Strada, CMKOS
Deportation	No information
Proceedings	
Criminal FL/THB	Criminal investigation initiated but no accusation of trafficking formulated and court proceedings are still pending.
Labour (compensation)	Labour inspection classified case as falling under remit of Ministry of Education ("trainee contracts") and refused to intervene
Other	No
Conviction/responsibility - subcontractor	No
Conviction/responsibility - employer	No
Were workers compensated	No
Analysis	
What constituted good practice/what worked well	Legal assistance by NGOs and trade unions, some media coverage
What constituted bad practice/ what did not work as well	Failure so far of both criminal and labour law enforcement. Impunity of perpetrators. Public procurement involvement did not result in any pressure to investigate the case. Companies involved in the supply chain continued to receive public grants.
What changes were instituted as a result	n/a

#### Annex 4 Case grid: CEE Cleaning workers in Belgium Case (Belgium)

Annex 4 Case grid: CEE Cleaning workers in Belgium Case (Belgium)	
Years	Facts 2008 (judgement 2012)
Country of destination	Belgium
Country of origin	Nationalities of workers involved: Bulgarian, Moldovan, Romanian, Kazakh, German; some have a double nationality such as Bulgarian-Moldovan; most German workers originate from Kazakhstan.
Industry	Services (maintenance/cleaning)
Company	Multinational corporation – chain of restaurants located at motorways
Description workplace	Mobile provision of services by subcontracted company – cleaning of bathrooms in motorway restaurant chain all around Belgium. Clients of restaurants were charged for using bathrooms – profits belonged to the subcontractor who paid a yearly fee to the restaurant chain of 1250 EUR per worksite. Worksites changing frequently. Transport to work organised by subcontracted company and meals on-site organised by subcontracted company and end company.
Profile of workers	Men and women, brought over from their home countries by the subcontracted company, no integration in Belgian society at all, deprived of social security (social fraud by employer)
Type of recruitment	By subcontracted company – directly contracting workers = service providers (advertisements in Russian and Moldovan newspapers)
Type of contract	Erroneous (no real arrangement for social security in country of posting) posting of workers/posting for provision of services (self-employment). Contracts and arrangements were changing over time in attempt to disguise non-compliance with Belgian and German labour standards.
Supply chain	Subcontracted company registered in Germany, owned by German citizen of Kazakh origin
THB indicators	
ACTION elements of the trafficking in persons definition	
Recruitment	Workers recruited in countries of origin through advertisements in newspapers by subcontracted company. Workers were then brought to Germany (usually for one day) and fictitiously registered for residence (e.g., at one specific address there were over 200 workers registered for very short periods). Posting contracts were signed including fictitious arrangements for social insurance (contributions to social insurance were not paid). Subsequently, workers were transported to Belgium.
Transportation/ transfer	Workers were transported to Germany and subsequently to Belgium; in some cases the workers came directly from their home country to Belgium. Transport arrangements arranged by the subcontracted company.
Harbouring (housing)	Subcontracted company organised accommodation for workers (overcrowded accommodation where larger numbers of workers lived together).
Receipt	n/a
MEANS elements of the trafficking in persons definition	
Coercive/deceptive recruitment/ recruitment with abuse of workers' vulnerability	Recruitment of people in a precarious situation in their home countries. Workers were brought over to Germany where they signed a contract in German, a language the workers could not understand. The documents signed were false, e.g., the documents stated that the workers were self-employed in Germany, which was not the case. The workers were totally uninformed: they were unaware of provisions of their contracts (i.e., some contracts stipulated working three hours per day where in practice workers worked up to 15 hours per day). They did not know whether or not they are insured; they thought they were employed as regular employees, not self-employed contractors.
Abuse of vulnerability/power in performing work	Workers lived in an apartment rented by the subcontracted company. The employer also organised daily transport to and from work. Workplaces changed frequently, subject to exclusive decision by employer. Workers were not to leave the workplace. They received food on site, provided by end company. No residency permit in Belgium. Workers were totally isolated and completely dependent on their employer.

Coercion	Serious psychological harassment by the employer indicated by state of emotions of workers when testifying to the social inspection. Some of the workers testified and ultimately did not decide to sign their testimonies.
Confiscation of documents	No
Debt bondage	Wages were never fully paid: the employer withheld part of the wages due (which made workers dependent on the employer, and made it difficult or even practically impossible for them to leave).
Violence on victims	No
Isolation	Accommodation, transport, meals under control of the employer. Excessive working hours, no knowledge of language – no conditions for organising normal social life in receiving country, no interaction with the community.
<b>PURPOSE elements of the trafficking in persons definition (labour exploitation, forced labour)</b>	
Exploitation	Excessive working hours, low salaries way below legal regulation in Belgium. Delays in payment of salaries.
Excessive working hours	Excessively long working periods: seven days a week, 15 hours a day, no breaks, for several weeks in a row. Contracts falsely stipulated work of three hours per day.
Bad living conditions	Total isolation, lack of any social contacts. Long working hours and long working periods did not allow for any other activities than work and sleep.
Hazardous work	No
Low or no salary	Underpaid: (promised) wages like 1200 EUR/month, 450 EUR/month, 300 EUR/week, 60 EUR/day – these wages, which are way below the Belgian legal wages, were not actually paid, often for weeks in a row: full payment only at the end of the working period.
No respect for laws or contract signed	Labour law violations (non-payment of legal wages, excessively long working periods, illegal employment of foreign workers). Bogus self-employment contracts. Bogus contract provisions – e.g., contracts stipulated working periods of three hours per day where in practice workers worked up to 15 hours per day).
No social protection	As posted workers, victims should have been socially insured in Germany. No social protection was arranged. The workers were also not declared to the Belgian social security. As a consequence, the workers had no social protection at all (social fraud)
Wage manipulation	Wages were never fully paid: the employer withheld part of the wages due (which made workers dependent on the employer, and made it difficult or even practically impossible for them to leave).
<b>Victim assistance</b>	
Identification	In the investigation phase workers were identified as victims of labour and social law infringement, but not as victims of labour trafficking. Consequently, they did not benefit from any victim assistance provisions. No identification as victims of THB and subsequent assistance took place at the phase of proceeding even though both the end company and subcontracted company had been accused and finally convicted for trafficking in human beings.
Assistance	No assistance was granted, since workers were not identified as victims of THB. Even though workers testified, they were not aware of the possibility to receive a temporary residence permit and left the country.
Control measures/involvement labour inspection	Labour inspectorate competent in investigating social fraud and labour trafficking (Belgian social inspectorate) started and led proceedings in cooperation with the Prosecutor's Office. Labour inspectorate gathered testimonies from workers and majority of evidence. There was also cooperation with labour inspectorate in Germany in order to verify existence of posting arrangements and social security arrangements in Germany.
Actors involved in assistance (trade unions, NGOs, etc.)	No information
Deportation	No information whether workers were deported or left Belgium on their own

Proceedings	
Criminal FL/THB	Criminal proceedings at the Ghent Criminal Court against the subcontractor as well as the end company. Charges brought of (1) employing undocumented or unauthorised foreigners; (2) failure to notify the institutions responsible for the collection of social security contributions; (3) human trafficking.
Labour (compensation)	Strong involvement of labour inspection in investigation of the case. Compensation for unpaid wages was adjudicated by the Ghent Criminal Court judgement, but the contact with victims was lost during the proceedings. While workers could apply for payment of compensation, they might not have been aware of the judgement and related rights.
other	
Conviction – subcontractor / employer	Subcontractor was found guilty of charges (see above) and was required to pay a 528 000 EUR fine, and 12 000 EUR of illegal profits were confiscated. Additionally, persons responsible for acting on behalf of the subcontractor were convicted to imprisonment (of respectively one, two, four, and four, years) and to payment of a fine (of respectively 55 000 EUR, 55 000 EUR, 27 500 EUR and 13 750 EUR) and four to five years of dismissal of civil and political rights. One Mercedes car was confiscated. Aggravating circumstances: 1) abuse was made of the precarious social situation of the workers in their home countries and in Belgium, which led to a situation of complete dependence on the employer; 2) the employer made a habit of exploitation of the workers.
Conviction - contractor	End contractor was found guilty of charges (see above) and required to pay a 99 000 EUR fine. End contractor was found guilty of adding and abetting the crime of trafficking by offering its cooperation to the acts of the subcontractor. End contractor was found aware of the exploitation of workers. The cooperation of end contractor enabled the subcontractor to commit the crime. The attempt to deny any liability through claiming no direct contractual relationship with workers was called by the Court a “pure cynicism”.
Were workers compensated	Compensation for unpaid wages has been adjudicated by the Ghent Criminal Court judgement, but the contact with victims was lost during the proceedings. While workers could apply for payment of compensation, they might not be aware of the judgement and related rights. The Centre for Equal Opportunities and Opposition to Racism was accorded a civil compensation of 2500 EUR.
Analysis	
What constituted good practice/ what worked well	Successful prosecution and conviction for THB of individual persons but also of legal persons. Successful prosecution and conviction of end contractor. Judicial reasoning on adding the crime of trafficking and joint liability in a supply chain. Good cooperation between criminal and labour law enforcement. Good cooperation between investigation teams of Belgium and Germany. Belgian investigation team of police and labour inspectors went to Germany to do investigations there. Cooperation between the Belgian and German investigating teams went very well.
What constituted bad practice/what did not work as well	Cooperation between Belgian and German social security inspectors did not work well (it was difficult to establish facts as to the claimed payment of social security in Germany). Workers were not recognised as victims of crime and not granted assistance. Contact with workers was lost, which resulted in lack of access to compensation (due to their probable lack of knowledge of the positive outcome of the criminal proceedings).
What changes were instituted as a result	No information

## Annex 5 Case grid: Cameroonian workers in Swedish forestry sector

Annex 5 Case grid: Cameroonian workers in Swedish forestry sector	
Year/nationalities	2012
Country of destination	Sweden
Country of origin	Cameroon
Industry	Forestry
Company	Two leading companies in Swedish forestry sector
Description workplace	Heavy physical work, planting trees.
Profile of workers	Around 50 male workers from Cameroon
Type of recruitment	No information
Type of contract	no information
Supply chain	Recruitment company subcontracted by the forestry companies
THB indicators	
ACTION elements of the trafficking in persons definition	
Recruitment	Recruited by the agency
Transportation/transfer	No information
Harbouring (housing)	Housing provided by the employer
Receipt	No
MEANS elements of the trafficking in persons definition	
Coercive/deceptive recruitment/ recruitment with abuse of workers' vulnerability	Non-binding job offer. Work and employment conditions fundamentally changed upon arrival. Deception related to both remuneration and performance requirements.
Abuse of vulnerability/power in performing work	No knowledge of the Swedish language
Coercion	No
Confiscation of documents	No information
Debt bondage	Serious debt caused by substantial change of employment conditions
Violence on victims	No
PURPOSE elements of the trafficking in persons definition (labour exploitation, forced labour)	
Exploitation	Excessive hours, impossible daily norms, low rates per piece (instead of salary), equal to 1/3 of the legal minimum wage,
Excessive working hours	Yes – to get close to the monthly pay that they had been promised, workers then had to plant about 3500 new trees a day, which is about double the amount of trees that an experienced worker is capable of planting a day.
Bad living conditions	No information
Hazardous work	Heavy workload
Low or no salary	Serious debt caused by substantial change of employment conditions
No respect for laws or contract signed	Substantial change of employment conditionsNo respect for contracts signed.
No social protection	No information
V bad living conditions	No information
Wage manipulation	Promised a monthly salary of 18 500 SEK, plus 6000 SEK per diem. Upon arrival the deal changed and it was no longer a monthly salary but instead paid at a piece rate of 0,22 SEK.



Victim assistance	
Identification	No recognition as victims of trafficking or forced labour
Assistance	Assistance by trade unions.
Control measures/involvement labour inspection	No
Actors involved in assistance (trade unions, NGOs, etc.)	Trade unions
Deportation	No information
Proceedings	
Criminal FL/THB	No
Labour (compensation)	No labour proceedings involved – case solved by collective bargaining
Other	Collective bargaining negotiations with the Swedish Employers Federation (SLA) over the commitment of the company to compensate Cameroonian workers according to their initial contracts
Conviction/responsibility - subcontractor	The recruiting company paid rates according to initial contracts but only for work actually performed (not according to the length of contracts initially offered).
Conviction/responsibility - employer	Voluntary – negotiations with trade unions
Were workers compensated	Recruitment company agreed to cover only for work actually performed. In the work permit, authorised by the Swedish Migration Board (Migrationsverket), the employment offer was for a longer period than the work actually lasted (so were the wage expectations of the workers, on the basis of which they made the decision about labour migration).
Analysis	
What constituted good practice/what worked well	The case was well covered by the media, and some compensation was made available. Good action by trade unions.
What constituted bad practice/what did not work as well	Legal constructions do not allow for proper identification of victims, or offenders. No legal responsibility for deceptive recruitment, as recruitment is allowed to take place according to a non-binding offer. Compensation was paid but only for work done, not for expected length of contract.
What changes were instituted as a result	No information

## Annex 6 Case grid: Romanian holiday resort camp site workers in Germany (construction)

Annex 6 Case grid: Romanian holiday resort camp site workers in Germany (construction)	
Year	2013
Country of destination	Germany
Country of origin	Romania
Industry	Construction
Company	Large German construction company
Description workplace	Large construction site, some 35 companies providing in total 400 workers to end users in complex supply chain
Profile of workers	Romanian construction workers recruited in Romania
Type of recruitment	Through contracted recruitment company in Romania
Type of contract	Self-employment
Supply chain	Large construction site, some 35 companies providing in total 400 workers to end users in complex supply chain
THB indicators	
ACTION elements of the trafficking in persons definition	
Recruitment	Workers were recruited by a company in Romania and subsequently contracted by a company subcontracted to provide workforce for general constructor.
Transportation/transfer	No information
Harbouring (housing)	Housing organised by subcontracted company
receipt	No
MEANS elements of the trafficking in persons definition	
Coercive /deceptive recruitment/ recruitment with abuse of workers' vulnerability	Deceptive recruitment – on type of contract, conditions of work and employment
Abuse of vulnerability/power in performing work	Workers kept in isolation, lodged at the worksite
Coercion	Serious case of withholding of wages
Confiscation of documents	No information
Debt bondage	Workers kept in heavy bondage through nonpayment of wages that resulted in impoverishment
Violence on victims	No information about physical violence
PURPOSE elements of the trafficking in persons definition (labour exploitation, forced labour)	
Exploitation	Deceptive recruitment, withholding of wages, bad living conditions
Excessive working hours	No information
Bad living conditions	Living organised at construction site, no heating in December, no beds
Hazardous work	No information
Low or no salary	Wages below living costs in Germany. Wages withheld for four months
No respect for laws or contract signed	Contract changed upon arrival. No sectoral standards were observed.
No social protection	No social protection due to self-employment arrangement
Wage manipulation	Wages much lower than promised, non-payment of wages

Victim assistance	
Identification	Workers were not recognised as victims of labour trafficking due to insufficient elements of direct physical coercion. Economic coercion was not taken into account.
Assistance	No assistance was granted as workers were not recognised as victims of trafficking.
Control measures/involvement labour inspection	No involvement of labour inspection
Actors involved in assistance (trade unions, NGOs etc)	Assistance by local community
Deportation	No information
Proceedings	
Criminal FL/THB	Criminal investigation initiated but dropped, due to insufficient elements of direct physical coercion. Economic coercion was not taken into account.
Labour (compensation)	Labour inspection or labour court were not involved
Other	No
Conviction/responsibility - subcontractor	Responsibility for payment of wages was lost in a complicated supply chain. No responsibility of the subcontractor was established. Wages for 4 months of work performed were not paid.
Conviction/responsibility - employer	No responsibility of general constructor who claimed no direct relationship with workers.
Were workers compensated	Workers were compensated to some limited extent. Subcontractor agreed to pay some small amounts of money to workers (500 EUR each) to cover most urgent living needs. It was advertised as a "humanitarian act", and it was underlined that no liability of the subcontractor can be involved.
Analysis	
What constituted good practice/what worked well	Case was well covered by the media; some compensation was made available.
What constituted bad practice/what did not work as well	No responsibility for trafficking or forced labour. No responsibility for deceptive recruitment by recruitment agency. No responsibility for compensation for unpaid wages for performed work.
What changes were instituted as a result	No information

## Annex 6 CAnnex 7 Case grid: Moroccan workers in circus in Ireland (Entertainment sector)

Annex 7 Case grid: Moroccan workers in circus in Ireland (Entertainment sector)	
Years	Alleged trafficking took place between 2003 – 2007. MRCI submitted the case under the Criminal Law (Human Trafficking) Act 2008 on behalf of three workers who were willing to come forward. However, more workers were employed in similar conditions
Country of destination	Ireland
Country of origin	Morocco
Industry	Circus/Entertainment
Company	Circus
Description workplace	Circus which operated in seasons over nine months across Ireland; involved frequent moving across Ireland. The three men were employed as circus riggers although prior to the recruitment they were promised that one would be working as a mechanic and that two would be working as drivers.
Profile of workers	Males, aged between 35 - 55
Type of recruitment	Two workers were recruited by other employees of the circus (the motivation of the workers to act as agents in the recruitment process was not clear). One worker was recruited through an advertisement in the internet placed by the wife of the employer.
Type of contract	Seasonal
Supply chain	No
THB indicators	
ACTION elements of the trafficking in persons definition	
Recruitment	Deceived about conditions of work; about content or legality of the work contract; about housing and living conditions; about legal documentation or obtaining legal migration status; about the nature of the job, location or employer; about travel and recruitment conditions; about wages/earnings
Transportation / transfer	No information
Harbouring (housing)	Mobile caravans on site
Receipt	No
MEANS elements of the trafficking in persons definition	
Coercive /deceptive recruitment/ recruitment with abuse of workers' vulnerability	Isolation, confinement; violence on victims; withholding of wages
Abuse of vulnerability/power in performing work	Abuse of difficult family situations; lack of information; lack of education; control by exploiters; economic reasons; relationship with the authorities/legal status
Coercion	Yes
Confiscation of documents	Yes
Debt bondage	No
Violence on victims	Yes
Isolation	Yes
PURPOSE elements of the trafficking in persons definition (labour exploitation, forced labour)	
Exploitation	Yes
Excessive working hours	Yes
Bad living conditions	Yes
Hazardous work	Yes
Low or no salary	Yes
No respect for laws or contract signed	Yes
No social protection	No
Wage manipulation	No

Victim assistance	
Identification	Workers were not identified as victims of trafficking or forced labour due to the fact that they returned to Morocco for two to three months after the circus season had finished and were considered as “having broken the cycle of exploitation”. The authorities failed to recognise the coercion exerted by the employer, which made them return to Ireland every year to continue their employment with the circus.
Assistance	Provided by MRCI in seeking compensation and in securing immigration status
Control measures/involvement labour inspection	
Actors involved in assistance (trade unions, NGOs, etc.)	MRCI, legal professionals
Deportation	No
Proceedings	
Criminal FL/THB	No
Labour (compensation)	Yes, the victims brought their claims before the employment redress mechanisms and they were awarded substantial amounts. However, the decisions have not been enforced yet.
Other	
Conviction – subcontractor /employer	No
Conviction - contractor	No
Were workers compensated	Still in the process of enforcement of Labour Courts decision; the workers have not received the monies to date.
Analysis	
What constituted good practice/what worked well	Good collaboration with the legal teams in seeking compensation for the breaches of their employment rights. One worker was also granted permission to remain by the Department of Justice and Equality allowing him to access employment without any restrictions and to access any other supports such as access to the training or social welfare supports.
What constituted bad practice/what did not work as well	Anti-trafficking measures in Ireland are designed to deal with individual cases rather than group cases. In this particular case the authorities failed to see how elements such as group recruitment or group work permit facilitated trafficking.
What changes were instituted as a result	No changes