

Challenges and ways forward in the area of inspections and cooperation among monitoring bodies

The practitioners' session – Summary of discussions

'From wrongs to rights: Ending severe labour
exploitation'

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The EU Agency for Fundamental Rights (FRA) organised a practitioners' session titled "Challenges and ways forward in the area of inspections and cooperation among monitoring bodies" in the context of the conference 'From wrongs to rights: Ending severe labour exploitation'. At the conference, FRA launched the report '[Protecting migrant workers from exploitation in the EU: workers' perspectives](#)'. The conference was organised together with the Romanian EU Presidency, the EEA (European Economic Area) and Norway Grants, as well as the Council Secretariat. The practitioners' session identified actions for improving the detection of severe labour exploitation during workplace inspections – based on an exchange of experiences and current practices.

Around 30 participants, including practitioners from selected Member States, Norway, the European Commission, the International Labour Organization (ILO) and European Foundation for the Improvement of Living and Working Conditions (Eurofound) took part in the session. The participants looked at how national authorities cooperate, both within a particular country as well as across borders in cases of joint investigations and joint inspections. They also discussed how best to protect workers who are migrants in an irregular situation.

IDENTIFIED PRIORITY AREAS FOR ACTION

Key problems lie in the detection and recognition of severe forms of labour exploitation, essential for allowing exploited workers to be guided to access justice and victim support. Through working group discussions, the participants identified priority actions within four thematic areas.¹

1 Cooperation between national authorities with a monitoring role and other stakeholders to prevent and identify labour exploitation of migrant workers

Economic sectors with the highest risk of workers being severely exploited are construction, agriculture, transport, car cleaning, and domestic work; the latter being the most difficult to monitor. Joint inspections may involve various national actors, such as labour inspectors, health and safety inspectors, police, border guards, NGOs and sometimes also trade unions. Mandates of labour inspections vary across the EU. Data protection requirements need to be considered when establishing procedures for the exchange of data between actors involved in joint inspections. Identification of victims is endangered if labour exploitation is not specifically included in the law, or victim support systems and remedies are not in place. In all instances when there are reasonable-grounds indication for believing that the person might be a victim of trafficking in human beings, Member States have a duty to ensure that the victim has access to assistance and support, as provided for in Article 11 of Directive 2011/36/EU.

¹ Short introductions were given by Paul Elms, Gangmasters and Labour Abuse Authority, United Kingdom; Peter Van Hauwermeiren, National Office for Social Security, Belgium; Eefje De Volder, CoMensha, The Coordination Centre against Human Trafficking, Netherlands; and Isabella Biletta, Eurofound.

The **following actions** would support the creation of a joined-up response to tackle labour exploitation:

- Prioritising economic sectors for monitoring through the setting up of sector based risk assessment, to identify suspected cases of labour exploitation
- Explicitly including detection of victims of labour exploitation in the mandate of monitoring bodies and building their capacities through training
- Increasing the number of joint inspections that focus on identifying victims of severe forms of labour exploitation – not only for prosecution purposes, but also to provide support to the victims.
- The establishment of effective systems for support and referrals when victims have been identified. Where there are signs of trafficking in human beings, victims must be referred, as per Directive 2011/36/EU.
- Raising awareness of the obligations and responsibilities of companies and the role consumers could play in combating labour exploitation, through for instance introducing a “labour exploitation free” certification system, with the aim of making supply chains more transparent.

2 Protecting victims who are migrants in an irregular situation during monitoring activities

Participants generally agreed that clear-cut cases of severe labour exploitation involving migrants in an irregular situation are typically identified and referred during labour inspections. In such instances, in some Member States they would be issued a temporary residence permit. However, cases of labour exploitation that do not have such a clear-cut criminal component might be more easily dismissed, with exploited workers being channelled into return procedures. This risk increases when labour inspectors and immigration law enforcement authorities carry out joint inspections. Labour inspectors may also be obliged to report migrant workers who are in an irregular situation to the immigration law enforcement authorities. Sometimes workers slip into irregularity, for example when the employers do not fulfil their part in meeting the requirements for the residence permit, which can be to contribute to the application procedure for the work permit or social security coverage. This increases vulnerability to exploitation.

The **following actions** would go some way in ensuring that monitoring activities give due attention to the protection of victims who are migrants in an irregular situation:

- Introducing a waiting time (e.g. three months) before workers in an irregular situation who have been identified during an inspection as potential victims of labour exploitation are issued a return decision, to allow time for the authorities to investigate the case and collect proof. This would also make it easier for them to claim back pay, building on Articles 6(2) and 15 of Directive 2009/52/EC, also if no crime is involved.
- As the investigation of cross-border cases may take longer, ensure that victims who are migrants in an irregular situation are not returned before the procedures are completed, building on Articles 13(4) and 15 of Directive 2009/52/EC.
- Strengthening co-operation with social partners and other third parties in line with Article 13(1) of Directive 2009/52/EC, also when no crime is involved, to increase possibilities for migrants in an irregular situation who are victims of labour exploitation to claim back pay.
- Identifying ways to overcome problems associated with the dependency on the employer for those third country nationals whose residence permit is linked to the work contract, as it prevents victims from leaving an exploitative employer, through for instance:
 - A reactivation of the work permit when the victim has left an exploitative employer (as is the case in, for instance, Ireland, where a third country national who ended up in a situation of irregularity due to exploitation in the workplace can apply for a new work permit).
 - Provision of sector-based work permits, rather than employer-specific permits (as is the case in, for instance, Sweden, where the employer-specific work permit becomes sector-specific following a period of two years).

3 Cross-border cooperation to investigate cases of severe labour exploitation

Severe forms of labour exploitation are criminalised differently across Member States, creating barriers for cross-border investigations. Such cooperation is therefore deprioritised resulting in insufficient exchange of information and allocation of resources. Experience and knowledge on cross-border cooperation cannot be built up. Due to legal differences, solving the particular case at the national level remains the aim, which may impact on victims' access to justice in cases involving several Member States. Authorities tend to concentrate on gathering evidence at the national level to try to ensure that it holds in their courts. For these reasons, joint investigation teams (JITs) often experience a lack of interest in cooperation and prosecutors sometimes tend to keep the cases at the national level.

The **following actions** would support cross-border cooperation in investigation of cases of severe labour exploitation:

- Ensuring the protection of victims in all actions relating to cross-border cooperation
- Support legal harmonisation by ratifying and implementing relevant ILO conventions, in light of Council Decision 2014/51/EU of 28 January 2014, ratify and implement the ILO Domestic Workers Convention (2011) No. 189
- Consider the establishment of specialised police units for cross border cases to support the investigation and prosecution and the rights of victims.
- Foster cross-border co-operation that will:
 - Ensure that financial sanctions are enforced for those who are involved in labour exploitation - so that engaging in labour exploitation is seen as a real risk with consequences.
 - Focus on tracking down the sub-contractors or gathering evidence in cases of complicated sub-contracting chains, in order to ensure access to justice for victims.

4 Joint labour inspections among Member States

A way to formalise cooperation among Member States is to introduce joint labour inspections. Joint labour inspections can take various forms. There is an increasing need for such inspections in the EU, in particular due to posted workers schemes and labour agencies engaging workers abroad. According to Eurofound, only eight EU Member States have adopted a legal basis for joint inspections ([Working paper: joint cross-border labour inspections and evidence gathered in their course](#)). They may not explicitly focus on labour exploitation, although such would clearly benefit victims. Also without a formal arrangement on joint inspections, in practice Member States still cooperate. Due to differences in mandate and legislation labour inspection authorities in different Member States may not be able to respond to a request for information. Other barriers to joint inspections are the lack of financial resources, language problems and lack of capacities and skills.

The **following actions** would foster the introduction and efficiency of joint labour inspections:

- Mapping of various mandates of labour inspectorates or other bodies with a role in monitoring working conditions within the EU in order to allow for their meaningful cooperation. Once it is operational, the European Labour Authority (ELA) could possibly carry out such an activity.
- The design of joint inspections should give due attention to the needs and rights of potential victims.
- Provision of information about rights and remedies in a language that the workers can understand by authorities and organisations of another Member participating in a joint inspection.
- Support the setting-up of joint inspections through training and joint action days, such as currently organised by Europol in the context of the European multidisciplinary platform against criminal threats (EMPACT) to fight trafficking in human beings.

WAY FORWARD

To tackle severe forms of labour exploitation it would be necessary to strengthen cooperation among various actors with a monitoring role as well as cooperation across borders in situations involving several Member States, while considering the particular vulnerability of workers in an irregular situation.

FRA stands ready to support EU Member States, the European Commission, EU Agencies, ILO, as well as other actors to set up informal structures for exchanging knowledge and experience and mapping existing practices.

The ILO is currently exploring the possibility of establishing a “Peer Based Practitioners’ Forum for European Law Enforcement Actors on Forced Labour and Other Forms of Severe Labour Exploitation.” The purpose of this forum is for practitioners to exchange knowledge and best practices on how to cooperate within and across countries to tackle labour exploitation.

Once the European Labour Authority (ELA) is established, it may be able to support effective cooperation among labour inspectorates or other bodies with a role in monitoring working conditions in EU Member States, including the setting-up of joint inspections.