

# Regulation of labour market intermediaries and the role of social partners in preventing trafficking of labour





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## Country codes

### 28 EU Member States

|           |                |           |            |           |                |
|-----------|----------------|-----------|------------|-----------|----------------|
| <b>AT</b> | Austria        | <b>FI</b> | Finland    | <b>MT</b> | Malta          |
| <b>BE</b> | Belgium        | <b>FR</b> | France     | <b>NL</b> | Netherlands    |
| <b>BG</b> | Bulgaria       | <b>HR</b> | Croatia    | <b>PL</b> | Poland         |
| <b>CY</b> | Cyprus         | <b>HU</b> | Hungary    | <b>PT</b> | Portugal       |
| <b>CZ</b> | Czech Republic | <b>IE</b> | Ireland    | <b>RO</b> | Romania        |
| <b>DE</b> | Germany        | <b>IT</b> | Italy      | <b>SE</b> | Sweden         |
| <b>DK</b> | Denmark        | <b>LT</b> | Lithuania  | <b>SI</b> | Slovenia       |
| <b>EE</b> | Estonia        | <b>LU</b> | Luxembourg | <b>SK</b> | Slovakia       |
| <b>EL</b> | Greece         | <b>LV</b> | Latvia     | <b>UK</b> | United Kingdom |
| <b>ES</b> | Spain          |           |            |           |                |

### Other

|           |        |
|-----------|--------|
| <b>NO</b> | Norway |
|-----------|--------|

## Acronyms used in the report

|                   |                                                                                                                      |
|-------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>CIETT</b>      | International Confederation of Private Employment Agencies                                                           |
| <b>EEA</b>        | European Economic Area (EU28 plus Norway, Iceland and Liechtenstein)                                                 |
| <b>EPA</b>        | Employment placement agency                                                                                          |
| <b>EuroCiett</b>  | European Confederation of Private Employment Services                                                                |
| <b>FRA</b>        | Fundamental Rights Agency                                                                                            |
| <b>GRETA</b>      | Group of Experts on Action against Trafficking in Human Beings                                                       |
| <b>ILO</b>        | International Labour Organization                                                                                    |
| <b>IOM</b>        | International Organisation for Migration                                                                             |
| <b>ITUC</b>       | International Trade Union Confederation                                                                              |
| <b>LMI</b>        | Labour market intermediary                                                                                           |
| <b>OSCE</b>       | Organisation for Security and Co-operation in Europe                                                                 |
| <b>PEA</b>        | Private employment agency                                                                                            |
| <b>PES</b>        | Public employment service                                                                                            |
| <b>TAW</b>        | Temporary agency work                                                                                                |
| <b>TWA</b>        | Temporary work agency                                                                                                |
| <b>UNI Europa</b> | European trade union federation representing 7 million service workers in over 20 sectors – part of UNI Global Union |
| <b>UNODC</b>      | United Nations Office on Drugs and Crime                                                                             |

# Executive summary

## Introduction

This report aims to contribute to the development of a best practice guide for public authorities on monitoring and enforcing rules and regulations relevant to labour market intermediaries to prevent trafficking for labour exploitation. The report brings together research findings on two main areas: how labour market intermediaries are regulated by public authorities in the different Member States, and to what extent social partners' activities contribute to preventing trafficking for the purpose of labour exploitation. The main focus of the report is on trafficking for the purpose of labour exploitation and does not cover trafficking for sexual exploitation. The report is based on information provided by Eurofound's network of European correspondents across all 28 EU Member States and Norway.

## Policy context

Since the late 1990s, the drive to prevent trafficking in human beings has been high on the EU agenda. The adoption of the Palermo Protocol in 2002 to prevent trafficking underpinned the adoption of the EU Council Framework Decision and an EU plan to address trafficking in the same year. In 2011, the European Parliament and the Council adopted a Directive on preventing and combating trafficking in human beings and protecting its victims. Taking its lead from the Anti-Trafficking Directive, the EU Strategy towards the eradication of trafficking in human beings 2012–2016 (COM (2012) 286 final) includes a set of targeted actions aimed at prevention, protection, prosecution and partnerships. The strategy also identifies recruitment as an area relevant to trafficking and highlights the importance of including trade unions and employer organisations when developing anti-trafficking policies.

## Key findings

The report analyses legislation, regulation and social partner activities to counter the potential involvement of labour market intermediaries in trafficking for labour exploitation. The first part of the report discusses the policy context and definitions while considering potential ways in which labour market intermediaries could be linked to trafficking. Labour market intermediaries are private or public entities or institutions mediating between the individual seeking employment and the employer, operating either as Employment Placement Agencies (EPAs) or Temporary Work Agencies (TWAs).

The research shows that there was a rapid escalation in the number of labour market intermediaries towards the end of the 20th century after many EU countries lifted restrictions and began to regulate temporary agency work.

The relevant European and international regulations include the Temporary Agency Work Directive (2008/104/EC) and ILO Convention 181 which govern employment agencies, as well as different national measures to regulate and monitor labour market intermediaries. The most common forms of regulating labour market intermediaries in the EU include licensing, registration or certification schemes.

The research identified four sectors that across most countries were linked to problems with trafficking for labour exploitation: agriculture, construction, domestic work, and hotels and restaurants. In some countries, problematic sectors include retail (Belgium and Sweden), beauty and hair salons (Finland), transport (Romania) and waste and recycling (Denmark).

Social partners provide information and experience regarding fraudulent recruitment and labour exploitation. Sharing information, mutual support and effective cooperation are key to preventing and eradicating trafficking for labour exploitation. At international level, the social partners for the temporary agency sector (Uni Global and CIETT) concluded a Memorandum of Understanding on temporary agency work in 2008 in which both sides pledge their support for a regulatory framework to prohibit agency work from undercutting other workers' rights and conditions. The research

finds that national social partners are increasingly recognising their responsibility in this area and voicing their concern about fraudulent recruitment and exploitative labour practices. However, despite this activity, it seems that trafficking for labour exploitation is still not a priority at national level.

Social partners across the Member States and Norway have developed various practices to combat trafficking for labour exploitation by labour market intermediaries. These complement state policies and can take a variety of forms, such as: collective agreements, joint initiatives, dialogue with the government, campaigns, systems for handling complaints, trans-national cooperation, developing codes of conduct, providing information and educational material, increased inspections, and the use of media.

The report reveals that social partner involvement in this area is often challenging. As employer associations do not cover all labour market intermediaries, enforcement, especially in the case of small- or medium-sized intermediaries, can be problematic. Trade unions are not always in a position to reach all workers, particularly those in 'hidden' or isolated employment.

### Policy pointers

Examples of emerging good practice are highlighted throughout the report. National government activities include cross-border cooperation, labour inspectorate activity, introducing legislation and regulation, supporting cooperation between different authorities, providing guidance through awareness-raising, training and ethical codes, giving support to victims and cooperating with social partners. Many emerging good practice examples from governments, as well as those from social partners, involve targeting victims and attempting to raise awareness about trafficking for labour exploitation. As little was identified which specifically referred to labour market intermediaries, or indeed employers, the report emphasises that more could be done to address the issue by both employers' associations and trade unions. In countries with a functioning sectoral social dialogue, it could be practical for the social partners to develop a joint strategy to tackle unfair competition and downward pressure on pay and conditions.

The following points should be considered when developing a best practice guide for public authorities on better monitoring and enforcing rules and regulations to prevent trafficking for labour exploitation by labour market intermediaries:

- Develop clear national definitions of labour market intermediaries, trafficking and labour exploitation based on relevant European Directives, and international instruments.
- Use concise definitions to improve the collection of data on the significance and incidence of labour market intermediaries and trafficking for labour exploitation.
- Increase the coverage of labour market intermediaries who are registered, licensed and/or certified.
- Make use of improved registration, licensing and/or certification to help comprehensively enforce and sanction labour market intermediaries which might be engaged at the entry point of trafficking.
- Increase regional and cross-border cooperation among public authorities and the social partners.
- Support coherent and effective bipartite and tripartite joint activities dealing with labour market intermediaries and recruitment practices, and trafficking for labour exploitation.
- Support the social partners in increasing collective representation particularly in small- and medium-sized labour market intermediaries.



## Background and policy context

The right to free movement for workers within the European Economic Community (EEC), as provided for in Article 48 of the **EEC Treaty** in 1957 (now Article 45 of the Treaty on the Functioning of the European Union), radically altered the context for finding work and moving for it within what is now the European Union. The provision governing the free movement of workers is laid down in **Directive 2004/38/EC** which defines the rights of EU citizens to move and reside freely within Member States. The Directive re-affirms that:

*the free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.*

Labour mobility within the European internal market is a fundamental freedom, aimed at promoting employment growth and economic performance. Private labour market intermediaries – such as temporary work agencies (TWAs) and employment placement agencies (EPAs) – play a role in facilitating the free movement of workers within the EU. Labour market intermediaries mediate between individual workers and the organisation that needs to get the work done. They may lease workers to companies or act as brokers to fill jobs. Previous research by Eurofound on *Temporary agency work in an enlarged EU* and on *Temporary agency work and collective bargaining* indicates that temporary agency work is one of the fastest growing types of employment in many EU Member States (Eurofound, 2006 and 2009).

If the facilitation of labour through labour market intermediaries is not adequately regulated, workers run the risk of being exploited by fraudulent labour market intermediaries. During the recruitment process, the potential employee might be deceived about the nature of the job, location or employer. The potential employee's vulnerability might also be exploited. International and European reports have increasingly shown how abuse by labour market intermediaries can result in employers disproportionately benefiting from people's labour, which might amount to trafficking in human beings for the purpose of labour exploitation (Fudge and Strauss, 2014).

Regulating and monitoring the compliance of labour market intermediaries with standards to protect the employee, as well as the business sector, is a recent phenomenon. At EU level, the **Temporary Agency Work Directive 2008/104/EC** (TAW Directive) was adopted to ensure 'the protection of temporary agency workers and to improve the quality of temporary agency work'. The temporary agency sector is recognised as a legitimate and professional business. Prohibitions or restrictions on the use of temporary agency work are justified only on grounds of general interest relating, in particular, to the protection of the workers, the requirements of health and safety at work, the need to ensure the smooth functioning of the labour market and to prevent abuse. In addition, the TAW Directive ensures that temporary agency workers – once employed – are treated as equal to employees in other types of employment. The TAW Directive establishes that a temporary work agency may be a natural or legal person. The **Anti-Trafficking Directive (2011/36/EU)** aims to protect potential employees from coercive, fraudulent or deceptive recruitment for the purpose of exploitation. It further establishes that legal persons can be held liable for trafficking in human beings and that this can include criminal prosecution.

Since the late 1990s, the fight against trafficking in human beings has been high on the EU policy agenda. The adoption of the **Palermo Protocol** in 2000 to prevent, suppress and punish trafficking in people, especially women and children, supplemented the **UN Convention against Transnational Organised Crime**, and supported the adoption of the **EU Council Framework Decision (2002/629/JHA)** and an EU plan to address trafficking in the same year. In 2011, the European Parliament and the Council adopted the Anti-Trafficking Directive, thereby replacing the 2002 Council Framework Decision. Trafficking in human beings is defined in Article 2 as:

*the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of 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, for the purpose of exploitation.*

The Anti-Trafficking Directive recognises human trafficking as a crime and a violation of human rights and aims to prevent human trafficking and strengthen protection for victims. The Directive puts a special emphasis on the victims of trafficking by applying a rights-based approach and places particular emphasis on child victims. It also recognises that women and men are often trafficked for different purposes and therefore victim support needs to be gender-specific. It is relevant to the study of labour market intermediaries as trafficking can start with recruitment. Member States must adopt measures that hold labour market intermediaries – either a legal or natural person – liable for any offences specified in Article 2 of the Anti-Trafficking Directive, such as deceptive recruitment for the purpose of exploiting a person's labour.

The scope of the Anti-Trafficking Directive is inclusive, as it condemns trafficking for the purpose of any form of exploitation. The Directive establishes a minimum number of exploitation types – although this list is non-exhaustive (more forms can be included by the Member States) – and specifies the minimum forms of exploitation:

*Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.*

Trafficking in human beings is explicitly prohibited by Article 5 of the **Charter of Fundamental Rights of the European Union** (2000) which recognises that any form of trafficking is a serious violation of human rights and that legal persons (such as labour market intermediaries) can be held accountable for trafficking in human beings. When the Treaty of Lisbon came into force in 2009, the Charter became primary EU law according to Article 6 (1) of the Treaty of the European Union (TEU). The Anti-Trafficking Directive underlines this by highlighting that:

*this Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of slavery, forced labour and trafficking in human beings, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, the protection of personal data, the right to an effective remedy and to a fair trial and the principles of the legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.*

Following on from the Anti-Trafficking Directive, the **EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016** (COM (2012) 286 final) (the Anti-Trafficking Strategy), further elaborates on areas covered by the Directive and includes a set of targeted actions. It focuses on prevention, protection, prosecution and partnerships and also on ways to increase knowledge regarding emerging concerns related to trafficking in human beings.

The strategy identifies recruitment as an area relevant to trafficking and highlights the necessity of adopting coherent policies requiring the contribution of a diverse group of actors including trade unions and employer organisations. In order to contribute to ‘increased knowledge of, and effective response to, emerging concerns related to all forms of trafficking in human beings’, the strategy envisages that the European Commission together with Eurofound will develop a best practice guide for public authorities on the monitoring and enforcement of labour market intermediaries to prevent trafficking in human beings for the purpose of labour exploitation (Priority E: Action 4). The findings of this present report will be used as background material for the development of the best practice guide. Other complementary deliverables mentioned in the strategy are the recently published report **on case law related to trafficking in human beings for labour exploitation** and the forthcoming establishment of a European Business Coalition.

Although the Anti-Trafficking Directive focuses on forms of forced labour or services, it is important to note that there are different forms of abuse or exploitation in the labour market. However, only those forms that are relevant to trafficking in human beings are covered in the present report.

The link between the recruitment of employees by rogue labour market intermediaries and the potential mistreatment of workers, including trafficking in human beings, is established by EU law. However, research has recently started to concentrate more intensely on labour supply chains and potential abuses such as trafficking people along the supply chain. For instance, a recent working paper published by the International Labour Organization (ILO) on **global labour recruitment** sets out to explain why the recruitment market operates the way it does and suggests responses by governments and social partners to address some of the recruitment market’s shortcomings (Gordon, 2015). Acting as the guardian of the Palermo Protocol, the United Nations Office on Drugs and Crime (UNODC) actively assists Member States to tackle trafficking. A recent report from UNODC examines **the relationship between the fraudulent recruitment practices of agencies and trafficking (938KB PDF)**, highlighting the criminal justice measures that can be taken to address this (UNODC, 2015b). In line with the UNODC report, a **UN Working Group on Trafficking in Persons meeting in Vienna on 16–18 November 2015** recommends that:

*States’ parties should consider taking measures to regulate, register, license and monitor private recruitment and employment agencies (...) to ensure that such agencies are not used to facilitate trafficking in persons.  
(CTOC/COP/WG.4/2015/2)*

Some concrete cases are mentioned in a 2015 report by the Fundamental Rights Agency (FRA), which highlights **the risks that workers face if they are dependent on agencies (1.7MB PDF)** for visas, transportation, accommodation and information about the work involved. Examples include the fraudulent charging of fees, lack of transparency and absence of written contracts. In some cases, it is not even clear who is responsible for the exploitative practices because the work has been subcontracted multiple times.

## **Objectives and scope of the report**

The main purpose of this report, is to provide information that will be used to prepare a guide for public authorities on the best practices in monitoring and enforcing rules and regulations relevant to labour market intermediaries to prevent trafficking for labour exploitation. As such, the report constitutes Eurofound’s analysis of the current regulations related to labour market intermediaries in Member States, includes trade unions’ and employer organisations’ initiatives contributing to the prevention of trafficking in human beings, and presents proposals on how to improve the public monitoring and enforcement of labour market intermediaries.

Information about the regulation of labour market intermediaries in the Member States, together with information on how social partners approach the issue of trafficking for labour exploitation, is useful to identify what is done well and what needs to be improved or supported more strongly by public authorities.

In order to contribute to this objective, the report first looks at how public authorities are currently regulating labour market intermediaries in Member States, using various means such as registration or licensing schemes. Their effectiveness is discussed where information has been available.

The report also looks at social partners' activities to prevent the trafficking of labour. Eurofound is a tripartite agency with expertise in the area of social partner activities and cooperation. It is therefore well placed to carry out research and document different activities which are initiated by the social partners, such as awareness-raising campaigns, establishing complaint mechanisms, developing codes of conduct, distributing educational material and engaging in cross-border cooperation. Any potential gaps are identified and discussed.

The report will answer the following questions:

- How are labour market intermediaries regulated across the Member States?
- What are the procedures for establishing labour market intermediaries, especially in terms of registration obligations and licensing systems?
- What role have TWAs and their national bodies played in fighting the trafficking of labour?
- Have trade unions initiated activities related to preventing and tackling the trafficking of labour?

It should be stated at the outset that trafficking for sexual exploitation is not included in this report. Nor is the report a comprehensive study of anti-trafficking measures or of labour market intermediaries. Anti-trafficking measures are covered in various national and international reports, one example being the reports produced by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA, 2013 and 2014). The regulation of labour market intermediaries has been described in reports published by wmp consult (Voss et al, 2013) and by IDEA Consult (IDEA, 2015), for example. The 2013 Voss study primarily examines the role and dynamics of temporary agency work, exploring the regulatory frameworks and the industrial relations and employment conditions contexts of this type of work in the EU as a whole. It is complemented by case studies on major forms of labour market transitions. The IDEA Consult study (2015) compares temporary agency work with other forms of work, such as open-ended contracts, fixed-term contracts (FTCs) and self-employment in order to understand better the evolution of the different forms of work, the working conditions they provide and their contribution in the labour market.

### Structure of the report

This report examines how effective legislation, regulation or social partner activity may be in tackling the potential involvement of labour market intermediaries in trafficking for labour exploitation.

The report begins with a discussion of the context, providing definitions and considering what evidence there is to demonstrate a potential link between labour market intermediaries and trafficking.

It goes on to explain the significance and growth of labour market intermediaries in the European labour market and whether – and how – these intermediaries are subject to regulation at European and international level as well as at national level. After charting the legal framework, the section discusses trafficking in human beings for labour exploitation, showing briefly how it is related to, and sometimes also differs from, other phenomena such as forced labour and other forms of abuse or exploitation. Based on the questionnaire responses from national experts in the EU Member States and Norway, and other national and transnational reports and studies, the relationship between the two phenomena (labour market intermediaries and trafficking) is demonstrated.

The next section focuses on the relationship between labour market intermediaries and trafficking, and the potential roles of the social partners in combating trafficking related to, or involving, labour market intermediaries.

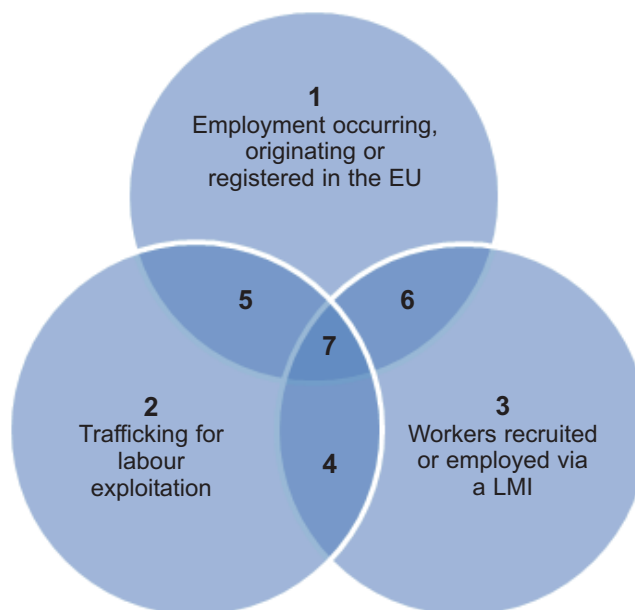
Finally, examples of good practice are presented. These have been developed through the research and described in conjunction with other findings taken from literature on the subject. Together with the report's recommendations, these examples will contribute to the compilation of a guide for public authorities to understand better the concept and practice of trafficking for labour exploitation. Furthermore, and most importantly, the report presents suggestions on what tools and measures can help to monitor labour market intermediaries better and to enforce LMI regulation aimed at tackling and preventing trafficking for labour exploitation.

### Understanding the issue

The report deals with two distinct, yet intertwined, areas of the labour market. On one hand, it has to do with labour market intermediaries and their recruitment of workers. On the other hand, it looks at trafficking for the purpose of labour exploitation. Trafficking is defined in terms of three characteristics: what is done (action), how is it done (means) and why is it done (purpose). This definition brings together the two areas relevant to this report: Trafficking through recruitment of potential workers (action) who were deceived about their potential job, location or employer (means) in order to exploit their labour (purpose).

The actors – public authorities and social partners – who set out to prevent, monitor and fight exploitative practices by labour market intermediaries and trafficking in human beings are relevant to both areas of interest. These actors either have a legal obligation or the required expertise to tackle the issue. Figure 1 and the examples below are intended to illustrate and clarify the variety of combinations between employment within the EU labour market, recruitment or employment by an LMI and the experience of being trafficked for labour exploitation. It should be noted that the figure is a very simplified way of categorising the different scenarios, as it aims to provide an overview. More detailed information and an individual assessment would be needed for each case to categorise it thoroughly.

Figure 1: The variety of combinations between employment, recruitment and trafficking for labour exploitation



- Example A: German citizen recruited by a family in Germany to work as a caregiver for their aged relative – 1 would apply.
- Example B: Worker from Moldova recruited by an agent registered in Dublin to work for a Russian contractor on a construction site in Moscow – 6 would apply.
- Example C: British bitumen worker taken by UK-based employer to work in Belgium for no pay, without an opportunity to refuse work – 5 would apply.
- Example D: Seafarer recruited by a Philippines-based agency to work on a Bahamas-registered ship with a Chinese owner. No wages paid, seafarer prevented by immigration rules from leaving ship – 4 would apply, until ship docks in EU port, at which point 7 would apply.
- Example E: Bangladeshi worker recruited by a local agent to work in Dubai – 3 applies unless, for example, their travel documents and pay are withheld, in which case 4 would apply.
- Example F: Thai workers recruited by Thai agents to pick berries in Sweden. Poor living conditions and wages unpaid for the purpose of exploitation – 7 would apply.
- Example G: Polish workers recruited by a Netherlands-based temporary work agent to work picking asparagus in Germany. Underpaid wages, collective agreement not applied – 6 would apply, but 2 could equally apply depending on the judgement of local courts regarding the nature of the exploitation.
- Example H: Filipino worker applies via online recruitment site for a job as a domestic worker in the Czech Republic – 6 would apply.

The examples show that different forms of abuse are prevalent in the labour market. This report focuses only on situations where the trafficking in human beings is involved. The focus concerning trafficking in human beings is based on deceptive recruitment by labour market intermediaries. The Anti-Trafficking Directive defines trafficking for labour exploitation as a criminal act. The European Commission recognises that the fight against trafficking needs to be as inclusive as possible to eradicate any related type of exploitation.

The terms used in this report are defined in the following section.

## Definition of key terms

**Labour market intermediaries** are ‘entities or institutions that interpose themselves between workers and firms to facilitate, inform, or regulate how workers are matched to firms, how work is accomplished, and how conflicts are resolved’ (Autor, 2009). These entities can be private or public.

**Public employment services (PES)** are agencies run by public authorities who place, counsel, and provide vocational guidance and similar services in connection with job search and placement to jobseekers.

**Temporary work agencies (TWAs)** are defined by the Temporary Agency Work (TAW) Directive to designate ‘any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction.’

**Registration systems** require businesses to register with a public authority before starting to operate their business. They often serve as a registry of the amount and kind of businesses which are providing goods and services.

**Licensing system** refers to a mandatory (sometimes voluntary) certificate or authorisation from a public or private authority. Licences to operate a business such as a LMI are often monitored. Licensing standards, which can cover health and safety, accommodation, pay, transport and training, as well as complying with national tax regimes, are checked through inspections. Licences might need renewal on a regular basis or become indefinite after a business operates for a number of years.

**Trafficking in human beings** is defined by the Anti-Trafficking Directive. It means ‘the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the 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, for the purpose of exploitation.’ Accordingly, to categorise an activity as trafficking for labour exploitation (or trafficking of labour) three conditions need to be fulfilled: An action, a means and a purpose. In the context of this report, the focus lies on deceptive and coercive recruitment to exploit someone’s labour. A list of [operational indicators to measure and detect trafficking for labour exploitation \(7.2MB PDF\)](#) was developed by a joint project of the European Commission and the International Labour Organization (ILO).

**Breaches of labour rights** refer to the lack of respect for a person’s rights at work as enshrined in international, European and national law. Labour rights include a wide range of individual and collective rights related to working conditions (including working time, pay, and holidays) or workers’ right to participation (including information and consultation). Breaches of labour rights are not necessarily linked to trafficking. The condition of identifying a purpose (such as exploitation of labour in severe cases) might be fulfilled by disrespecting labour rights. Yet the required action and means are missing for this situation to be defined as trafficking for labour exploitation.

**Labour exploitation** in this context is a collective reference to the purposes of trafficking in human beings in relation to exploitative work. At a minimum, the Anti-Trafficking Directive states that labour exploitation includes forced labour or services, slavery or practices similar to slavery, and servitude. The term labour exploitation is more inclusive than forced labour or slavery, as it encompasses a variety of possible abusive situations related to work.

Forced labour is defined by the ILO **Forced Labour Convention**, 1930 (No. 29). It means ‘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 voluntarily’. The **Protocol of 2014** to the Forced Labour Convention reaffirms this definition and establishes the link between trafficking and forced labour by highlighting that ‘specific action against trafficking in persons for the purpose of forced or compulsory labour’ needs to be taken.

Figure 2 shows that of the many forms of breaches of labour rights in the labour market, some can be considered as labour exploitation. Once people are recruited, by fraudulent or deceptive means for the purpose of exploiting their labour, the act may then be classified as trafficking for the purpose of labour exploitation. In certain cases, trafficking for labour exploitation can amount to trafficking for the purpose of forced labour. It should be noted here that both labour exploitation and forced labour could take place in conjunction with trafficking, but also without it.

**Figure 2: Different forms of labour rights breaches culminating in trafficking for forced labour**



## **Methodology**

The information for this report was provided by Eurofound’s **network of European correspondents** who are experts in the relevant areas and based in all 28 EU Member States and Norway. The network provides national expertise of key importance for European policy debates, which enables a comparative perspective on developments and for information to be contextualised at national and European level. National correspondents also reach out to relevant stakeholders such as governments, public authorities and social partners.

To gather the required information for this report, Eurofound developed a detailed questionnaire, discussed it with the authors and sent it to the social partners and national correspondents for comments. The questionnaire (see Annex p. 53) consists of 10 different thematic categories with open-ended questions where the experts could provide extended responses. The correspondents completed the questionnaire in English in November 2014. Clarifications were submitted and responded to during March and April 2015, and all responses were finalised during this period.



Correspondents were asked to cover two issues normally covered by separate disciplines: the commercial, legal and administrative regulations applying to labour market intermediaries, and the multi-disciplinary responses to trafficking for labour exploitation.

One shortcoming of this study is that while the information included reflects the findings as reported by the experts, reliable and comparable national statistics were not always available. Moreover, as many of the reports cited by correspondents were published in a particular country's language, in many cases the authors of this report relied on the interpretation and summaries of national correspondents.

Thematic analysis was conducted on both questionnaire responses and literature using NVivo 10 software. Correspondents were asked to identify what in their view constituted good practice in the context of this enquiry. The authors also identified aspects of what seemed to represent good practice based on the responses in conjunction with the other source material.

No primary research at national or transnational level was conducted for this report, although there is clearly a need for this as the responses demonstrate. In many cases, the responses describe general plans to tackle trafficking or raise awareness without any specific reference to practical activities or labour market intermediaries. These have not been reported as they are outside the scope of this report.

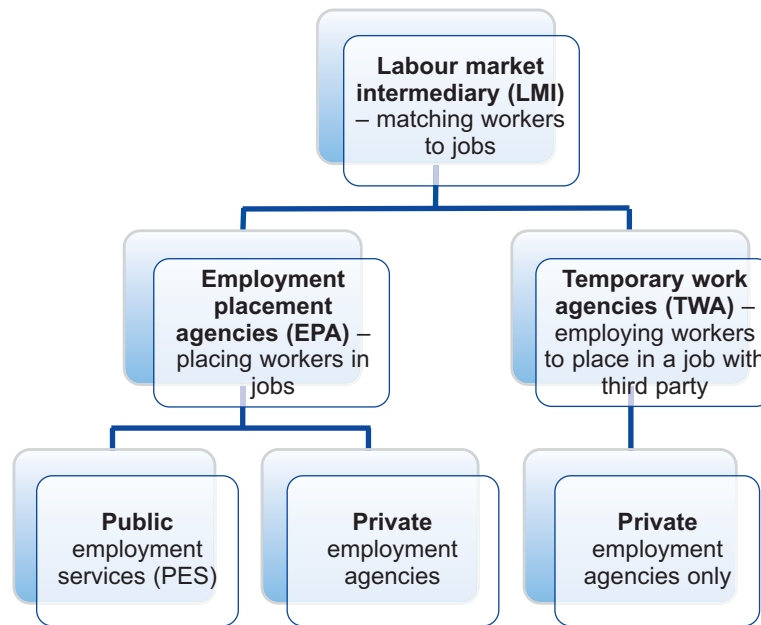
The authors also examined recent papers (published since 2002) and reports on labour intermediation and on trafficking published by the institutions and agencies of the European Union, International Labour Organization (ILO), United Nations Office on Drugs and Crime (UNODC), Organisation for Security and Co-operation in Europe (OSCE), Council of Europe, European and national social partners, academic reports and reports from national governments and agencies, particularly those tasked with monitoring or combating trafficking.



# Labour market intermediaries in Europe 1

As stated in the introduction, labour market intermediary is a generic term used to describe private or public entities or institutions mediating between the individual seeking employment and the employer needing work to be done. Figure 3 illustrates the most common forms of labour market intermediaries.

**Figure 3: Forms of labour market intermediaries**



While the focus of this report is on temporary work agencies (TWAs), labour market intermediaries take many forms, ranging from large and established international temporary employment agencies to individual recruiters (Strauss, 2015). Other forms include au pair services and services that facilitate and match students to jobs abroad for the purpose of cultural and work-related experience. Until recently, intermediaries providing temporary staff were regarded as illegal in many countries. It has been suggested that temporary agencies spread in the aftermath of the adoption of ILO Convention 181 in 1997, and that regulatory frameworks for them were developed at national level to monitor them (Enright, 2013; Peck et al, 2005). Countries that had not permitted labour market intermediaries to operate previously have now been establishing regulations for agencies since 2003 – this is particularly the case with Central and Eastern European countries. Poland, for example, which is a signatory to Convention 181, began to regulate temporary work agencies in 2003 (Voss et al, 2013), while the Czech Republic amended its Employment Act in 2011 to require the regulation of employment agencies (UN Working Group on Trafficking in Persons, 2015). But the ILO instrument is not the only factor determining whether temporary work agencies are subject to regulatory arrangements. There may be regulatory requirements in the newer Member States (post-2003 EU enlargement) despite their not having ratified Convention 181 – this is the case with Latvia and Croatia.

The existence of the diverse forms of labour market intermediaries has raised questions about their role and function in the labour market, and their usefulness to people's employment prospects. Both the ILO and EU argue that private intermediaries can contribute to an efficient functioning of the labour market, while accepting that public employment services (PES) should retain the authority to implement labour market policy. A report by Green et al (2014) highlights the important role played by labour market intermediaries in building networks and reducing transaction costs, in influencing and minimising mismatches on the part of both jobseekers and employers, and in encouraging disengaged individuals to enter the labour market. Their role is particularly crucial, as they tend to form partnerships with different organisations and are able to provide advice and guidance on employability. Other reports, however, have shown that

their role is not conclusive. Voss et al (2013), for example, point out that the role of temporary agency work in acting as a bridge into permanent work may be overstated, as the evidence shows that a significant share of temporary agency workers are likely to remain in agency work – in particular, people from certain groups such as the long-term unemployed, people with a migrant background and disabled people – find it more difficult to make transitions into permanent employment.

As national regulations restricting labour market intermediaries from operating have declined, it can be seen that temporary work agencies (TWAs) and employment placement agencies (EPAs) now operate in all EU Member States, although the market is very different according to country. In some cases, where the market is still evolving, there are differences between regulatory regimes.

Precisely how significant labour market intermediaries have become in the EU labour market is hard to establish. The situation is no clearer for EPAs. In some sectors and geographical areas, intermediaries have become strongly associated with migration and cost reduction as well as flexibility. In developing markets, enterprises have made the transition from informal to formal enterprises (Pijpers, 2010). However, many informal or unregistered businesses remain, even in long-established markets.

### Prevalence in the European labour market

Malo and Munoz-Bullon note that, over the last decade, employment in temporary agency work has doubled throughout Europe. Although the distribution of temporary agency work differs across European countries, some of the prominent sectors in which temporary agency work is used are services, manufacturing and construction. In the Scandinavian countries, Spain, Italy and Austria, temporary agency employment has increased at least five-fold and accounts for 1.3% of the agency employment in the European Union (Malo and Munoz-Bullon, 2006). Similarly, Eurofound's study on temporary agency work points out that it is a unique form of employment, based as it is on a triangular relationship between workers, intermediary agencies and employers (Eurofound, 2002).

Some studies, for example those carried out by Eurofound (Eurofound, 2002, 2006 and 2009) and others (European Parliament, 2009, ILO 2011, Voss et al, 2013, IZA, 2013) point to the increase in the TAW sector in Europe over past years, whereas EuroCiett points out that the penetration rate has remained constant over the past decade. The increase partly stems from the fact that, in many EU countries, TAW is a form of employment that has become legally regulated only during the last two decades, following the adoption of the Temporary Agency Work Directive.

However, as Eurofound's 2002 study underlines, establishing the size of labour market intermediaries by means of counting the number of agencies or the numbers of workers interacting with them presents difficulties, and it appears not to have become easier in the meantime.

According to the Structural Business Statistics (SBS), the number of temporary work agencies (TWAs) operating in Europe ranges from 32,000 to 33,000, depending on how the sector is defined. Of these, over three-quarters were concentrated in just four countries: France (over 2,000 enterprises), Germany (almost 4,000), Netherlands (over 6,000) and 12,000 in the UK (Eichhorst et al, 2013). At the transnational level, a few major players dominate (such as Adecco, Randstad and Manpower), and while these may also be the largest in national labour markets, there may be many other, smaller enterprises. In addition, even where there are licensing or registration requirements, many labour market intermediaries will be operating informally or unlawfully. For example, a 2010 report by Pijpers cites earlier research showing that there were 5,000 intermediaries operating in the Netherlands reporting recruitment or posting activities 'that are not entirely, or at all, legal'.

Measuring the number of temporary agency workers is problematic because of the intermittent nature of the work. Being registered with a TWA does not necessarily mean that the worker is employed in any given week. Furthermore, because of the nature of temporary work, such workers may not work the same number of hours every week. Some will also be registered with more than one agency, or have another part-time job. The agency employers' organisation, the International Confederation of Private Employment Agencies (CIETT), therefore opts for 'billed hours' as the best measure of activity in the sector although, of course, this is not the same as the number of workers engaged in any particular period.

A table published by IDEA Consult (Voss et al, 2013) shows trends and employment figures for 2010 in 23 Member States, based on returns from Eurociett member organisations and European Commission data (no figures are given for Cyprus, Croatia, Estonia, Latvia, Malta or Norway). According to these data, the proportion of the national workforce employed as temporary agency workers ranges from 0.1% (Romania and Greece) up to 3.0% (UK) – although most countries displayed TAW levels of less than 1%. Four countries had more than 200,000 temporary agency workers: the UK (1.07 million), Germany (625,000), France (447,000) and the Netherlands (213,000). More recent data published by CIETT shows that the total number of hours worked in Europe by temporary agency workers dropped sharply from October 2008, then rose just as sharply from October 2009 to a peak in mid-2010, after which they gradually declined up to January 2013. The latest figures, for November 2013, show a 1.7% increase.

The relevance of the economic crisis is worth noting. According to a new report from Eurofound on the TAW sector, an increase in the number of workers employed as temporary staff is often the sign of a strong economy, as companies are in need of additional workers in order to react to an increase in demand (Eurofound, 2016). When demand is down, temporary workers are the first to lose their jobs. These patterns were also present in the context of the 2008 crisis, when the TAW sector in Europe experienced a decline: then, following some indications of economic recovery (in some countries), temporary agency work started to increase. One explanation to account for recent increases in the sector might be the development of temporary agency workers in the newer Member States' national markets, although these are small compared with the most significant ones (the UK, the Netherlands, France and Germany).

Table 1 was developed by Eurofound during the preparation of its latest report and is based on data from Eurofound's network of European correspondents (Eurofound, 2016).

**Table 1: Number of temporary agency work (TAW) companies in 2009 and 2013–2014**

|    | 2009  | 2013–2014 |    | 2009   | 2013–2014 |
|----|-------|-----------|----|--------|-----------|
| AT | 779   | 1,062     | IE | --     | 166       |
| BE | 140   | 257       | IT | 76     | 78        |
| BG | 36    | 40        | LT | 75     | 92        |
| CY | 6     | 13        | LU | 41     | 46        |
| CZ | 2,214 | 1,588     | LV | 50     | 163       |
| DE | 5,714 | 6,593     | MT | 8      | 6         |
| DK | 739   | 512       | NL | 6,345  | 6,170     |
| EE | 316   | 462       | PL | 2,947  | 5,157     |
| EL | --    | 9         | PT | 540    | 514       |
| ES | 333   | 248       | RO | 42     | 389       |
| FI | 995   | 1,098     | SE | 1,675  | 2,321     |
| FR | 1,500 | 1,500     | SI | 152    | 98        |
| HR | 27    | 71        | SK | 144    | 186       |
| HU | 916   | 1,016     | UK | 15,130 | 10,535    |

Source: Eurofound's network of European correspondents, 2014

The International Confederation of Private Employment Agencies (CIETT) publishes figures for the ‘penetration rate’, which is defined as the proportion of the workforce engaged in temporary agency work, based on the reports of their affiliates compared with ILO data for the workforce (CIETT, 2014). This information indicates in which Member States temporary work agencies (TWAs) are likely to play the most significant role in the domestic labour market. Based on this data, TWAs in the UK are the most significant, deploying a reported 3.8% of the workforce, followed by the Netherlands (2.7%), Luxembourg (2.4%), Germany (2.2%) and France (2.0%). Only three other Member States (Austria, Belgium and Portugal) have a penetration rate of more than 1.5%.

Most data on EPAs seem to originate with organisations representing enterprises in the sector. Therefore data might not be as conservative in their estimation as data published by other organisations. For example, the Adecco Global Study found that 9% of the workers participating in a 24-country survey had received a job offer online, and almost half had used social media to assist in their job search (a high proportion of the sample were graduates, so this is unlikely to be representative). Eurostat’s Labour Force Survey records data on job seeking behaviour by the unemployed showing that, across the EU, 22.5% of the unemployed approached a private ‘employment office’ in 2011. The proportion varied hugely from more than 40% in the Netherlands to fewer than 2% in Denmark (Eichhorst et al, 2013). However, this represents only a minority of those actively seeking new employment, it does not provide data on successful job search, and fails to take account of the arrangements in some Member States, whereby at least some of the functions of the public employment service (PES) are contracted to private operators.

A report by the Institute for the Study of Labour (IZA), in Germany, also includes data from the **Structural Business Survey** which gave a figure of 27,000 enterprises in the NACE sector N781, ‘Activities of employment placement agencies’. More than one-third of these were located in just two countries, the UK and the Netherlands (IZA, 2013). A 2014 report by CIETT reveals the number of ‘private employment agencies’, their local branches and directly employed staff. While, in some countries, these data are restricted to local affiliates of CIETT member organisations, they do provide some interesting points of comparison. Again, the UK leads the field with more than 18,000 businesses and 14,000 branches – a difference perhaps explained by online recruitment businesses and the practice of running several specialist agencies from one address. Germany, France and the Netherlands have large numbers of agencies and branches, and so appear to be major sites for labour market intermediary activity as well as for TWAs. Of particular interest is the relatively large number of placement agencies operating in three of the newer Member States: the Czech Republic, Poland and Slovakia, each of which is reported to have more than 1,000 such businesses. In all these three countries, labour market intermediaries need licences to operate, and while social partner activity is limited in Poland and Slovakia, it is more advanced in the Czech Republic. (see Box 2, p. 35)

None of these figures is likely to reflect the spread of online recruitment sites. A project by the International Trade Union Confederation (ITUC) considering the role played by the internet in facilitating trafficking for labour exploitation drew attention to Tjobs, the largest online recruitment platform in Romania (ITUC, 2014). Of the 30,000 applications for jobs abroad in August 2014, 11,000 of the jobs were in the UK, 4,800 in Germany and 2,800 in France. The principal sector was hotels and tourism, followed by domestic work, healthcare, agriculture, and restaurants and catering. While this study was not able to measure the scale of internet recruitment, each of the five countries examined provided at least one example of a **trafficking case involving an online recruiter (2.54MB PDF)**. In addition to this study, the annual EU Anti-Trafficking Day in 2014 concentrated on the links between trafficking and the internet, especially on online recruitment. A variety of experts, practitioners and advocacy groups met in order to discuss the conference’s theme, ‘Exploring the links between the internet and trafficking in human beings: cyberspace for prevention, not recruitment’. One of the working groups highlighted that social networking tools are becoming increasingly popular as recruitment tools alongside pop-ups, chat rooms and spam mail.

Despite the inconsistencies, unreliability and lack of time series, most commentators seem convinced that the role of intermediaries in the European labour market is growing. Lifting restrictions or bans in some Member States on the operation of agencies suggests that they might become more active, with their role therefore becoming increasingly significant.

## **European and international regulations governing labour market intermediaries**

Labour market intermediaries play an important role in the EU labour market as they can help foster job creation and increase workers' participation and integration in the labour market. This is not only in terms of meeting business needs for flexibility, but also satisfying the need of employees to reconcile their working and private lives. The European Parliament and the Council, recognising the differences in the use of temporary agency work across the EU and in order to protect the legal situation, status and working conditions of temporary agency workers adopted the Temporary Agency Work Directive in 2008. Member States are asked to establish a framework so that TWAs can effectively create jobs and develop flexible forms of work. At the same time, the Directive recognises the temporary agency sector as a legitimate and professional business, and calls for the removal of unnecessary restrictions, permits or bans.

According to the Charter of Fundamental Rights of the European Union, free public employment services (PES) constitute services of general economic interest. Indeed, these services reflect an essential means to safeguard the fundamental right of access to a free placement service (Eichhorst et al, 2013). PES are increasingly supplemented by employment placement agencies (EPAs) and, to some extent, by temporary work agencies (TWAs). There is no specific definition of an employment placement agency (EPA) in European legislation, while a TWA is clearly defined in Article 3.1 (b) of the TAW Directive:

*Temporary work agency means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction.*

(European Commission, 2008)

There are a number of directives establishing a direct or indirect link between employers, such as TWAs, and trafficking for labour exploitation.

### **Liability of employers**

The Anti-Trafficking Directive highlights the liability of employers if they engage in trafficking. Article 5 states that legal persons, such as employers, have to be held liable for any offences concerning trafficking in human beings. The liability of legal persons shall not exclude criminal proceedings against natural persons who are 'perpetrators, inciters or accessories in the offences'. The sanctions can include non-criminal sanctions such as revoking a licence or closing the business (Article 6).

### **Sanctions against employers**

**Directive 2009/52/EC provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals** (the Employers Sanction Directive). The Employers Sanction Directive highlights the sanctions to be applied to employers (including TWAs) employing third-country nationals who are illegally staying in the country and/or who have been trafficked.

The Directive prohibits the employment of third-country nationals (meaning those who are not citizens of the EU) who are illegally staying in the country with the aim of fighting illegal migration. To prevent and tackle illegal employment, the Directive lays down common standards on sanctions against employers which have to be applied by Member States

(Article 1). Paragraph 22 establishes the link to the Anti-Trafficking Directive. In serious cases, where third-country nationals are employed under ‘particularly exploitative conditions [or] the employer knowing that the worker is a victim of trafficking in human beings’, Member States are obliged to apply criminal penalties.

**Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers** (the Seasonal Workers Directive) also provides for sanctions against employers who are in ‘serious breach’ of their obligations under this Directive, from employing seasonal workers from outside the EU (Article 17). Member States need to ensure the liability of employers to pay compensation to seasonal workers in the case that the employer is no longer authorised to employ seasonal workers. Authorisation can be withdrawn, for example, if the employer was previously sanctioned for undeclared and/or illegal work, or if the employer failed to meet its legal obligations regarding ‘social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements’ (Article 9). The Seasonal Workers Directive is not directly linked to trafficking. Yet the failure of an employer to meet obligations in relation to labour rights, working conditions or terms of contract can – in serious cases – amount to exploitative working conditions. If linked to fraudulent recruitment practices, for instance, the employer could be held accountable for trafficking. In both cases authorisation would be withdrawn and compensation to the seasonal worker would be required.

### Exclusion from procurement procedures

**Directive 2014/24/EU on public procurement** (the Public Procurement Directive) establishes rules on procurement for contracting authorities. Article 57, 1(f) highlights that contracting authorities shall exclude so-called economic operators from participation in the procurement procedure where it was established that the economic operator was involved in child labour and other forms of trafficking in human beings, as defined in Article 2 of the Anti-Trafficking Directive. This means that contracting authorities are obliged to exclude economic operators (such as TWAs) if it has been shown that they were engaged in trafficking people.

### Obligation to guarantee equal treatment of workers

The obligation to guarantee equal employment and working conditions for workers who are engaged with a TWA is enshrined in Article 5 of the TAW Directive. TWAs are also obliged to comply with **Directive 96/71/EC concerning the posting of workers in the framework of the provision of services** (the Posting of Workers Directive). Temporary Work Agencies (TWAs) have to guarantee posted workers the terms and conditions of employment in the EU Member State where the work is carried out as laid down by law, regulation or administrative provision, and/or by collective agreements or arbitration awards. By requiring the equal treatment of workers, the directives aim to prevent misuse and exploitative practices. Although these provisions do not necessarily contribute to preventing trafficking, they do contribute to preventing labour exploitation.

There are also two ILO conventions governing employment agencies. The first is **Convention No. 96 concerning Fee-Charging Employment Agencies**, which came into force on 18 July 1951. Its aim was to abolish private, for-profit, fee-charging agencies in favour of establishing public, free employment services and, during any interim period, the establishment of a licensing system for private agencies. However, most ILO constituents no longer seem to adhere to the principles of ILO Convention 96. Only four EU Member States remain signed up to it: France, Ireland, Luxembourg and Malta. A further 10 countries, which had earlier ratified it, have since renounced it: Belgium (in 2005), Finland (1992), Germany (1992), Italy (2001), Netherlands (2000), Norway (2002), Poland (2009), Portugal (2003), Spain (2000) and Sweden (1992).

This is because Convention 96 has, to some extent, been supplanted by the 1997 **Convention No. 181 concerning Private Employment Agencies**. This requires a system of licensing or certification, prohibits charging workers a fee, and sets out specific protection for migrant workers recruited or placed in host countries, as well as a system of penalties



for those agencies which ‘engage in fraudulent practices and abuses’. The application of the convention (and any derogation from it) should be subject to consultation with the relevant social partners. Convention 181 has been ratified by 12 Member States: Belgium, Bulgaria, the Czech Republic, Finland, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia and Spain. These countries have to report regularly to the ILO on how they implement the convention.

The Convention provides a comprehensive definition of labour market intermediaries, referring to them as private employment agencies (PEAs), to distinguish them from the public employment service (PES) run by national or local/regional governments:

*1. For the purpose of this Convention the term private employment agency means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:*

*(a) services for matching offers of, and applications for, employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;*

*(b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a ‘user enterprise’) which assigns their tasks and supervises the execution of these tasks;*

*(c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organisations, such as the provision of information, that do not set out to match specific offers of and applications for employment.*

Convention 181 is supported by the ILO constituents, as well as by the International Confederation of Private Employment Agencies (CIETT), who claim that the countries that have ratified it **have since enjoyed better protection for workers (2.46MB PDF)**, and other benefits, such as:

- lower levels of informal and undeclared work;
- high correlation with democracy;
- more cooperation between public and private employment services;
- greater protection for freedom of association;
- full respect for the right to strike;
- meaningful and constructive social dialogue in the temporary agency work sector;
- better protection of agency workers by forbidding fee-charging;
- better wages for agency workers;
- controlled and mitigated development of the industry.

As mentioned above, 12 Member States (Belgium, Bulgaria, the Czech Republic, Finland, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia and Spain) have already ratified the convention. France, which has a relatively big TWA sector, has recently signed the convention and this will come into force on 28 October 2016. Denmark, Germany, Sweden and the UK have not ratified it, although they each have one of the largest TWA sectors in the EU.

The International Trade Union Confederation (ITUC) also called for wider ratification of Convention 181, in a motion on migrant workers presented at its 2010 World Congress in Vancouver. The motion highlights the **convention's ban on charging fees to place workers into a job (61KB PDF)**. The ITUC statement emphasises that signing Convention 181 should lead to greater compliance by agencies in not charging fees, or demanding other costs, from workers. At the same time the CIETT's code of conduct and the longstanding engagement of the TAW industry has also helped in ending fees, human trafficking and forced labour. As a consequence, the situation of paying for work rather than being paid for work is less likely due to monitoring systems which ensure implementation and compliance with Convention 181.

### National regulations and definitions

This section analyses data on national regulations and definitions, based on information provided in the questionnaire by national experts who are members of Eurofound's network of correspondents. The scope of the questionnaire was to gather information on how labour market intermediaries are defined and regulated. The questionnaire also asked for information on how labour trafficking is defined and what the social partners are doing to prevent and tackle the issue. Regulations regarding workers' conditions, which are permitted in the TAW Directive (such as transfers to permanent – or at least open-ended – work, treatment on an equal footing to permanent staff, or maximum length of assignments) were not systematically dealt with in the questionnaire. However, these topics are covered in the IDEA report for UniEuropa and EuroCiett, (Voss et al, 2013). For example, 10 Member States (including Austria, Bulgaria, Germany, Netherlands and Poland), continue to restrict the use of temporary work agencies (TWAs) in certain sectors (Voss et al, 2013) and 14 Member States set out a maximum length for assignments. Five countries (Hungary, Ireland, Malta, Sweden and the UK) derogate from agency workers' entitlement (if they have open-ended employment contracts) to equal pay between assignments. This so-called 'Swedish derogation' means that if agency workers are paid even a small retainer between assignments they are considered to be employees of the agency, and there is no requirement for them to be given pay and conditions comparable with equivalent workers in the client company (after the qualifying period). This was introduced to accommodate the normal practice in Swedish TWAs.

Based on the information gathered on regulating the operations of labour market intermediaries, it appears that there is a general consensus by Member States that they require special treatment. Regulatory systems for labour market intermediaries, particularly those operating as temporary work agencies, are widespread across the 29 countries examined – even among those who have not signed either ILO Convention.

However, Member States' views on this are far from uniform. This might be due to the different environments in which regulation for labour market intermediaries was developed and adopted. In the expert report on employment agencies written for the European Parliament, four different environments are outlined:

- a market-driven environment where there is little formal regulation (as in the UK);
- a social dialogue based environment (for example, Denmark or Germany) where there is a balance between legislation and agreements made by collective bargaining;
- a legislator-driven environment (for example, Italy or Belgium) where temporary agency work is heavily regulated;
- emerging markets which show a legislative framework with mixed impact results (as in Poland). (Eichhorst et al, 2013)

This categorisation provides a comprehensive framework, as the categories have been developed to reflect the different labour market environments within which regulations evolve, and they can be used in the present analysis of the varied regulatory systems of TWAs in Member States, as reported by Eurofound's network of correspondents, and illustrated in Table 2.

### Licensing and registration of labour market intermediaries

The most frequent condition for labour market intermediaries to operate legitimately in Member States is to be licensed or registered. Licensing requires some prior authority to test qualifications and other requirements. Registration simply requires the LMI to notify the appropriate authority, which will then list it (see ‘Definition of key terms’ on p. 9).

Countries use regulation to varying degrees. According to Peck et al (2005), some European countries such as France, Germany and the Scandinavian countries have been cautious about weakening regulation. Countries like Italy and Greece started to introduce regulatory frameworks conducive to temporary staffing only after Convention 181 was passed in 1997, whereas other countries, such as Belgium, France and the Netherlands, introduced regulatory frameworks much earlier.

In the case of the Netherlands, although the licence system was abolished in 1998 as part of market liberalisation, a registration system was introduced in 2012 in order to tackle illegal practices. In addition, a government-led approach to ‘chain liability’ was introduced, whereby all companies over a staffing agency all the way up to the company at the top of the chain can be held liable. Joint liability is the default regime in Dutch subcontracting chains. In addition to the mandatory registration with public authorities, temporary work agencies (TWAs) can volunteer for certification which entails passing an audit by the Foundation for Employment Standards (SNA). Once a TWA has acquired a SNA certificate, the staffing agency and all enterprises above in the supply chain are partially released from joint liability. As the company at the top of the chain benefits from the certification scheme, major companies started to demand certification of TWAs in their subcontracting chains (Gordon, 2015).

According to the research carried out for this report, most Member States have some form of licensing, while over half of the countries (Austria, Croatia, Cyprus, the Czech Republic, Germany, Greece, Hungary, Latvia, Luxembourg, Malta, Portugal, Romania, Slovakia, Slovenia and Spain) require all TWAs – as a minimum – to have authorisation prior to commencing activity. A further seven countries (Belgium, Bulgaria, France, Italy, Netherlands, Norway and Poland) have registration systems (including the Netherlands where – as stated above – this was reintroduced in 2012, having previously been abolished in 1998). Five countries (Estonia, Finland, Ireland, Lithuania and Sweden) had neither and, in the UK, most labour market intermediaries were not required to register or become licensed, (although agencies do require licensing to operate in the agriculture and food processing sectors). Table 2 summarises the different types of regulation systems for TWAs using the categorisation drawn up by Eichhorst et al (2013) outlining the different labour market environments. Countries may use more than one regulatory measure.

**Table 2: Types of national regulation for temporary work agencies (TWAs) by environment**

|                                                                          | Licensing                  | Registration                     | No prior licensing/registration                                                | Certification schemes |
|--------------------------------------------------------------------------|----------------------------|----------------------------------|--------------------------------------------------------------------------------|-----------------------|
| Market-driven environment with little formal regulation                  | CY, MT                     |                                  | IE, UK (except in agriculture and food processing where a licence is required) |                       |
| Environment with a balance between legislation and collective agreements | AT, DE                     | NO, NL (reintroduced in 2012) DK | FI, SE                                                                         | NL                    |
| Legislative-driven environment with strong regulation                    | EL, PT, ES, LU             | BE, FR, IT                       |                                                                                |                       |
| Emerging markets with mixed legislative frameworks                       | HR, CZ, HU, LT, RO, SK, SI | BG, PL                           | EE, LT                                                                         |                       |

Source: Eurofound’s network of European correspondents, 2014

As Table 2 shows, there is great variation between Member States in terms of their regulation for TWAs and within the different market environments in which they operate. For example, in more liberalised and less regulated market environments such as Ireland and the UK, no registration or licensing is required. In Scandinavian countries, where there is a balance between legislation and collective agreements, the regulation system varies, with Denmark and Norway requiring registration, and Finland and Sweden requiring none. This difference can be explained by the latter introducing policy changes towards greater flexibility. In Sweden, private temporary work agencies have been allowed to operate since 1993 and restrictions were lifted for temporary work contracts, allowing them, for example, to ease a temporary workload or to fill temporary vacancies (Jonung et al, 2009). Similar changes have occurred in Finland since the 1990s although, even before the TAW Directive, temporary workers with successive contracts in Finland were entitled to benefits similar to those enjoyed by workers with permanent contracts. However, both countries allow a degree of regulation through collective agreements (Jonung et al, 2009).

The picture is less clear in the case of employment placement agencies (EPAs). In some countries, these require licensing (for example, Austria, Cyprus, Greece and Poland) or registration in the same way as TWAs – sometimes with less demanding conditions. In other countries, such as Germany, for example, EPAs are not subject to any special requirements. Other Member States have introduced changes in legislation to allow for greater flexibility: for example, in Spain, where since 2014, prior authorisation is no longer a prerequisite.

Where licences exist, they may be subject to time limits or periodic renewal. For example, in Luxembourg, the licences may be revised at any moment and approval needs to be obtained by the relevant Ministry. However, if a TWA has practised for three years without interruption, then approval may be given for an indeterminate period. Similarly, in Germany, the local branch of the Federal Employment Agency is responsible for issuing licences to TWAs. Licences are issued initially for 12 months and then renewed for a further two years. If a TWA operates for a continuous three-year period, an open-ended licence may be granted.

Furthermore, the most regularly mentioned condition for gaining a licence to operate a LMI is that the proprietor or agent should fulfil certain requirements (mentioned in 11 countries: Austria, Bulgaria, Cyprus, France, Greece, Italy, Luxembourg, Portugal, Romania, Slovakia and Slovenia). Apart from nationality (where this was mentioned, it usually required citizenship of the European Economic Area (EEA)), the most common requirement is that they should not have any criminal convictions or civil violations (in some cases these are limited to recent violations) relating to social security, unpaid wages or debts. In addition, some countries require certain levels of professional qualification. Cyprus, for example, stipulates an appropriate degree or diploma and, in Austria, anyone wanting to operate an EPA has to have passed the job employment services exam. Others countries have requirements that are less specific. Italy, for example, requires ‘adequate professional skills’, and in Greece qualifications must be supplemented by a minimum length of professional experience. In Romania, granting licences depends on certain conditions, such as not having any debts registered with the state or local budget, not having been sanctioned in the last 24 months, and being able to provide a financial guarantee.

### Financial guarantees and inspections

The second most frequent stipulation is that the enterprise should provide a minimum level of financial guarantee against any shortfall in wages, social security or taxes. This was reported by nine countries: Cyprus, France, Greece, Italy, Luxemburg, Norway, Portugal, Romania and Slovenia. These may take the form of deposits, insurance policies or bank guarantees, and range from €3,500 (NOK 30,000) in Norway and up to €119,000 in France. In other countries, the guarantee is related to turnover or multiples of a typical worker’s wage – for example, 25 gross minimum salaries for a year in Romania, or 200 minimum salaries plus 35% in Portugal (for TWAs the equivalent figure for EPAs is 13 salaries). Greece and Italy, meanwhile, require minimum levels of share capital: in the case of TWAs, this amounts to €176,000 in Greece and €600,000 in Italy.

Regulatory systems may also include special reporting or inspection regimes. In some cases, this may simply represent the application of sectoral collective bargaining agreements, as in the case of Luxembourg, where the application of the agency sector agreement can be enforced by the Labour Inspectorate. After the permit is granted, employers need to apply the national collective agreement of the temporary work sector (minimum wage) and also pay social contributions on these wages. The Labour Inspectorate (ITM) is responsible for the monitoring to ensure that TWAs adhere to the regulations that apply to the sector.

In Greece, inspectors will visit and interview the proprietor before a licence is issued. A similar arrangement originally applied in the UK's agriculture and food processing industries where inspectors from the Gangmasters Licensing Authority (GLA) carried out inspections as part of the licensing process. This no longer applies in all cases. Agencies may also be required to notify social security authorities of temporary work assignments – this is the case in Bulgaria, France and Lithuania, for example. Finally, in some cases, PES are notified of placements: in France, for example, temporary work agencies must send the Labour Inspectorate a monthly update of concluded employment contracts (*Relevé mensuel des contrats*) indicating the start and the end of tasks undertaken by the temporary workers. Similar rules apply in Italy and Spain.

Three countries – Cyprus, Italy and Slovenia – also require labour market intermediaries to have designated premises and sometimes to show they have technical equipment, presumably to prevent letter-box companies and to enable physical inspections. In France, a TWA can be set up anywhere but must occupy an independent office, as it cannot be a part of other business activities.

Taken together, the current regulations show that, in most EU countries, labour market intermediaries are regarded as being in some way exceptional, requiring specific regulations and controls. It appears that the main aims of these regulatory regimes are to ensure that the authorities are aware of who is operating as an LMI, with TWAs being in some ways regarded as more of a concern than labour market intermediaries operating solely as placement agencies. In Cyprus, this has been made explicit in the law to combat trafficking (N.13(I)2012) which came into force in 2012. This permits the government to revoke the employment agency licence if the person responsible for the agency, the director, or owner is convicted for any offence under the anti-trafficking law.

Moreover, the countries recognise the potential risk to both workers' and the state's finances of allowing unrestricted access to this type of activity, hence both qualification requirements and financial bonds or guarantees are required. However, the Eurofound correspondent's response for the Netherlands did point out that since the abolition of the licensing system in the 1990s, there was a massive rise in the number of labour market intermediaries operating in agriculture (from fewer than 50 to more than 1,600).

### Cross-border activity

Labour market intermediaries are becoming increasingly important in facilitating international mobility. A number of reports point to the role of both recruiters and temporary agencies who are operating across borders to provide workers for food processing, construction, domestic work, agriculture and manufacturing jobs (for example, Fudge and Strauss, 2014, Enright, 2013, Pijpers, 2010). However, as a 2015 report for the ILO points out, there may be an overlap between facilitation and exploitation. Highlighting the valuable services provided by the recruitment process – interviewing, matching with vacancies, facilitating visas and arranging transport – the report also points to the dangers of the abuses to which the sector is prey:

*Unscrupulous recruiters charge fees for every possible service related to migration, discriminate on the basis of gender and age, make false promises about the job on offer in the destination country to increase the amount that migrants are willing to pay, or lend money at usurious rates to cover these outsized expenses.*

(Gordon, 2015)

Furthermore, problems may arise where regulatory regimes may differ between the sending and host country. To give some examples: it may, in some countries, be normal for recruitment agencies to charge jobseekers a fee, whereas this might be unlawful in the country to which the worker is deployed. Or, where deposits might be required to register and operate in one country, there may be no such requirement in another. It is not clear whether a ban on operating an LMI in one country (by virtue of convictions or previous non-compliance) will prevent an EEA citizen from setting up a business in another Member State. To some extent, this might be balanced by the need to have a licence (irrespective of the country of origin) in order to operate as an LMI in a country where licensing applies – but only if there is sufficient international cooperation between regulators.

For example, in Belgium, TWAs may post workers into Belgium only if the agency is licensed – but this only applies in the Brussels and Wallonia regions, not in the Flemish region. Similar restrictions apply to EPAs (Eichhorst et al, 2013). Norway, however, simply requires that enterprises that do not have a registered office in the country provide the name and address of their ‘permanent representative’ in Norway. Estonian immigration law seeks to regulate temporary hiring in certain professions (au pairs, experts, advisers or consultants, equipment fitters, skilled workers or seasonal work involving the processing of primary agricultural products), by requiring that they are paid at least 24% on top of the average Estonian salary for that category (or twice the average for specialists).

The approach adopted in Germany is similar to that in Belgium. All agencies require permission from the public employment service (PES), and this applies to those based in other Member States. Posting from TWAs from outside the EEA is not permitted, and the PES may also forbid recruitment from outside the EEA in certain industries and occupations. Eichhorst et al (2013) list several of these: seasonal work, holiday jobs for students, domestic work, language teaching.

Austria has detailed requirements for enterprises based abroad in the EEA to post workers, such as prior notification to the Central Coordination Office for the Control of Illegal Employment (Zentrale Koordinationsstelle – ZKO) pursuant to the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*) and to the Employment Contract Law Adaptation Act (*Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG*) which apply to TWAs, as does the requirement to keep relevant documents available and to provide information on pay (in German) at the workplace. Greece has procedures requiring EPAs to notify the authorities of the intention to provide services (recruitment) in the country, and either to establish premises which can be inspected, or to notify the authorities of clients in Greece and inspection/licensing authorities in the EPAs’ home country.

According to Gordon (2015), host countries for the most part pay ‘little attention to routine problems with recruitment, which usually occur outside of their sight and beyond their jurisdiction’, preferring to focus on the worst cases (those known to feature forced labour, for example) and the best (codes of practice aimed at large enterprises with brands to protect).

## Labour market intermediaries and trafficking for labour exploitation in EU Member States

The international, European and national regulations are aimed at preventing and tackling trafficking in human beings. Member States are bound by the EU Anti-Trafficking Directive (2011/36/EU), which sets minimum standards for the definition of trafficking in human beings. Variations exist in relation to the definitions of labour exploitation in the EU Member States. According to the Directive, labour market intermediaries are to be held liable for engaging in trafficking activities. The Directive is clear regarding Member States’ obligation to initiate criminal proceedings against legal as well as natural persons who are perpetrators, inciters, or accessories in the offences (or their attempts to commit one) concerning trafficking in human beings (Article 5).

### National definitions related to trafficking for labour exploitation

All Member States are bound by the EU Anti-Trafficking Directive and, as mentioned above, the Directive sets minimum standards for the definition of trafficking in human beings. As regards trafficking for labour exploitation, Article 2 lists the exploitation forms of forced labour or services (including begging), slavery or practices similar to slavery, and servitude. There is no further definition given of forms of exploitation. The further interpretation of this is up to Member States' legislators and courts. The study shows that the most common approach to define trafficking for labour exploitation in the EU Member States is to refer to trafficking for the purpose of forced labour in the legislation and, while doing so, adopt the definition of 'forced labour' provided by ILO Convention 29 which states that 'forced or compulsory labour shall mean 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 voluntarily.'(Article 2(1))

Finland, for example, prohibits trafficking for forced labour in the Criminal Code, but gives no further definition. Instead, background documents to the legislation refer to ILO Convention 29 and the European Convention of Human Rights. Similarly, Slovakia prohibits forced labour and forced services in its Constitution, but the Constitutional Court relies on judgements of the European Court of Human Rights (ECHR) to determine its parameters. In Sweden, the National Police Board (NPB) is responsible for reporting developments in trafficking in Sweden. The NPB uses the definition of forced labour found in Article 2 in ILO Convention 29. Other countries transcribe the definition from ILO Convention 29 directly into legislation (the criminal code, the labour code or specific anti-trafficking legislation). This applies in Italy, Lithuania, Portugal and Romania, for example.

Other countries have developed their own definitions, which comply with ILO Convention 29 while reflecting the national legal context, and sometimes experience. A French law introduced into the Criminal Code in 2013 includes the use of threats or violence into its definition, but also relates this to unpaid work or work for 'payment clearly unrelated to the importance of the work done'. In Denmark, threats and the use of force whose purpose is 'exploiting another person' qualify, but exploitation itself is not defined. From the information gathered for this report it appears that much may be left to judicial discretion (or that of police and prosecutors). Related concerns were summarised in the UK response, but would seem to apply more widely:

*The definition and scope of forced labour are poorly understood, including differences between human trafficking, slavery and exploitation. Consensus is needed on forced labour indicators relevant for assessing the scope and scale of forced labour ... and to assist legal proceedings.*

In contrast, some legislation specifies labour exploitation and makes the relationship between trafficking and forced labour explicit. This is the case, for example, with the Irish Human Trafficking legislation:

*Labour exploitation means, in relation to a person (including a child):*

*(a) subjecting the person to forced labour (including forcing him or her to beg), (b) forcing the person to render services to another person, or (c) enslavement of the person or subjecting him or her to servitude or a similar condition or state; and (c) 'forced labour' means a work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily*

**(Criminal Law (Human Trafficking) Act 2008)**

In Austria, an amendment to §104a of the Austria Criminal Code (StGB) was passed by the parliament in 2013. This paragraph defines human trafficking for the purpose of exploitation. The amendment specifies the meaning of exploitation covering sexual exploitation, harvesting organs, forced begging, forced commission of a crime and, for the first time, also explicitly mentions **the exploitation of labour (in German, 166KB PDF)**. The explanatory memorandum to the amendment of §104a highlights that exploitation of labour is different to slavery and that it includes

the ruthless exploitation of people and the ‘lasting oppression of vital interests’ (Ministerial proposal for the amendment of the penal code for sexual offences, 2013). According to Gallagher (2015), differentiating labour exploitation from slavery may help those at the front line to investigate and prosecute cases more easily.

Table 3 provides an illustrative overview of the main definitions reported by the correspondents in some Member States. For a full overview of the national definitions in relation to trafficking in the 28 EU Member States, see the report on case law published by the European Commission (European Commission, 2015).

**Table 3: Summary of national definitions related to trafficking for labour exploitation**

|                                                                                                                                                                                            |                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ILO Convention 29</b>                                                                                                                                                                   | Most common approach for national legislation regarding definitions                                                                                                                                                             |
|                                                                                                                                                                                            | <i>Examples:</i>                                                                                                                                                                                                                |
|                                                                                                                                                                                            | Finland: Prohibits trafficking for forced labour in the Criminal Code, but gives no further definition. Instead background documents to the legislation refer to ILO Convention 29 and the European Convention of Human Rights. |
|                                                                                                                                                                                            | Slovakia: Prohibits forced labour and forced service in its Constitution, but the Constitutional Court would rely on judgements of the European court of Human rights (ECHR) to determine its parameters.                       |
|                                                                                                                                                                                            | Sweden: The National Police Board is responsible for reporting developments in trafficking in Sweden and uses the ILO definition to classify cases.                                                                             |
| Italy, Lithuania, Portugal, Romania: Definition from ILO Convention 29 directly transposed into legislation (the criminal code, the labour code or specific anti-trafficking legislation). |                                                                                                                                                                                                                                 |
| <b>Member States definitions, which comply with ILO Convention 29</b>                                                                                                                      | <i>Examples:</i>                                                                                                                                                                                                                |
|                                                                                                                                                                                            | France: From 2013 the Criminal Code includes the use of threats or violence in its definition, but also relates this to unpaid work or work for ‘payment clearly unrelated to the importance of the work done’.                 |
|                                                                                                                                                                                            | Denmark: Threats and the use of force whose purpose is ‘exploiting another person’ qualify, but exploitation itself is not defined.                                                                                             |
| <b>Legislation specifies labour exploitation and makes the relationship between trafficking and forced labour explicit</b>                                                                 | Ireland: Irish Human Trafficking legislation.                                                                                                                                                                                   |
|                                                                                                                                                                                            | Austria: Amendment to §104a of the Austria Criminal Code.                                                                                                                                                                       |

Source: Eurofound’s network of European correspondents, 2014

The table shows that many of the responses feature the ILO Convention 29, suggesting that the majority of Member States use it as their regulatory framework. Furthermore, respondents in Ireland and Austria specifically mention legislation on labour exploitation based on trafficking and forced labour.

**Role and involvement of labour market intermediaries in trafficking for labour exploitation**

Regardless of the obligation of labour market intermediaries to refrain from trafficking in human beings, some seem to engage in trafficking for labour exploitation by means of fraudulent and deceptive recruitment or through exploiting the vulnerable position of individuals. The present research has highlighted some of the sectors in which LMI trafficking activity is more likely to occur, and the country of origin of exploited workers, as summarised in Table 4.



**Table 4: Sectors with problems regarding trafficking for labour exploitation**

| Country | Sectors                                                                                                                                                     |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AT      | Construction<br>Personal care                                                                                                                               |
| BE      | Construction<br>Industrial cleaning<br>Car wash sector<br>Catering industry<br>Retail trade (annual report of the Federal Anti-trafficking Centre for 2013) |
| CZ      | Domestic work                                                                                                                                               |
| DE      | Construction (in Hungary report, also national report)                                                                                                      |
| DK      | Waste/recycling ('green' sector)<br>Cleaning<br>Domestic work                                                                                               |
| EL      | Agriculture                                                                                                                                                 |
| ES      | Seasonal agriculture<br>Textiles<br>Domestic work<br>Construction<br>Hospitality                                                                            |
| Europe  | Agriculture<br>Construction<br>Textiles<br>Hospitality<br>Domestic work (GRETA, 2014)                                                                       |
| FI      | Seasonal migrant work<br>Ethnic restaurants<br>Beauty/hair salons<br>General service sector                                                                 |
| FR      | Construction<br>Catering<br>Domestic work                                                                                                                   |
| IT      | Construction<br>Agriculture                                                                                                                                 |
| LU      | Catering<br>Construction                                                                                                                                    |
| NL      | Agriculture (in Hungary report)                                                                                                                             |
| PT      | Agriculture/fruit picking                                                                                                                                   |
| RO      | Construction<br>Transport<br>Agriculture<br>Food industry<br>Hospitality                                                                                    |
| SE      | Hospitality<br>Cleaning<br>Construction<br>Agriculture and forestry (berry-picking)<br>Retail<br>Report repairs<br>Service<br>TWA sector                    |
| SI      | Construction                                                                                                                                                |
| UK      | Agriculture and food processing<br>Construction<br>Hospitality (Oxfam 2009, cited by Enright, 2013)                                                         |

Source: Eurofound's network of European correspondents, 2014

Table 4 identifies the sectors most commonly having problems with trafficking for labour exploitation and in most countries these are construction, catering and hospitality, domestic work and agriculture. Other sectors include retail in Sweden and Belgium, beauty and hair salons in Finland, transport in Romania and waste and recycling in Denmark.

Given the limited availability of data for cases of trafficking for labour exploitation or for the size of the LMI sector, it is difficult to show a statistical correlation between the two. However, the anecdotal evidence is strong, and the data gathered for this report and the broader literature provide many supporting examples of the existence of certain practices, although not on how widespread they are. Some of these are discussed below. A study of trafficking conducted in Portugal and published in 2012 cited the human trafficking activities of the Portuguese recruitment company DFRM International Services SA with origins in Israel (IEEI, 2012). Although this was closed in 2011, its owners created another company to continue the activity. The report also states that the role of EPAs in the trafficking of human beings is on the increase.

The Estonian report produced for the ADSTRINGO project – ‘Addressing trafficking for labour exploitation through improved partnerships, enhanced diagnostics and intensified organisational approaches’ – highlights some issues related to deceptive recruitment. ADSTRINGO was a two-year project, funded by the Prevention of and Fight against Crime Programme (ISEC) of the European Commission, and developed to prevent trafficking for labour exploitation through national and regional partnerships of stakeholders that are in a position to address situations of trafficking and labour exploitation. Research shows that Estonian workers have also paid recruitment fees. The research in Finland and Poland shows that victims are misled or even deceived by recruiters and intermediaries who make false promises and paint rosy images about the terms of work, length of employment and salary. Sometimes no work is provided in the destination country, or the work is only part time despite the promise of a full-time job (Markina and Kask, 2013). Other similar examples were cited in Finland, where Chinese workers in the cleaning sector had been subject to fees by intermediaries in China, and nurses had similarly been charged illicit fees by agencies in South East Asia (cited in Ollus et al, 2013).

Deceptive recruitment by labour market intermediaries (where the pay, work or conditions fail to meet the promises made on recruitment) are reported in Hungary for agricultural workers going to the Netherlands (in 2012), and construction workers recruited online to work on the new Berlin Airport (in 2011). In both cases, salaries were underpaid or unpaid. In Bulgaria, workers were recruited to work in Germany. The LMI was found by investigators to have made workers work in inhumane conditions for little or no salary. It was also found that the LMI – although registered in Germany – had not provided legitimate contracts and, in some cases, had sent workers to Poland instead, where they were obliged to sign contracts written in Polish.

In Belgium, the regulatory framework for the operation of TWAs is tight, and some regulations apply to the whole of the Belgian territory and are based on the contractual relationship between the temporary work agency, the worker and the user company. One example is the case of Chinese recruiters who sent workers via Russia to work in restaurants in Belgium in exchange for very high fees. The conditions were found by the court to constitute trafficking, as they included 12 hours of work each day, poor accommodation (in an attic), almost complete dependence on the ‘employer’, and irregular, incomplete or no salary at all. Another example, also from Belgium, constitutes one of the few cases where the country’s Labour Inspectorate was able to establish the violations committed by an LMI, brought legal proceedings and won the case.

Some examples also demonstrate the difficulty that may be encountered in identifying whether an LMI has been involved. The Migrants Rights Centre Ireland (MRCI) cites the example of a Vietnamese man recruited through ‘a wealthy friend’ for what he believed was a gardening job in Europe. Having been brought into Ireland he was put to work tending cannabis plants, being locked in the building and brought food once a week. When this was uncovered by the police, he was charged with possession of the plants. It was not clear what the relationship was between the original

recruiter and those operating the cannabis farm, or whether there was LMI involvement (MRCI, 2013). In the Czech Republic, the Commission’s ‘**Together Against Trafficking in Human Beings**’ website suggests that organised crime groups who traffic workers out of the Ukraine and Russia were no longer confiscating documents and ‘tend to present themselves as legally functioning entities such as recruitment agencies’. The well-known case of the Chinese cockle-pickers who died in the UK in 2004 was also problematic (coming before the Gangmasters Licensing Act came into force), in that the gangmaster was convicted of manslaughter, but the company trading the cockles which they picked faced no charges, although it might be argued that the gangmaster was acting as an agent for them (Oxfam, 2009, cited in Enright, 2013).

The examples of exploitation set out in the previous section show that there are a number of examples of labour market intermediaries engaging in exploitative practices and, in some cases, trafficking for labour exploitation. Due to the hidden nature of the phenomenon of trafficking one might assume that there are numerous cases which are still left undetected. In some countries, trafficking offences may be obscured by conflicting policy objectives. For example, a focus on the issue of ‘social dumping’ (mentioned, for example, by Norway and Belgium) might lead to a focus on undercutting wages, rather than on the more wide-ranging plight of those being trafficked for the purpose of exploitation. In countries of emigration, an association of trafficking with migration may lead to the conviction that extreme exploitation is an issue only for foreign workers (in Croatia and Latvia), which it is not. Latvian NGO Marta has highlighted rural-to-urban trafficking for labour exploitation. Table 5 summarises the most notable examples identified by the network of European correspondents.

**Table 5: Overview of labour market intermediaries’ engagement in activities related to trafficking**

|                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Trafficking for labour exploitation</b>                                                                    | Portugal: Study published in 2012 (IEEI, 2012) cited human trafficking activities of Portuguese recruitment company DFRM International Services SA with origins in Israel.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Deceptive recruitment practices</b>                                                                        | Estonia: ADSTRINGO project highlights that Estonian workers in Finland and Poland were misled or even deceived by recruiters and intermediaries.<br>Finland: Chinese workers in the cleaning sector were charged fees by intermediaries in China.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Deceptive recruitment: where the pay, work or conditions fail to meet the promises made on recruitment</b> | Hungary: In 2012, temporary Hungarian workers in the agricultural sector in Netherlands reported that they were promised decent working and earning conditions but these were not fulfilled. These included missing payments, poor accommodation, lack of water and other facilities.<br>Bulgaria: An LMI was found by investigators to have made Bulgarian workers in Germany work in inhumane conditions for little or no salary. It was also found that the LMI, although registered in Germany, had no legitimate contracts there and, in some cases, had sent workers to Poland instead, where they were obliged to sign contracts written in Polish.<br>Belgium: Recruiters in China sent workers via Russia to work in restaurants in Belgium in exchange for very high fees. The conditions were found by the court to constitute trafficking. |
| <b>Difficulty that may be encountered in identifying whether a labour market intermediary was involved</b>    | Ireland: The Migrants Rights Centre Ireland (MRCI) cites the example of a Vietnamese worker deceived at recruitment stage who ended up tending cannabis plants under poor working conditions. When discovered by the police, it was not clear whether there was labour market intermediary involvement (MRCI, 2013).<br>Czech Republic: Organised crime groups trafficking workers were no longer confiscating documents but presented themselves as legal recruitment agencies instead.<br>UK: The gangmaster in the case of the Chinese cockle-pickers was convicted of manslaughter, the company trading the cockles which they picked faced no charges, although it might be argued that the gangmaster was acting as an agent for them (Oxfam, 2009, cited in Enright, 2013).                                                                     |

Source: Eurofound’s network of European correspondents, 2014

As well as providing some examples of LMI trafficking activities, Table 5 gives a flavour of the complex issues around trafficking. The duplicity often starts at the recruitment stage, where workers are trafficked specifically for labour purposes. Generally, they pay fees to labour market intermediaries in their home country and, in some cases, have their passports or other identification confiscated, leaving the victim in the vulnerable position of being unable to seek help. In other cases, the deception is related to working conditions involving payment, signing contracts in a foreign language, as well as poor living conditions and substandard hygiene.

In terms of regulating or monitoring LMI activities, as discussed above, most countries have a form of regulatory system such as rules on licensing or registration, which vary depending on the national market environment and how liberalised it is. There is also social partner activity in terms of raising awareness, provision of training and cooperation with the state (for example, with the labour inspectorate or the police). The experts' responses and existing literature have highlighted three main areas that can help to tackle trafficking in human beings where labour market intermediaries are involved:

- enforcement of LMI and anti-trafficking related rules and regulations;
- support of social partners' activities;
- policy coherence and cooperation.

According to some commentators, more emphasis should be put on understanding and tackling the issue of trafficking for labour exploitation. In some Member States – for example, in Spain – previous work gravitated towards trafficking for sexual exploitation and, as a result, there is a gap in understanding and in developing policies and regulations in the area of trafficking for labour exploitation. Within this context, other experts discussed the need for further research to understand the characteristics and trends of trafficking or the needs of workers in specific sectors such as domestic migrant workers, an area of work that is often undeclared and hidden (McKay et al, 2011). Other questionnaire responses focused on the importance of legislation and changes in the national legislative system, for example, providing protection for those that decide to testify (for example, in Romania), or more preventative regulatory measures to increase public awareness and understanding of trafficking and of the victims' situation (for example, in Croatia). Further improvements can include the following: workers receiving better information on local employment legislation and rights, and the role and function of trade unions; strengthening contractual agreements; strengthening the role of the Labour Inspectorate; and increasing legislation on other aspects such as health and safety, as many temporary agency workers are often in precarious, risky jobs. The following chapter will provide more in-depth information on social partner activities in this area.

# Social partner actions to combat 2 trafficking for labour exploitation

Given the increasing number of issues related to fraudulent recruitment and exploitative labour practices, the social partners have in recent years acknowledged their responsibility and are increasingly voicing their concern.

At international level, the social partners for the temporary agency sector, Uni Global and CIETT, concluded a Memorandum of Understanding (MoU) on temporary agency work in 2008. As well as agreeing on the potential value of temporary agency workers in making the labour market operate more efficiently, both sides supported a regulatory framework that aims to prevent agency work undercutting other workers' rights and conditions. The MoU also specifically dealt with trafficking, highlighting the need to:

*Promote quality standards within the industry and prevent unfair competition by fraudulent agencies and/or user companies, counter abuses and illegal practices and fight human trafficking.*

(Uni Global and CIETT, 2008)

It is worth noting that on the employers' side this was signed by CIETT's corporate members (Adecco, Kelly Services, Manpower, Olympia Flexgroup AG, Randstad, USG People), rather than by CIETT on behalf of their national affiliate associations – implying immediate support and ownership of the MoU.

CIETT recently adopted a new Code of Conduct for its corporate and national affiliates. This includes the requirement that private employment services should observe legislation and official guidance, and **explicitly prohibits the use of forced or bonded labour, human trafficking and child labour (348 KB PDF)**. It also prohibits charging fees to jobseekers and workers. Complaints about breaches by an affiliated LMI must first be dealt with by the relevant national association (CIETT, 2015).

Some individual, multinational labour market intermediaries also have their own codes of conduct. Adecco's code of conduct, for example, 'recognises the ILO Declaration on Fundamental Principles and Rights at Work' (adopted in 1998) and aims to eliminate all forms of forced or compulsory labour. In its code of conduct, Manpower states that **it stands against practices that exploit people** and that limit opportunities for individuals, especially the most vulnerable in society, to fully enjoy dignity at work. It affirms that it aims to reduce abuse, focusing on creating awareness of, and opposition to, the following: exploitation of disadvantaged individuals; human trafficking; forced labour; child labour; illegally low wages for vulnerable individuals and unsafe working conditions.

Other, similar viewpoints have been expressed by smaller labour market intermediaries. Some of the national social partners across the EU Member States and Norway have also expressed their views on trafficking and examples of their stated viewpoints are given in Box 1.

## Box 1: Sample views of social partners against trafficking

- 'The social partners are naturally against illegal labour exploitation' (Denmark)
- 'Social partners clearly and strongly condemn trafficking in human beings for labour exploitation' (Austria)
- 'The position of the social partners is clearly opposed to every form of exploitation and trafficking of human beings, and they coordinate their efforts in order to effectively deal with the phenomenon' (Cyprus)
- 'No trade union worth its name can agree to, or accept, exploitative working conditions and or human trafficking for labour purposes' (Malta).

Source: Eurofound's network of European correspondents, 2014

ILO Convention 181 recommends that LMI regulation should be subject to consultation with social partners. According to the findings of the correspondents, the EU and national social partners have been engaged in debates and related policy development on temporary work agencies, trafficking and related matters such as migration. The French response illustrates this well, citing the support of the General Confederation of Labour (CGT) – and of several associations and NGOs – for the strike action of undocumented workers in the catering, cleaning and construction industries, denouncing the fact that they were in undeclared work.

The next section discusses in more detail social partner actions to tackle trafficking by labour market intermediaries for labour exploitation. It presents activities based on dialogue, joint activities and campaigns and the social partners' engagement in public discussions and policy debates. Table 6 provides a summary of these actions.

**Table 6: Summary of social partner activities against trafficking for labour exploitation by labour market intermediaries**

| <b>Tools and practices used by the social partners</b>                                        |                                               |
|-----------------------------------------------------------------------------------------------|-----------------------------------------------|
| <b>Sectoral collective agreements in the TWA sector *</b>                                     | AT, BE, DK, ES, FI, FR, DE, IT, LU, NL, SE    |
| <b>Joint initiatives which build on already existing bargaining arrangements</b>              | DK, IT, NL, CZ                                |
| <b>Engagement of social partners</b>                                                          | UK, IE, RO                                    |
| <b>Dialogue with the government</b>                                                           | HR, HU                                        |
| <b>Activities with government agencies and/or NGOs</b>                                        | AT, CZ, IE, NO, SI, NL, BG, UK, HR, LV, RO    |
| <b>Information or awareness raising campaigns</b>                                             | DE, FI, HU                                    |
| <b>Activities of workers' organisations</b>                                                   |                                               |
| <b>Establishing system for handling complaints</b>                                            | SI, NL, CY, IT                                |
| <b>Information campaigns</b>                                                                  | DE, ES, UK, FI, SE                            |
| <b>Transnational cooperation</b>                                                              | BG-DE; HU-UK-RO                               |
| <b>Activities of employers' organisations and companies</b>                                   |                                               |
| <b>Developing codes of conduct</b>                                                            | FI, DK, NL                                    |
| <b>Providing information and educational material</b>                                         | PL, CZ                                        |
| <b>Social partners' initiation of and engagement in public discussions and policy debates</b> |                                               |
| <b>General approach against trafficking for labour exploitation</b>                           | NO, AT, ES                                    |
| <b>Related to labour market intermediaries</b>                                                | RO                                            |
| <b>Increased inspections or call for increased inspections</b>                                | CY, CZ, ES, FI, SI, HU                        |
| <b>Use of media</b>                                                                           | BG (trade unions), EL (employer associations) |

Source: Eurofound's network of European correspondents, 2014

\*Source: Voss et al (2013)

Table 6 underlines the fact that some countries have a sectoral collective agreement in place. There is also increased activity through cooperation with NGOs, which demonstrates their increasing role, particularly in the period after the 1980s (Paraskevopoulou and McKay, 2015). Eurofound's network of correspondents reported less activity in the area of social partner initiation and engagement in policy debates on trafficking for labour exploitation.

## Dialogue, joint initiatives and campaigns of social partners

The information in this section on social partner engagement on the issue of trafficking for labour exploitation in the LMI sector is derived from the responses to the questionnaire, with input from Eurofound's network of European correspondents. Social dialogue is one of the most important tools used by social partners to shape and influence the legislation and policymaking of national governments.

In Croatia, the social partners' engagement on trafficking and labour market intermediaries – and on labour market issues in general – via dialogue with the government is limited. Consequently, this issue is relatively neglected in social partners' activities in this country. However, there are many practical examples of engagement with trafficking in sectors, or among workers, who were likely to have been recruited or employed by labour market intermediaries. There are also initiatives aimed at labour market intermediaries which would, by implication, have an impact on trafficking. Some are related to serious issues of exploitation which, it could be argued, do not involve or qualify as trafficking, and these have been included as well. Other examples of campaigns on undocumented migration, so-called 'social dumping', or trafficking for other forms of exploitation which are related to this report, but which are not its main theme, are not included.

Several Member States have collective agreements covering temporary agency workers. Eurofound, in their report on temporary agency workers and collective bargaining, identified sectoral collective bargaining in 11 countries: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Spain and Sweden (Eurofound, 2009). This remained the case up to 2013, when Voss et al published their report for the European social partners for the TAW sector (UNI Europa and Euro CIETT). While they highlighted the same 11 Member States where a sectoral collective bargaining structure existed, they also listed a further 15 Member States where there was an employers' association, but no mandate to engage in collective bargaining (Voss et al, 2013). Interestingly, sectoral collective bargaining is carried out in three out of the four countries with over 200,000 TAWs (Germany, France and the Netherlands) – the fourth country, the UK, does not engage in sectoral collective bargaining. The absence of collective bargaining and interest representation was also reported in the newer Member States.

Replies from some countries where collective bargaining is prevalent suggest that social partners might regard the policing of the agreement as sufficient to ensure that all employees are treated with dignity. The extent to which the social partners act on their responsibility to address trafficking for labour exploitation varies according to factors such as labour market conditions, the perceived extent of trafficking and labour exploitation, and the relationships between the social partners and agency workers.

The most common activities are joint initiatives which build on already existing bargaining arrangements. In Denmark, the Netherlands and Italy, the social partners jointly agreed on establishing systems for monitoring the application of collective agreements (either in the TWA sector or agriculture) with the specific aim of identifying and eradicating exploitative practices. A noteworthy example of conflicting practice comes from the Netherlands where the permit system for temporary work agencies was abolished in 1998. This resulted, on the one hand, in the growth of TAWs with collective agreements and certification. On the other hand, however, there was also a growth in TWAs of disputable reputation. Those in favour of a permit system are of the opinion that the temporary agency work sector would have been better regulated if the permit system had been kept in place. In Italy, the social partners agreed to establish a national observatory to analyse, research and monitor trends and issues regarding migrant employment under the agriculture agreement.

According to the correspondents in Ireland, Romania and the UK, there is evidence of previous engagement of social partners in the development and maintenance of regulations or campaigns aimed at reducing exploitation. Unfortunately,

in Ireland and the UK, some trends have been reversed, and the formal engagement – of unions at least – has ceased. In Ireland, national social partnership broke down at the peak of the 2008 banking crisis. Under this umbrella, the Irish Congress of Trade Unions (ICTU) and The Irish Business and Employers Confederation (IBEC) had negotiated with the government in 2007 to initiate the Labour Relations Commission **Code of Practice for Protecting Persons Employed in other People's Homes**, which clarified existing rights and entitlements. Unions and the Migrants Rights Centre Ireland (MRCI) have subsequently taken cases and developed important case law. However, since Ireland's social partnership has broken down, it is understood that there has been no national-level social partnerships on preventing trafficking for labour exploitation, nor have there been any sectoral or local-level collective agreements on this issue.

In Romania, unions, employers and government have signed a trilateral protocol to help reduce trafficking. The group Salvați Copiii Romania has been working with the hospitality industry to raise awareness and run educational sessions on child labour exploitation in the sector. In the UK, the structure of the Gangmasters Licensing Authority (GLA) has been altered to remove the automatic representation of the various stakeholders.

There are also several examples of only one side of industry engaging in joint activities with government agencies and/or NGOs. The European Commission has, over the years, **provided funding** for different **projects** (some involving trade unions) to address trafficking for labour exploitation.

For example, in Austria, a project coordinated by the Ludwig Boltzmann Institute for Human Rights focused on raising awareness of trafficking for labour exploitation in the construction sector and within companies. In the Region of Piedmont and the Province of Milan, Italian unions, NGOs, public administrations and the police have signed Protocols of Understanding aimed at strengthening collaboration between these organisations to analyse, prevent, and combat trafficking for labour exploitation and illegal intermediation.

In Ireland, the MRCI has been involved in two alliances with trade unions. Since 2005, both the MRCI and the ICTU have been engaged in a 'Campaign to secure the rights of domestic workers', resulting in a code of practice published by the Labour Relations Commission. The second involves the MRCI cooperating with the largest trade union, the Services, Industrial, Professional and Technical Union (SIPTU), to prevent exploitation of migrant workers in the mushroom industry: this involved almost 1,300 such workers in some form of activity to oppose exploitation in 2010. A registered employment agreement (REA) was established for mushroom workers, setting out terms and conditions, rates of pay, holiday entitlements and sick pay. Mushroom workers were subsequently awarded hundreds of thousands of euros in unpaid wages. REAs are collective agreements negotiated between employers and their organisations and trade unions that cover issues such as minimum rates of pay and working conditions, and dispute procedures, applicable to a sector or enterprise, which if registered as a multi-employer agreement by the Labour Court then become legally binding not only upon the parties to these collective agreements, but upon all workers and employers in the affected sectors (Eurofound, 2014).

The Norwegian Union of Municipal and General Employees is also involved, together with Norwegian People's Aid in running an office established for the purpose of giving advice and assistance to au pairs and to host families. Although the **au pair scheme** is first and foremost supposed to be a cultural exchange, the au pairs also provide cheap labour for their host families, and come to Norway through agencies or through private contacts on the internet. A report published by the Trade and Labour Union (FOA) **focuses on possible abuse and exploitation in that sector (789 KB PDF)**. Denmark has a similar au pair scheme to Norway.



In some countries (for example, Slovenia and the Netherlands), there is cooperation between trade unions and labour inspectorates in sectors where trafficking may be a problem. In others, there was collaboration between employers or their organisations and NGOs. For example, in Bulgaria, employers are cooperating in La Strada International's 'NGO-Business engagement in addressing human trafficking' project. This project was funded by the European Commission's ISEC programme and aims to address the issue of the demand and supply of products and services involving the use of forced and trafficked labour.

In the UK, a multi-stakeholder campaign (**Stronger Together**) to detect and combat forced and trafficked labour has been organised in the food and agriculture industry. The Association of Labour Providers (ALP), Gangmasters Licensing Authority (GLA) and Migrant All, together with sponsors and supporting partners (not including trade unions), provide guidance, resources and a network for employers, labour providers, workers and their representatives to work together to reduce exploitation. In Croatia, Latvia and Romania, the social partners are consulted on, and participate in, their respective governments' initiatives against trafficking – in Romania's case, this is reported to be concentrated in the hospitality, transport and construction sectors.

Other forms of social partner involvement are information or awareness-raising campaigns, such as that reported by the German Confederation of Trade Unions (DGB) as part of the 'Alliance Against Human Trafficking for Labour Exploitation', operating in four German states (Berlin, Brandenburg, North Rhine-Westphalia and Rhineland-Palatinate). This is coordinated by the Work and Life Association (Arbeit und Leben e.V.) in Berlin and supported by the International Labour Organization (ILO) and the International Organisation for Migration (IOM). The Finnish Metalworkers' Union, Trade Union Pro and the Central Organisation of Finnish Trade Unions (SAK) took part in an information campaign on human trafficking in 2012. This was coordinated by the national rapporteur on trafficking in human beings (Ombudsman for Minorities) and by the IOM.

The example from the Czech Republic illustrates how dialogue, joint initiatives and campaigns by the government, social partners and NGOs can result in an integrated approach based on tripartite cooperation. The Czech Republic adopted regulations and policies which were developed in cooperation with the social partners and NGOs. To ensure effective monitoring, regular training of personnel from relevant public authorities is provided and the number of labour inspections has increased. Social partners adopted general and company-level agreements, while employers are also considering developing a blacklist of non-compliant labour market intermediaries to raise awareness and fight unfair competition (see Box 2).

### Box 2: Tripartite good practice example – the Czech Republic

The Czech Republic is a good example of successful engagement in a tripartite approach to regulating labour market intermediaries and preventing trafficking for labour exploitation. It has a relatively large number of labour market intermediaries (around 1,500) and in 2000 ratified ILO Convention 181 – which required the establishment of a system of licensing and monitoring compliance with rules and regulations. Bound by Convention 181, but also by the TAW Directive and the Anti-Trafficking Directive, a licensing system was established in accordance with Article 60, Employment Act No. 435 of 2004.

#### *Government policy*

A coordinated approach by the institutions led to the formulation and adoption of the National strategy for combating trafficking in human beings in the Czech Republic in 2012–2015. Moreover, the Ministry of Labour and Social Affairs (MoLSA) administrates a project called, 'Innovations aimed at preventing labour exploitation of EU citizens'. The objective is to develop a policy and targeted campaign focusing on the prevention of labour exploitation of Bulgarian citizens in the Czech Republic. In this project, MoLSA cooperates with both Czech and Bulgarian civil society

organisations. In the future, attention will be focused on crimes of trafficking in human beings committed by means of new information technologies, such as social media.

A working group concentrating on labour market intermediaries was established in the Czech Republic in 2008 and continues to meet today. This includes representatives of trade unions, employers, temporary work agencies' associations, MoLSA, the Labour Inspection Office and the Ministry of the Interior. An interdepartmental group to **combat trafficking in human beings was set up in the same year (in Czech)**. Special training has also been given to inspectors from the State Labour Inspection office (SUP) on the employment of foreign nationals, and two trained inspectors are located in each regional labour inspection office. The focus has been on detecting people illegally working in the Czech Republic, and recent attention has been directed to temporary work agencies and their clients. Detection can result in the withdrawal of labour market intermediaries' operating licences. The number of inspections generally has been increased as well. Trafficking in human beings as a topic is also included in the police training. Targeted training of judges and prosecutors, consular officials, employees of the Administration of Refugee Facilities (SUZ) is also delivered.

### *Social partners' activity*

The social partners share the same objective: to combat illegal employment and labour exploitation. This is underlined by the president of Association of Personnel Service Providers (APPS): 'Our main goal is to remove such agencies from the market that exploit people, foreign nationals, in particular'. The president of ČMKOS, a trade union, adds that, 'We are not particularly enthusiastic about agency employment, but we do not condemn it generally either. What we do condemn are the practices of many agencies that, undisturbed and often arrogantly ignored by company owners, practice slavery of modern times and get agency employees into insoluble situations.'

A first step was made in March 2014, when the APPS signed a special cooperation agreement with metalworking union KOVO. It aims to enforce decent working conditions and to combat illegal forms of employment. The parties to the agreement see this as combating the 'black market' efficiently. Unlike most previous agreements, this sectoral agreement does not deal with pay, but is more closely related to exploitation.

The first company-level agreement in the TWA sector which relates to 'dignified working conditions' followed by an agreement regarding the use of agency workers, was concluded at Skoda. While the motor industry is not ordinarily associated with trafficking for labour exploitation, both sides in the agreement see it as a start in undermining illicit agencies and undeclared work.

The Czech Republic's LMI association APPS, together with the Confederation of Industry of the Czech Republic (SPČR) are considering the introduction of a 'blacklist' of temporary work agencies which do not comply with regulatory requirements. This list will be based on practical findings from employers (users) and the APPS. The blacklist should be an instrument for cleaning the agency employment market, as well as increasing trust in those which operate legitimately.

Source: *Eurofound's network of European correspondents – Czech Republic correspondent, 2014*

## Actions by employee organisations

Some trade unions have established systems for handling complaints (particularly from migrant workers) and/or for monitoring abusive behaviour of employers in high-risk sectors. This was reported in Slovenia by the Association of Free Trade Unions (ZSSS), in Cyprus by the Pancyprian Federation of Labour (PEO) and in Italy by the Italian Confederation of Trade Unions (CISL). In the Netherlands, affiliates of the Dutch Federation of Trade Unions (FNV) have established complaint desks to report on illegal practices. These may relate to breaches of collective agreements and other illicit activities, as well as allegations of trafficking.

In other countries, trade unions have launched information campaigns. In Denmark, the United Federation of Danish Workers (3F) published a series of articles on human trafficking in the cleaning sector in its newsletter, winning an award from the NGO **Hope Now**. Both of the main Spanish trade unions have also conducted information campaigns on trafficking in human beings. During 2010, the General Workers' Union (UGT) launched a national campaign on trafficking, and in February 2013 held a one-day seminar calling for zero tolerance for trafficking for the purpose of labour exploitation – with a particular gender perspective. In April 2014, the regional Trade Union Confederation of Workers' Commissions (CCOO) in Castilla-La Mancha, launched a service to assist with complaints made by workers undergoing labour exploitation. In the UK, the Trades Union Congress (TUC) published an online educational guide, **Migration: the fight against exploitation**, while Finland's service sector trade union Service Union United (PAM) provided training for its shop stewards in how to detect signs of trafficking at workplaces.

In Sweden, where berry-picking in northern Swedish forests has been associated with exploitation of migrant workers from Asia, as well as from Bulgaria and Romania, the trade union Kommunal sent out a questionnaire to wholesalers of berries. The questionnaire included questions on ethical considerations when buying and selling berries, as well as on how the wholesalers check that the product has been acquired legally and according to collectively agreed terms. According to the union, many wholesalers responded very well to this initiative in 2014 and have since reviewed their procedures.

There are also examples of trans-national cooperation. The Bulgarian trade union confederation Podkrepa's principal activity against trafficking has been to assist mobile Bulgarian workers by establishing links with trade unions in host countries. The signing of a bilateral agreement with unions in Germany, led to the establishment of the BeGIN project providing information and training on labour and social security rights for Bulgarian workers employed in Germany. Similarly, the Hungarian LIGA confederation is participating in a joint project with the British TUC and Romanian Cartel Alfa to assess the needs of mobile workers.

## Actions by employer organisations and companies

CIETT states that it, and its members, have engaged in a series of international and European initiatives to combat rogue operators that pass themselves off as 'agencies' in order to take advantage of workers. A couple of examples support this statement:

- The **ILO Fair Recruitment Initiative** is a multi-stakeholder initiative supporting Convention No. 181, among others, that aims to prevent human trafficking and forced labour and to promote fair recruitment practices.
- The International Organisation for Migration's (IOM) International Recruitment Integrity System promotes ethical cross-border recruitment by certifying responsible and professional agencies.

CIETT has also participated recently in the following initiatives:

- the European Commission guidance on the implementation of the UN business and human rights for employment and recruitment agencies;
- the Dhaka Principles;
- the Athens Ethical Principles against human trafficking.

Employers' activities at national level are focused on developing codes of conduct. The Finnish Employment Agencies Association (HPL) adopted rules for the recruitment of foreign employees which include minimum requirements for training, appropriate accommodation, and a ban on workers being charged fees. Contracts and applicable agreements are to be provided in the workers' language, and it was recommended that workers should not be employed through third-parties or subcontractors. The Dutch Federation of Agricultural and Horticultural Organisations (LTO) also has a code of conduct for its members and has been cooperating with the public employment service to fill vacancies since the early 2000s.

Some employers also provide information and educational material. The Polish-based agency Aterima, which operates in the health and social sector, hosts a website jointly with the NGO Po-moc called 'Safe trip abroad'. The contents include a film, guide book and quiz to encourage safe behaviour while travelling, with the overall aim of preventing human trafficking.

### Engagement in public and policy debates

According to the information provided by the national correspondents, the social partners often recognise the limits of their ability to combat trafficking, focusing their efforts on ensuring that the government enacts adequate regulation and enforces it effectively. In the main, the debate on this issue is a general one about trafficking for labour exploitation. However, some proposals may occasionally be targeted at particular economic sectors or groups of workers and this might be expected to have a specific impact on labour market intermediaries. Some parties approach the issue as being related to regulation of workplaces, others as a migration problem (sometimes using the term 'social dumping').

All the Austrian social partners, through their involvement in the working group on trafficking set up by the Federal Ministry of Labour, Social Affairs and Consumer Protection 'BMASK', are engaged in combating all forms of labour exploitation. The Austrian Trade Union Federation (ÖGB) emphasises the rights of workers and the protection of local wage and social security standards, which is also important to employers who are interested in fair competition in the Austrian market. This engagement has resulted in the **Act Against Wage and Social Dumping** (*Lohn- und Sozialdumpingbekämpfungsgesetz*). This law imposes fines for failure to pay wages in compliance with collective agreements and, in the event of repeat offending, can result in foreign enterprises being banned from trading in Austria, or an Austrian enterprise having its trading licence revoked for a year. The legislation does not specifically deal with trafficking, and negotiations are under way regarding stricter regulations on the availability of pay documents.

In Cyprus, the Pancyprian Federation of Labour (PEO), has called for increased inspections by the Department of Industrial Relations and by the police to identify instances of trafficking in human beings and labour exploitation. In the Czech Republic, the social partners (including representatives of temporary work agencies) have welcomed the State's recent increase in inspection activities, focusing on illegal employment. Both trade unions and the Association of Personnel Service Providers (APPS) would like to improve the state inspection mechanisms, primarily at the point of granting licences for employment intermediation. Calls for improved inspection and enforcement mechanisms have also come from unions in Finland, Slovenia and Spain. In the latter case, the unions (and the Labour Inspectorate) also called

for the Ministry of Economic Development and Technology to change the Companies Act, so that employers who have flouted rules on pay will not be able to establish new companies.

In Finland, the regulation of workplaces to prevent abuses has attracted considerable attention. The Central Organisation of Finnish Trade Unions (SAK) has called for greater supervision – in accordance with the Employers Sanction Directive – of companies employing migrant workers. SAK also proposed that unions be given the right to bring cases related to breaches of working conditions to court on behalf of individuals. It is thought that this could prove beneficial in combating trafficking, since victims are usually reluctant to report crimes to which they have been subjected. The Finnish Employment Agencies Association (HPL) and Service Union United (PAM) agree that the worst abuses occur in smaller, unorganised enterprises – a view shared by employers and unions in the Italian agency sector. On this basis, PAM calls for greater access to such companies, together with enhanced health and safety inspections, and the enforcement of contractor liability. The Confederation of Finnish Industries (EK), however, opposes the right of trade unions to bring cases to the attention of a court: according to EK, it should be an individual decision and not a trade union decision to go to court.

In its 2013–2017 action plan, the Norwegian Confederation of Trade Unions' (LO) has proposed tackling labour trafficking. LO asks for better coordination between public authorities in different government ministries, including the reorganisation of projects and/or coordinated inspections, and improved operational collaboration. In its view, such public units should share analytical and intelligence work more effectively. The Confederation of Norwegian Enterprise (NHO) made an official statement regarding human trafficking in September 2010 when putting forward 10 suggestions on how to combat labour market crimes. They also proposed the better coordination of public authorities and of specific programmes directed at different industries, as well as increased maximum sentences and improved regulations and enforcement to avoid recurrent bankruptcies.

Differences have also emerged between the Swedish union Kommunal and the employers' organisation Svenskt Näringsliv over perceived abuses in non-Swedish labour market intermediaries operating in the country. Where the union argues for more effective application of controls and liabilities, the employers claim that the tax rules need to be changed to cut down on the use of foreign TWAs and EPAs.

Spanish trade unions, together with public authorities, employers and other institutions, called for the approval of a 'Plan against trafficking in human beings for labour purposes', which was not implemented until recently. The General Workers' Union (UGT) has criticised the lack of a coordinated database centralising statistics on the issue. Moreover, the General Budget Law for 2015 does not allocate a specific amount for fighting trafficking in human beings. Italian unions also see the implementation of an anti-trafficking plan that features measures to combat labour exploitation as a priority, with the Italian Confederation of Trade Unions (CISL) stating that a 'culture of legality' needs to be promoted, as well as the strengthening of cooperation with authorities in the countries of origin. An earlier campaign by the Italian General Confederation of Labour (CGIL) led to a new Section to the Criminal Code (S603) being introduced in 2011 to punish unlawful gangmastering in agriculture and construction.

Unions in Romania have expressed concern over the failure of anti-trafficking measures to address labour market failures related to labour market intermediaries acting improperly regarding workers' rights. A proposal was made in 2012 by the then coalition government to introduce a 'social judicial record' for private companies wishing to bid for public contracts, aimed particularly at labour market intermediaries in construction, transport and agriculture. It seems that no further steps to implement this have yet been taken.

In summary, it appears that despite their activities, social partners have not taken a very prominent stance in opposing trafficking – possibly reflecting a view that dealing with criminal offences is principally the responsibility of the state.

Another reason might be the fact that their resources are limited. They have publicly opposed trafficking for labour exploitation in a number of countries (see Box 1 on p. 31). However, they may face problems with public attitudes, or even those of their own members. The Greek response drew attention to the infamous ‘Manolada case’: **the acquittal in 2014 of farmers who had shot 28 Bangladeshi workers (1.46MB PDF)** who had been demanding back pay. This highlights the fact that ‘the institutional framework for the renewal of immigrants’ residence permits forces hundreds of thousands of farm workers into illegality, making it easier for migrant trafficking networks to operate and forced labour to exist’. Polish employers’ organisation Konfederacja Lewiatan also felt that more educational work was needed to overcome members’ doubts about the extent of forced labour. This could go some way to explaining the absence of joint activities between social partners on this matter in Poland.

The Belgian response drew attention to the divergent interests of the two sides; the trade unions expressing concern that labour and social security rights were at stake, while employers rejected further undesirable competitive pressure on honest businesses. At their congress in 2014, the General Federation of Belgian Labour (ABVV/FGTB) went further’ proposing a motion on undocumented migrants and victims of trafficking, stating that it was ‘on their side and supports their struggle’.

Use of the media was seen as vital by Bulgarian trade unions because of difficulties in reaching workers likely to be affected, since these workers are mostly part of the informal economy or are members of particularly vulnerable groups (such as children). In other cases, it was clear that the unions were using the term ‘modern slavery’ in the media in order to attract attention about labour market abuses. This term was, for example, used in a newspaper article in Luxembourg about the low wages and poor accommodation given to agency construction workers across the border in France who had been mainly recruited in Africa (Luxemburger Wort, 2013). While these conditions were clearly in breach of the spirit of posting regulations and collective agreements, it was not evident that deception (or force) had been used against the workers.

Farm employers in Greece have argued in the media that tight controls over the renewal of seasonal work permits has led to the greater exploitation of migrants, enabling trafficking networks. Under the Seasonal Workers Directive, third-country nationals are allowed to stay for 90 days if they have a valid work contract, insurance coverage and accommodation. As their stay is linked to their employment, there is an increased risk of exploitation and, potentially, trafficking, if workers wish to stay longer. This might be one reason why employers in the agricultural sector in Greece are calling for legal access to migrant labour.

### Cases of good practice by public authorities

In the present study, correspondents were asked to identify what they saw as examples of good practice, relating to combating trafficking for labour exploitation in labour market intermediaries. Little was identified which specifically referred to the intermediaries, or indeed employers. Much of what was cited was either targeted at ‘victims’ or was devoted to awareness-raising. The response from Hungary, for example, cited an information campaign held at a youth music festival, aimed at letting young potential workers know what rights they have when choosing to work elsewhere in Europe.

However, there were some examples of anti-trafficking initiatives which could be expected to have particular impact in reducing or detecting trafficking amongst labour market intermediaries. Such examples of emerging good practice are described below.

One such example was cited in several responses, and in other literature. This was described as the ‘flagship project’ of the European Union Strategy for the Baltic Sea Region, known as ADSTRINGO (‘Addressing trafficking in human beings for labour exploitation through improved partnerships, enhanced diagnostics and intensified organisational

approaches’). It is a collaboration between Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, and Sweden, and has included international meetings and coordination, joint research on recruitment practices, plus the creation of **guidelines for states, businesses, trade unions and civil society**. Some of the material produced for this project has been mentioned in this report, and it is clear that it has been a significant advance in developing international collaboration.

Collaboration between Swedish public authorities (the police, Migration Board, Tax Agency and Work Environment Authority), began in 2011 and led to the publication of guidelines aimed at companies offering employment to migrant berry pickers, with the intention of reducing exploitation of migrants. At the other end of the migrant journey, the Bulgarian National Employment Agency, together with their anti-trafficking committee, organised information campaigns via the media to help prevent exploitation of Bulgarian labour used for picking blueberries in Sweden.

Particular activities of labour inspectors were highlighted in two reports. In the Czech Republic, special training has been given to inspectors on the employment of foreign nationals located in each of the two district offices. The focus has been on detecting people illegally working in the Czech Republic, and recent attention has been directed to temporary work agencies and their clients. Detection can result in the withdrawal of licences to operate labour market intermediaries. In Italy, a training programme and subsequent handbook on **labour exploitation and human trafficking (in Italian, 710KB PDF)** was developed for labour inspectors in 2012. A handbook was also drafted in 2010 for Italian and Romanian Labour Inspectorates, envisaging cooperation on monitoring posted workers.

Guidance for people or enterprises using labour market intermediaries has been issued by the State Employment Agency in Latvia. It states that a person or enterprise should verify that the LMI is licensed and to check that employment conditions are appropriate. The guidance also clarifies the information that should be provided to a jobseeker before starting (such as the identity of employer, what the worker’s duties will be, and their workplace).

Somewhat more robust measures are reported in the Netherlands, where ‘chain liability’ for offences committed by labour market intermediaries operating along the supply chain of labour has been established. At the same time, cooperation between the various arms of enforcement (labour and tax inspection, police and judiciary) has been strengthened in order to better detect such infringements. In a similar vein, the UK’s Gangmasters Licensing Authority (GLA) has always shared intelligence with other enforcement bodies such as tax authorities and immigration control. The GLA is now also taking part in joint operations specifically targeting trafficking which involve the police and the UK Human Trafficking Centre.

The role of social dialogue has been recognised in several countries when it comes to regulating (as in the Netherlands, for example), derogating (UK, for example) and setting terms for the use of agency workers. Pugliano and Doerflinger (2013) found that ‘local unions and works councils may influence the norms of treatment and the working conditions of agency workers via plant-level negotiations with HR managers’. This is interesting, as they examined manufacturing plants in the automotive sector which are not ordinarily associated with labour exploitation. However, there may be some divergence of interests. The key interest of employer organisations is in ensuring that there is a legal framework for operating, and that trade unions focus on the reduction of the potential for undercutting employment terms and conditions of the permanent workforce.

Social dialogue, where it occurs at enterprise level, is likely to be taking place in organisations least likely to be engaging in the most exploitative practices (and therefore less likely to engage in trafficking for purposes of labour exploitation as defined in ILO/EU instruments).

Furthermore, there must be some questions as to whether voluntary regulation can deal with this issue, particularly in light of the EU-wide recognition that employers have to be liable to penalties if engaging in trafficking for labour exploitation. Indeed, it is of note that the UK GLA, which is widely cited as an example of good practice, came into existence only after the Temporary Labour Working Group (which included unions and employer organisations) had concluded that voluntary regulation in the sector could not combat exploitative practices in labour market intermediaries operating in the UK food sector.



# Conclusions 3

The report set out to examine two phenomena that are not easy to measure. Trafficking for labour exploitation is a serious crime, but it is not the only form of exploitation. Other types of exploitative practices, which would constitute labour law violations rather than criminal activities, can also be observed within the EU labour market. At the same time, while labour market intermediation is now regarded by regulators as being a positive element of labour market efficiency, at its fringes, one can see clear examples of criminal activity.

The details contained in the national responses correspond with much of the research published elsewhere. While not all labour market intermediaries are exploitative, it is evident that some are operating outside legal and/or formal parameters. It would therefore be prudent to consider how their operations might be better regulated and monitored as part of the strategy being developed to combat trafficking for labour exploitation. The report places emphasis on the issue of trafficking for the purpose of labour exploitation and its approach is two-fold. On the one hand, it analyses information provided by an expert from each Member State on the national legislation and measures regarding the operation of labour market intermediaries and in relation to trafficking. On the other hand, it explores the approach taken by social partners in each Member State and occasionally by social partners from different Member States that work in collaboration. This approach has allowed for good practice to be identified.

Unsurprisingly, social partners – where they have expressed their view – are opposed to trafficking. However, as trafficking is more likely to occur at European or international level, this could explain the higher priority given to anti-trafficking measures in international policymaking than at national level. Social partner activity is complementary to state regulation. Employers' associations tend not to cover all operators and, even where collective agreements are generally applicable, enforcement will prove challenging, particularly when it comes to small and medium-sized labour market intermediaries. Furthermore, it is not clear what sanctions are available to employers' organisations, apart from expelling employers from their associations.

Unions too are confronted with problems in attempting to represent or assist groups of workers who are likely to be hidden away or isolated, who might be working in undeclared work, or who may be undocumented migrants – or both. They also face, in some cases, difficulties in taking up cases and enforcing judgements. In some jurisdictions, cases are taken by individuals (albeit assisted by unions): the individual has to launch any enforcement actions and the union is not formally party to the proceedings.

For employers' and workers' organisations, trafficking for labour exploitation is unlikely to be a top priority. For membership organisations, the resources that can be devoted to combating trafficking are likely to be small.

While acknowledging the issues social partners may face when engaging in preventative measures on trafficking, there are still enough examples in this report to show that social partners can – and do – take part in activities directed against trafficking, and against exploitative practices in labour market intermediaries. More could be done to address both issues together, but this is a small step, particularly where there is a functioning sectoral social dialogue. In particular, there is a joint concern to avoid unfair competition leading to downward pressure on pay and conditions, or to job losses.

Adopting policy is one thing: putting it into practice through the implementation of existing regulations, however, is another. Detailed regulation does not necessarily lead to effective enforcement. For example, the French response cited a report regarding Portuguese construction workers who were posted to work in France, but were paid the Portuguese minimum wage rather than the collectively agreed minimum wage in France. While this may not constitute forced labour, it could be considered to be exploitative – and unlawful. This situation continued (according to daily newspaper *L'Humanité*) for two years without being detected.

The Council of Europe's experts on trafficking pointed to the need for intensified labour inspections, particularly in sectors

most at risk (GRETA, 2014). They identified agriculture, construction, textiles, the hotel/catering sector and domestic work, which match the data collected for this report. Not all labour inspectorates have the mandate to address trafficking in human beings because their role might be restricted to health and safety checks. The absence of such inspectors is likely to hinder the detection of exploitation in general, and trafficking in particular. Member States should consider establishing a labour inspectorate, or strengthening those already in existence – and providing training on detecting and responding to trafficking for labour exploitation. There are also other officials who might need training to identify possible cases of trafficking for labour exploitation, in order to maximise the chances of detection. These might include health and safety and hygiene inspectors, housing officials, police, immigration officers and tax/social security inspectors.

At the same time as seeking to better identify possible trafficking, regulation is needed to reduce the extent to which exploitative labour market intermediaries can operate. ILO Convention 181 requires the establishment of licensing or registration schemes for labour market intermediaries, and this report has shown that many countries have done this – also in some cases where they have not ratified the convention. However, regulating formal labour market intermediaries is of limited value if the proliferation of informal actors is neither restricted nor penalised. The same will apply to codes of practice (favoured by employer associations) and collective agreements (favoured by trade unions) if flouting them does not lead to any consequences. Where non-legally binding codes exist, there will obviously be no legal consequences. However, commercial sensitivities have been found to be a powerful motivating factor: given that bad publicity tends to be avoided by key clients, robust and transparent enforcement mechanisms – even where they are submitted to voluntarily – may work in motivating labour market intermediaries to comply. Taken together this suggests that the best option is for a licensing scheme that covers both temporary work agencies (TWAs) and employment placement agencies (EPAs), and is subject to strict enforcement. Factors for consideration in such a scheme should include the suitability of proprietors or senior executives, financial guarantees for wages and social security contributions, and periodic inspections and re-licensing. Governments who are responsible for monitoring the enforcement of licensing (and other) schemes play a role in holding businesses accountable if they do not comply with national regulations. According to the Anti-Trafficking Directive, Articles 5 and 6, such licences can be revoked or a business shut down if it is found that it engaged in trafficking for labour exploitation. The implementation and monitoring of the licensing scheme should be supplemented by sectoral social dialogue and/or codes of practice for labour market intermediaries. To this end, governments can play a key role by encouraging collective representation and bargaining.

This liability must include penalties for use of irregular operators, even where no abuse of workers has been demonstrated. This would help reduce the presence of informal or even criminal operators, and of course requires there to be some system for identifying those operating legitimately – such as a licensing system. Not all Member States have such systems, and those which exist differ quite markedly. It has been accepted that Member States can require operators based in other Member States to have a legal presence and meet all the licensing requirements that would apply to nationally based enterprises. While this can work for TWAs, it is not so easily applied to EPAs. It has been seen how the charging of fees in countries of origin can result in debt bondage, and how workers may be deceived by recruiters as to the nature of the proposed jobs. Again, it may be that placing liability on the end-using enterprises for the activities of recruiting agents might make them more selective about their use of EPAs.

Labour exploitation is not solely an accompaniment of migration. A key question for legislative systems must be the extent to which those exposed to exploitative practices feel confident that complaints they might make will lead to receiving restitution and being granted lawful access to the formal labour market, and to their exploiters being punished. Those who might feel at risk of deportation may prefer to avoid officialdom rather than complain. In such a situation, it is the Member States' responsibility under Article 11 and 12 of the Anti-Trafficking Directive to assist, support and protect those who were trafficked and exploited. Measures to be offered to these people include, for instance, the provision of legal counselling and legal representation.

# Towards a good practice guide 4 for public authorities

The purpose of this report was to explore the role and practice of labour market intermediaries in trafficking for labour exploitation, to discuss the complex and varied systems of regulation that exists in different Member States, to explain the role and activities of social partners in tackling trafficking for labour and to consider good practice examples. This information will feed into a guide for public authorities to more effectively prevent and tackle trafficking for labour exploitation through labour market intermediaries.

In terms of national definitions, in addition to the two main EU directives (on human trafficking and on temporary agency work) most Member States have adopted parts of the ILO conventions. Questionnaire responses have shown that definitions are often general, highlighting the need to specify definitions. Clear and precise definitions can contribute to effective enforcement and targeted policy intervention. More concise definitions could also add to the improved collection and reliability of data in relation to the significance and incidence of labour market intermediaries and trafficking for labour exploitation. Successful prosecution is rare as it is difficult to prove fraudulent practices, especially when the law only provides general definitions of concepts and related practices.

On the issue of regulating labour market intermediaries, the report has shown that the regulatory systems across different Member States are complex and were developed within the context of different market environments as seen in Table 2 (p. 21). Therefore, in environments where there is increased liberalisation, regulation for labour market intermediaries is minimal. In other cases, where there is a balance between legislation and collective agreements, regulation varies.

In terms of registration and licensing, the systems which require specific qualifications for proprietors/legal representatives and impose bans from operating in the event of abuse will, if (and only if) adequately enforced, help to keep the number of labour market intermediaries engaged in fraudulent practices to a minimum. If public and business support is to be secured, a system of approved contractors and a 'kite mark' of end users committed to using only approved contractors might prove useful. Based on the **Public Procurement Directive, (2004/18/EC)** Article 57, businesses who engaged in trafficking for labour exploitation should be excluded from such a system.

The activities of labour market intermediaries require little fixed capital, and much of the abuse appears to take place in cross-border activities. It follows that there is a need for greater cross-border cooperation (and not only in traditional cross-border areas) of public authorities, as well as social partners.

Designing effective regulatory systems requires much better information on the nature and location of labour exploitation than currently available. Reported malpractice by agencies should be analysed and assessed at local and national level. An EU-wide comparative analysis would be desirable but seems difficult to conduct at present. According to the Anti-Trafficking Directive, further commitment and efforts by the EU and its Member States are required to combat trafficking with better enforcement and sanctions for labour market intermediaries that break the law. These relate in particular to the coordination and coherence of efforts between the EU, Member States and other international organisations.

On the issue of social partner activity, it appears that where there is sectoral collective bargaining (for TWAs at least), there is likely to be some commitment on the part of the social partners to monitor adherence. This is also likely to mean that there is more detailed knowledge of malpractice by labour market intermediaries. The consequence of paying greater attention to labour abuses is that they are more likely to be enumerated and for issues to become more apparent.

Another argument for the promotion of social partner activity, especially in the TWA sector, was identified by the Organisation for Security and Co-operation in Europe (OSCE) in their **2014 report on ensuring that businesses do not contribute to trafficking in human beings**. They pointed out that workers subjected to coercion or exploitation of their vulnerability might be unable to form or join a union. If supported by a stronger national trade union they may be successful. This highlights the importance of established trade unions in empowering workers to organise and to form a collective voice.

This might also be done by formally encouraging the extension of collective bargaining and representation, but also by reducing some of the vulnerability which arises from having precarious immigration status. The vigilance of social partners is likely to be enhanced by the existence of a robust system of licensing, where the partners can be sure that the detection of offences is likely to result in the removal of operators engaging in fraudulent practices.

Many of the responses included details of awareness-raising activities aimed at the general public, young people in particular. For this to be effective it would need to take place before any money or contracts have changed hands. And as Gordon commented in her 2015 report for the ILO, information on rights needs to be:

*provided to workers who will have the power, the protection from retaliation, and the institutional support necessary to actually exercise the rights about which they learn.*

(Gordon, 2015)

She goes on to point out that, in most contexts, this is not the case. However, the case for training inspectors and law enforcement officers is inescapable. The better equipped they are to identify trafficking, the more readily they will be able to take appropriate action. The promotion of regular training for officials including front-line police officers is a requirement under Article 18 of the Anti-Trafficking Directive, which must be implemented by Member States.

This, however, requires the establishment of inspectorates with sufficient resources to monitor the labour market effectively – particularly the sectors which are emerging as having higher risk. This must include labour market intermediaries operating in agriculture, construction, cleaning, hospitality, and domestic work.

Enforcement and control is also most likely to be effective where the end users of labour market intermediaries are held accountable for breaches, as well as the intermediaries themselves. This not only encourages vigilance in terms of the service supply chain, but also ensures that wages, taxes and social security contributions are paid.

Within this context, Table 7 (p. 47) provides a summary of good practice examples as identified and reported across Member States.

**Table 7: Overview of good practice**

| Good Practice                                            | Member State                                                   |
|----------------------------------------------------------|----------------------------------------------------------------|
| <b>National government activities</b>                    |                                                                |
| Cross-border cooperation                                 | AT, BG, IT, RO, SE                                             |
| Labour Inspectorate activity                             | CZ, LN, SI, IT, RO                                             |
| Introducing legislation and further regulation           | NL, AT, BE, ES, PT                                             |
| Cooperation between different authorities                | NL, DK, CY, FR, LV                                             |
| Guidance (raising awareness, training, ethical code)     | NL, UK, RO, DK, BG, CY, CZ, ES, FR, HR, HU, IT, LT, MT, PL, SI |
| Provision of support for victims                         | NO, BE, BG, CZ, PT, SI, SK                                     |
| Cooperation with social partners                         | RO, DE, DK, AT, BG, CZ, HR, PT, SK                             |
| <b>Social partners</b>                                   |                                                                |
| Provision of support to victims                          | DE                                                             |
| Cooperation between trade unions and labour inspectorate | NL, SI                                                         |
| Guidance (raising awareness, training, ethical code)     | UK, IE, DK, AT, BG, FI, IT, LV, SE, SI                         |

Source: Eurofound's network of European correspondents, 2014

Table 7 shows that effort has been made in raising awareness about trafficking and victims of trafficking, both by government agencies and social partners, which may indicate the need for a better discussion and better understanding of the issues involved. The table also highlights a human rights approach to trafficking, as governments and social partners make provisions for the victims. There is a debate about whether the current provisions for victims are adequate. However, according to Article 11 of the Anti-Trafficking Directive, Member States are obliged to provide assistance to victims. Overall, greater effort needs to be made to improve regional, cross-border and tripartite cooperation, and joint activities dealing with both labour market intermediaries and recruitment practices, and trafficking for labour exploitation.

The above good practice examples and the following suggestions could help to develop a guide for best practice to be used by public authorities.

There are several policy pointers to consider when developing such a guide:

- Develop clear national definitions of labour market intermediaries, trafficking and labour exploitation based on relevant European directives and international instruments.
- Based on concise definitions, improve the collection of data on the significance and incidence of labour market intermediaries and trafficking for labour exploitation.
- Increase the coverage of labour market intermediaries who are registered, licensed and/or certified.
- Based on improved registration, licensing and/or certification comprehensively enforce and sanction labour market intermediaries who might be engaged at the entry point of trafficking.
- Increase regional and cross-border cooperation among public authorities and social partners.
- Support coherent and effective bipartite and tripartite joint activities dealing with both subjects: labour market intermediaries and recruitment practices, and trafficking for labour exploitation.
- Support social partners in empowering vulnerable workers to organise, especially in small and medium-sized labour market intermediaries.



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# Annex: Questionnaire

## Regulation of labour market intermediaries and the role of social partners in preventing trafficking in human beings for labour exploitation

Member State:

Correspondent contact details:

| Questions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>National definitions. Please provide, where they exist, definitions of the following key terms:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Labour market intermediary (LMI)<br>Temporary work agency (TWA)<br>Employment placement agency (EPA)<br>Other forms of LMI<br>Trafficking for labour exploitation<br>Forced labour                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Please identify the legislation or regulation where the definitions can be found.<br><br>'Other forms of LMI' might include contract brokers, those supplying independent workers on temporary basis, websites, staff lending arrangements.                                                                                                                                                                                                                                                                                                                                          |
| <b>Statistics. Please provide data for the last three available years for the following:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Trafficking cases (if possible disaggregated by sex) for the purposes of labour exploitation and domestic servitude<br>Other forms of labour exploitation not specifically identified as trafficking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Trafficking as defined by national administrations/enforcement bodies.<br><br>'Other forms of labour exploitation' might include exploitation or conditions contrary to human dignity, for example.                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Legislation. Please provide details of the following legal provisions:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Registration or licensing systems for LMIs. Please give separate details for TWAs, EPAs and other LMIs where they exist. What conditions must be met? Are there regulations on liability for wages and social security?<br>Are there any special provisions for cross-border recruitment or posting? If so please identify them.<br>Are there any special legislation or rules, regulations or procedures specifically aimed at preventing trafficking in human beings activities which apply to LMIs?<br>Are there any other forms of relevant regulation (including non-binding, voluntary or self-regulation) within the LMI sector? Please give details.<br>What specific legal measures exist for combatting trafficking, forced labour, or labour exploitation? How are cases detected and measures enforced? | Where there are specific provisions for certain sectors (social care, construction, agriculture, for example), please identify them.<br><br>Include details of monitoring and enforcement, and where relevant show provisions for TWA and EPA separately.<br><br>Please include measures related to the ratification/transposition of international instruments and EU directives: e.g. on temporary work, removal of third-country nationals, trafficking, posting of workers, ILO Private Employment Agencies Convention 1997 (No. 181) and Forced Labour Convention 1930 (No 29). |
| <b>Social partner actions. Please give details of any actions undertaken by social partners to combat trafficking for labour exploitation in LMIs.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Collective Agreements<br>Codes of practice or practices specifically aimed at preventing trafficking for labour exploitation.<br>Other social partner activities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | We are most interested in measures at the sectoral or enterprise level, but where there are none, national level agreements which cover all enterprises are also of interest.                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Please identify any NGOs having a specific role in combatting trafficking for labour exploitation, or supporting workers affected.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Good practice.</b> Please give examples of good practice in the combat of trafficking for labour exploitation in LMIs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Good practice could take the form of codes of conduct, reporting and monitoring, training, or awareness-raising; practice of labour inspectors, licensing systems or enforcing liability. What constitutes 'good practice' should be based on national correspondents' perception and judgement.                                                                                                                                                                                                                                                                                     |
| <b>Research.</b> Please identify any significant studies published since 2010 relating to trafficking for labour exploitation (other than official statistics elsewhere mentioned). These may be academic studies or those produced by NGOs or regulatory bodies. Any citing case studies of good practice are of particular interest.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Views of social partners.</b> Please give details of the views of the social partners on trafficking for labour exploitation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | These may be national or sectoral partners, but where they exist those covering LMIs would be preferred.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Public discussion.</b> Has there been any recent political or media discussion of trafficking in general, and specifically relating to LMIs? Please give details.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | In the past three years.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Comments from national correspondents.</b> Do you have any further comments of relevance to the theme of this study?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Please limit these to 500 words maximum.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |





*The right to free movement for workers within the European Union was enshrined in Article 48 of the EEC Treaty in 1957. Nowadays, private labour market intermediaries – such as temporary work agencies and employment placement agencies – contribute to facilitating this labour mobility in their role as mediator between individual workers and organisations in need of labour. However, due to loopholes in regulation, some workers and vulnerable groups run the risk of being exploited by fraudulent agencies. This report examines how public authorities are currently regulating labour market intermediaries across Member States, highlighting the effectiveness or otherwise of different registration or licensing schemes. It also examines activities by social partners aimed at preventing the trafficking of labour. The overall aim is to contribute to the development of a best practice guide for public authorities to encourage better monitoring and enforcement of regulations deterring trafficking for the purpose of labour exploitation.*

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