

Protecting migrant workers from exploitation in the EU: boosting workplace inspections

Annex 1: Institutional set up
(monitoring) for combating labour
exploitation at national level

Annex 1 complements the report *Protecting migrant workers from exploitation in the EU: boosting workplace inspections*, published by FRA in 2018 (ISBN 978-92-9474-080-9).

More information on the European Union is available on the internet (<http://europa.eu>).

Luxembourg: Publications Office of the European Union, 2018

Print:	ISBN 978-92-9474-211-7	doi:10.2811/695171	TK-02-18-899-EN-C
Web:	ISBN 978-92-9474-214-8	doi:10.2811/64765	TK-02-18-899-EN-N

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Annex 1: Institutional set up (monitoring) for combating labour exploitation at national level

The institutional set up in terms of Member States' monitoring operations for combating labour exploitation in the eight EU Member States researched is quite diverse.

In **Belgium**, labour inspectorates (national and regional level) monitor the observance of the labour code and well-being at work. At the federal level, the Social Inspection Service of the Federal Public Service (FPS) Social Security, which was integrated into the services of the Inspection of the National Social Security Office on 1 July 2017, and the Directorate-General Monitoring of Social Legislation of FPS Employment, carry out targeted controls to verify compliance with social legislation (by checking social papers, labour conditions, employment of foreign workers, pay) to detect cases of trafficking in human beings.¹ These controls mainly focus on so-called high risk sectors identified both at a national (e.g. domestic work) and at a provincial level (e.g. building sector, clothing factories and agriculture). The FPS Social Security's Social Inspection Service, which was integrated into the Inspection of the National Social Security Office on 1 July 2017, also checks that employers have duly registered their workers and that they have workplace insurance to cover work-related accidents.² While regional social inspection services are not competent to deal with human trafficking, they sometimes act as intermediaries in these situations.³ Trafficking and smuggling of human beings are priorities for the police on the basis of the national security plan of the police.⁴ Medical staff in Belgian hospitals may also encounter potential victims of human trafficking.⁵ In 2012, the Bureau of the Interdepartmental Coordination Platform and the FPS Public Health therefore put together a brochure to raise awareness among medical staff and provide information on how to help victims.⁶ The FPS Foreign Affairs and Development Cooperation provides training to its staff to enable them to identify possible cases of human trafficking in visa application procedures.⁷

In **France**, the labour inspectorate is responsible for checking compliance with the labour code, but also – since 2016⁸ – for ascertaining offences of trafficking in human beings, forced labour and servitude. When workers are identified as being in an irregular situation during a labour inspection, they are at risk of deportation, although a separate organisation – Central Office for Combating Illegal Work – is responsible for combating severe forms of labour exploitation and social security fraud. When persons are recognised as victims of trafficking in human beings, they may be granted

a renewable one-year residence permit until there is a court ruling.

In **Germany**, several authorities are allocated tasks during which the situation of workers and their rights may be detected. These include occupational health and safety authorities, the Financial Control of Undeclared Work (FKS), employment and recruitment agencies, and the local, regional and federal police. Third-country nationals are subject to proceedings for illegal residency and are to be reported to authorities. They may be eligible for a residence permit under certain conditions in case criminal proceedings are initiated against their employer. The National Employment Agency (ZAV) is responsible for approving resident titles of third-country nationals who want to work in Germany. The ZAV must examine the conditions of work and wages, which must be no less favourable than the conditions of employment of comparable local workers. This examination is done on the basis of the draft employment contracts the workers submit. There are no on-the-spot visits at the actual working place.

The National Labour Inspectorate in **Italy** took up its duties on 1 January 2017. It operates at national level in coordination with inspective services of local health-care departments and with the Regional Authorities for Environmental Protection. The Inspectorate is in charge of monitoring respect of workers' rights, working conditions, wages, the respect of compulsory working insurance and social legislation. The inspectorate is also in charge of implementing legislation concerning compensation and protection of workers who suffered injuries while working. It releases guidelines concerning the inspective activity, trains inspectors and promotes awareness-raising campaigns concerning the prevention and promotion of legality in the labour market. Finally, the inspectorate is in charge of producing studies and researches concerning working conditions and the respect of workers' rights. The mandate of the Inspectorate covers all kinds of workers and economic sectors. The activity of the inspectorate is supported by police authorities: more specifically, the Carabinieri (a branch of the Italian police authority) have a crucial role in assisting the Inspectorate's activity in monitoring working conditions and reporting exploitation episodes and situations.⁹ At local level, the activity of public authorities is crucially supported by different stakeholders, especially NGOs and trade unions, which are committed not only to the identification of exploitative situations but also to the support of (potential) victims. Their role

is stressed and supported by the National Action Plan against Trafficking and Severe Exploitation 2016-2018.

The Inspectorate Social Affairs and Employment in **the Netherlands** (Labour Inspectorate) is responsible for both monitoring the rights of workers and irregular employment. Since 2016, the Labour Inspectorate in the Netherlands has been focusing on labour exploitation with the aim of ending the impunity of employers, and it established a special section for investigating labour exploitation. The Inspectorate SZW programme on labour exploitation aims to combat labour exploitation and ensure effective protection of vulnerable groups. The Inspectorate deploys a mix of administrative and penal instruments. It advances the alacrity to report and cooperates with different public and private partners.

At the national level, priority is likewise given to investing in multi-stakeholder involvement to combat labour exploitation. The Netherlands explicitly prioritised labour exploitation with project "TeamWork!" during its EU presidency in the first half of 2016, stressing the importance of strengthening multidisciplinary cooperation. A manual has been developed with the best practices of the EU countries.¹⁰ The Ministry of Justice and Security holds regular "TeamWork!" meetings to further multi-stakeholder involvement and to determine how public institutions as well as NGOs can engage with companies in particular sectors through private-public partnerships. An Action Plan is to be developed in close cooperation with and supported by all relevant partners, both governmental and non-governmental.

The National Labour Inspectorate of **Poland** (NLI) and the Border Guard are the most important institutions dealing with migrants' labour exploitation. Moreover, according to Polish law, anyone with information of a crime prosecuted *ex officio* has a duty to notify the prosecutor or the police. State bodies that have learned of such a crime in connection with their official activities are obliged not only to immediately notify the prosecutor or the police, but also to take necessary actions until the authority appointed to prosecute the crime arrives or until the competent authority issues a relevant order to prevent contamination of evidence of the crime.¹¹ The NLI is responsible for monitoring both work conditions and irregular employment. Labour inspectors who detect workers with an irregular status have to notify the Border Guard. The Inspectorate operates at national level and its activities are not restricted to any particular economic sector. NLI supervises and controls the observance of the labour law, in particular the

rules and regulations related to health and safety of the employees, remuneration and other benefits arising from the employment relationship, working time, leave, employment of juveniles and persons with disabilities.

The authorities responsible for monitoring and overseeing the legislation that forbids severe forms of labour exploitation in **Portugal** are the Authority for Working Conditions and the Immigration and Borders Service. However, there are other public bodies implied in this control at a second level, such as the Institute of Social Security, responsible for controlling compliance with the legal provisions on social security contributions by employers and workers, and the Tax Authority in cases of undeclared work. To the extent that severe labour exploitation constitutes a crime, the bodies of criminal police have competences of investigation on the matter. These authorities sometimes act jointly, a situation that has been boosted by the signing of collaboration protocols and by measures included namely in the Strategic Plan for Migration 2015-2020 and the Plan to Combat Human Trafficking 2014-2017. Workers interviewed in Portugal more often recalled different authorities participating in inspections. 11 interviewees recalled inspections involving the labour inspectorate and immigration authorities (5), police (2), social security (1), labour inspectorate (1); special police unit (1), and police (1).

The Gangmasters and Labour Abuse Authority (GLAA) in the **United Kingdom** monitors labour market offences defined in the Immigration Act. It works in partnership to protect vulnerable and exploited workers, and provides licences to employers in the agricultural, horticultural and shellfish gathering sectors (and associated processing and packaging).¹² The licence conditions are legal requirements to protect workers from poor treatment and exploitation. The GLAA can inspect and investigate whether the employer still meets the criteria set out in the licence.¹³ It is a criminal offence to operate without a licence.¹⁴ In addition to this, the GLAA is now also given a labour abuse prevention function and can therefore directly investigate "labour market offences" in all business sectors.¹⁵ The GLAA can also ask for the assistance of and cooperate with the National Crime Agency and other government agencies.¹⁶ This additional power only applies to England and Wales. The Employment Agency Standards Inspectorate ensures that everyone using services of private recruitment agencies is treated fairly. Another authority – Her Majesty's Revenue & Customs – enforces the workers' right to the national minimum/living wage.



Endnotes

- 1 Belgium, Belgian Criminal Policy Service (*Dienst voor het Strafrechtelijk Beleid / Service de la Politique Criminelle*) (2014), *The fight against trafficking and smuggling of human beings – Policy and approach*, DSB-SPC, p. 13.
- 2 The current service is no longer tasked to monitor work-related accidents since its integration. These services also check whether workers are authorized to work and/or stay in Belgium and especially if there are indications of economical exploitation, in line with the criteria set out in COL 01/15.
- 3 *Ibid*, p. 9.
- 4 Belgium, Belgian Ministry of Justice (*Ministre de la Justice*) (2014), *National Security Plan 2016-2019*.
- 5 Belgium, Belgian Criminal Policy Service (*Dienst voor het Strafrechtelijk Beleid / Service de la Politique Criminelle*) (2014), *The fight against trafficking and smuggling of human beings – Policy and approach*, DSB-SPC, p. 18.
- 6 Belgium, Interdepartmental Coordination Platform for the Fight against Trafficking and Smuggling in human beings (2012), *Mensenhandel... wat te doen? Advies voor ziekenhuispersoneel / Traite des êtres humains, que faire? Consails pour les personnel hospitalier*.
- 7 Belgium, Belgian Criminal Policy Service (*Dienst voor het Strafrechtelijk beleid / Service de la Politique criminelle*) (2014), *The fight against trafficking and smuggling of human beings – Policy and approach*, DSB-SPC, p. 19.
- 8 France, Order No. 2016-413 relating to the control of the application of employment law (Ordonnance n° 2016-413 du 7 avril 2016 relative au contrôle de l'application du droit du travail), 7 April 2016, Article 4.
- 9 Italy, Legislative Decree no. 149 (*Decreto Legislativo n. 149*), Provisions for the rationalisation and simplification of the inspection activity on matters concerning labor and social legislation, implementing law 10 December 2014, no. 183 (*Disposizioni per la razionalizzazione e la semplificazione dell'attività ispettiva in materia di lavoro e legislazione sociale, in attuazione della legge 10 dicembre 2014, n. 183*), 14 September 2015, Article 6.4.
- 10 The "TeamWork!" manual is also available as a [website](#).
- 11 Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Article 304§1.
- 12 UK, HM Government (2004), *Gangmasters (Licensing) Act 2004*, 8 July 2004, Section 3.
- 13 *Ibid*, Section 16.
- 14 *Ibid*, Section 12.
- 15 UK, HM Government (2016), *Immigration Act 2016*, 12 May 2016, Section 12 and Schedule 2. See also: GLAA (2017), 'GLA Brief – GLA Additional labour market powers', January 2017.
- 16 *Ibid*, Section 13.