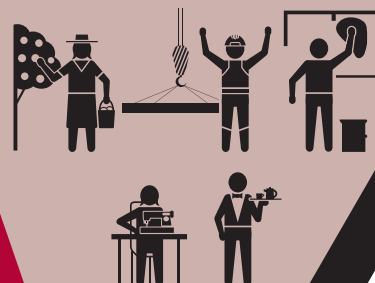


Severe labour exploitation: workers moving within or into the European Union

Summary



The Charter of Fundamental Rights of the European Union sets out rights that are of particular relevance for workers moving within or into the EU. The most important are human dignity (Article 1), the prohibition of slavery and forced labour (Article 5), the freedom to choose an occupation and right to engage in work (Article 15), non-discrimination (Article 21), the right to access placement services (Article 29), protection in the event of unjustified dismissal (Article 30), fair and just working conditions (Article 31), the prohibition of child labour and protection of young people at work (Article 32), consumer protection (Article 38), and the right to an effective remedy and to a fair trial (Article 47).

Severe labour exploitation of foreign workers is common, but often remains invisible. Most consumers are not aware that the products they purchase in a supermarket or shop, or the services they receive in a hotel or restaurant, may be produced by exploited workers. Exploitation occurs in many economic sectors and affects diverse groups of workers, such as citizens from Romania gathering potatoes in Hungary; women from sub-Saharan countries exploited as au-pairs in France; Portuguese men recruited for road construction

in the Netherlands; North Korean men working as unskilled labourers at a shipyard in Poland; and fruit pickers from Bangladesh and Pakistan in southern Greece. What these individuals often have in common is being paid € 1 or much less per hour, working 12 hours or more a day for six or seven days a week, being housed in harsh conditions, and being denied holidays or sick leave.

Gross global economic disparities and increasing global mobility drive severe labour exploitation. Pushed by the economic situation at home, growing numbers of people work abroad, often ready to accept working conditions far below local legal standards, but still better than the poverty and unemployment they fled. Moving to another country generally creates or exacerbates situations of social and economic vulnerability. Social isolation resulting from not knowing the language, not having contacts outside the workplace and being unaware of local legal standards or where to turn for help increases the risk of exploitation.

This summary outlines the research findings of the EU Agency for Fundamental Rights (FRA) on the various criminal forms of severe labour exploitation of workers who have moved from one EU Member State to another or from a third country.

Severe labour exploitation and the law

Severe labour exploitation affects both EU and non-EU citizens. The right to fair and just working conditions under Article 31 of the EU Charter of Fundamental Rights extends to both EU citizens and third-country nationals, and whether a worker is in a regular or irregular situation of residence.

‘Severe labour exploitation’ refers to all forms of labour exploitation that are criminal under the legislation of the EU Member State where they occur. This research focuses on exploitation at work and the risks surrounding it. It does not analyse the process of workers moving or being moved from their home countries into a situation of exploitation.

Severe labour exploitation is not always a consequence of trafficking, which consists of taking certain actions, using illicit means, for the purpose of exploitation. Nor are victims of such exploitation necessarily coerced into working; they are victims of such exploitation because their work experience encompasses conditions that fall far below what can be considered acceptable in law.

FRA SELECTED CASE STUDY

Access to justice

A Bulgarian couple picked fruit and vegetables on a farm in France. They were posted by a Bulgarian employer, lawfully employed by means of a labour contract in their native language, and had a lawful residence and employment status in France. Nonetheless, they were subjected to extremely exploitative living and working conditions and were paid for only six weeks, despite working 15-16-hour days for five months (the price of their return flight tickets was also deducted from their salaries). They reported their case to the National Commission for Combating Trafficking in Human Beings, which asked the local branch of the Central Office for Combating Organised Crime to investigate and prevent future labour exploitation by the Bulgarian employer.

Labour exploitation ranges from severe abuses such as slavery to acts that fall short of constituting severe labour exploitation and criminal offences.

‘Severe labour exploitation’ also covers situations referred to in Article 9 (1) of the Employer Sanctions Directive (2009/52/EC) – the employment of a worker in an irregular situation under ‘particularly exploitative working conditions’. According to Article 2 of the directive, these are conditions ‘where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers’ health and safety, and which offends against human dignity’. This wording reflects Article 31 of the EU Charter of Fundamental Rights, according to which workers have a right to working conditions that respect their health, safety and dignity. In other words, ‘severe labour exploitation’ denotes work situations that deviate significantly from standard – fair and just – working conditions as defined by labour laws and other legal regulations concerning, in particular, remuneration, working hours, leave, health and safety, and decent, respectful treatment of workers.

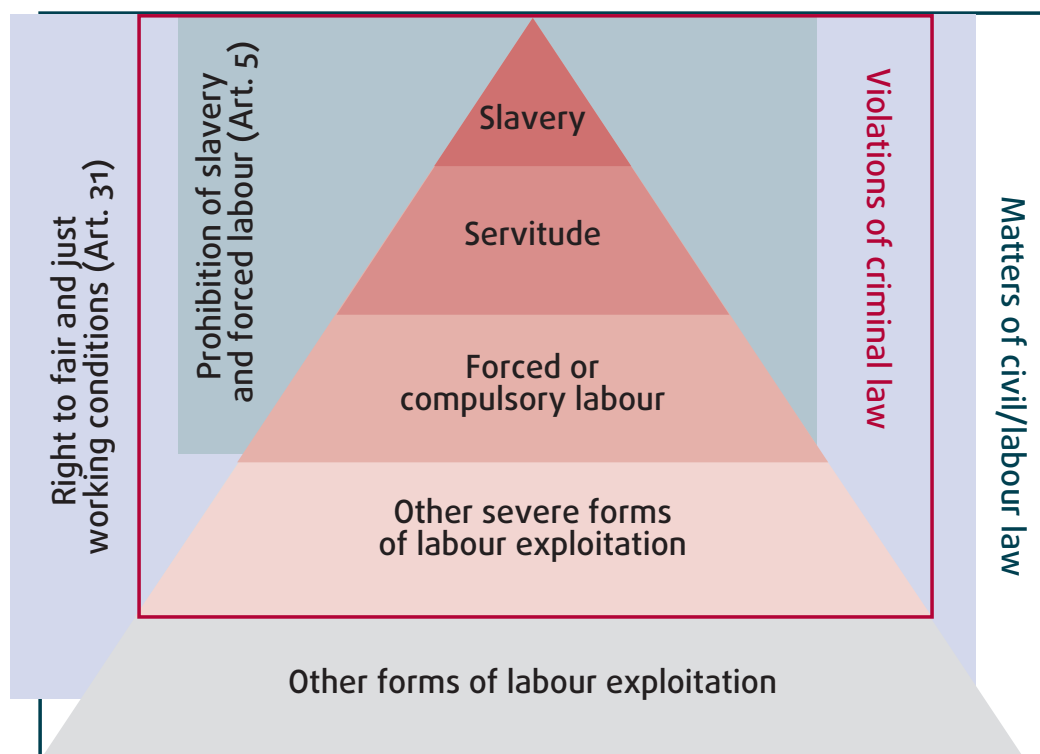
Data collection and coverage

This FRA research is the first of its kind since it comprehensively explores all criminal forms of labour exploitation of workers moving within or into the EU, using both desk and field research. Desk research into the legal and institutional framework of severe labour exploitation was conducted in all 28 EU Member States, while field research was carried out in 21 (the research did not cover Denmark, Estonia, Latvia, Luxembourg, Romania, Slovenia and Sweden, partly because of resource limitations). Different geographical regions and diverse economic situations and legal traditions are covered. The fieldwork involved 616 expert interviews with various professional groups working in the field of labour exploitation, such as labour inspectorates, the police, judges and representatives of workers and employers, as well as 24 focus group discussions with mixed groups of practitioners.

Some 217 case studies of examples of severe labour exploitation, based on information supplied by experts at Member State level, were also collected. These reflect real stories and focus on workers’ experience of exploitation. Due to the lack of comprehensive information, legally categorising the situations described is largely not possible. However, several could amount to human trafficking.



Figure 1: Forms and severity of labour exploitation



Notes: Victims of all forms of exploitation set out in this figure may also be victims of trafficking whenever the elements of the trafficking definition in Article 2 of the Anti-Trafficking Directive, as covered by Member State law, are met.

Source: FRA, 2015

Focusing on risk factors

The FRA research aims to support EU institutions and Member States in preventing severe labour exploitation, monitoring situations where severe labour exploitation occurs and making victims' right to access justice a reality. More specifically, it identifies:

- factors that put workers who have moved within or into the EU at risk of severe labour exploitation in the country where they work (risk factors);
- how EU institutions and Member States respond to these risk factors in terms of
 - prevention;
 - monitoring, including the legal and institutional framework in place to trace cases of labour exploitation, particularly through workplace inspections by labour inspectors or other public authorities;
 - measures enabling, once severe labour exploitation has been detected, victims to access justice, such as targeted support services, providing information about the case and victims' rights, effective investigations and prosecution, and dissuasive sanctions.

Risk factors are grouped as relating to the legal and institutional framework, to the situation of the worker, to specificities of the workplace or to employers' behaviour (see Figure 2).

Given the dangers of exploitative working conditions, EU Member States have due diligence obligations. Workers from another country who face a serious risk of severe exploitation – as a result of an accumulation of risk factors – are entitled to protective measures adopted by the competent authorities. Hence, where risk factors accumulate, Member States have duties, stemming from EU law, to carry out inspections aimed at identifying labour exploitation, to protect victims, to establish redress mechanisms and to avoid impunity.



Key findings and evidence-based advice

Prevention

Awareness raising and promoting a climate of zero tolerance of labour exploitation

The practitioners interviewed perceived an attitude among the general population in European societies of tolerating labour exploitation of workers from other countries. Such workers are seen as voluntarily accepting – albeit because of poverty and marginalisation – work under exploitative conditions. A lack of clear understanding of severe labour exploitation by practitioners who intervene in relevant situations also contributes to exploitative situations not being perceived or prioritised.

This tolerance towards labour exploitation stands in marked contrast to the legal situation. Severe forms of labour exploitation are extensively criminalised under EU and Member States' laws – although arguably not comprehensively and consistently enough. According to the research – particularly expert interviews and case studies – exploitation in the domestic work sector, for example in cleaning and caring for children or the elderly, has emerged

for the general public as a grey area, potentially blurring the line between morally acceptable and unacceptable practices.

FRA opinion

EU Member States should increase awareness among the general public of the existence of severe labour exploitation of people moving either within or into the EU and increase efforts to promote a climate of zero tolerance of exploitation of such workers, including exploitation in private households.

Targeted awareness raising and training

Experts in several EU Member States reported that because of the multiplicity of forms of labour exploitation and legal provisions relevant to it, it is not clear what precisely constitutes a criminal form of severe labour exploitation. They pointed to difficulties in applying the various legal categories and in understanding the various forms of severe labour exploitation of workers from other countries and their root causes. Better knowledge and awareness of the

many forms of such exploitation would help labour inspectors and police officers identify such cases.

Expert interviews pointed out that the tasks of public authorities in controlling migration and acknowledging and supporting victims of severe exploitation can lead to conflicting roles and requirements. Labour inspectors and police officers should be briefed and trained to give priority to the fundamental rights of victims over issues of public order when confronted with a situation of severe exploitation of third-country nationals in an irregular situation.

FRA opinion

EU Member States must ensure that staff members of organisations who come across labour exploitation are aware of the various forms of severe labour exploitation and their root causes, and are trained to react in an appropriate manner. Labour inspectors and police officers should be briefed and trained to give the rights of victims of severe labour exploitation priority over objectives relating to the management of migration.

The European Police College (CEPOL) and the European Agency for Safety and Health at Work (EUOSHA) are invited to support Member States in implementing training programmes strengthening the capacity of law enforcement officers and labour inspectors to identify and investigate cases of severe labour exploitation and to intervene in a spirit respecting the fundamental rights of exploited workers moving within or into the EU. Such initiatives could be supported by the work of the EU Anti-Trafficking Coordinator.

Effective cooperation between public and private organisations is essential and should be based on a shared understanding of the problems caused by labour exploitation, of the fundamental rights at stake and of the interventions required.

Encouraging trade unions and civil society organisations to reach out and provide information to workers moving within or into the EU

Many respondents considered it essential for workers to know about working conditions and their rights before arriving in their country of destination, or to be given such information on their arrival. In this respect, the important functions performed by trade unions and NGOs that come into contact with workers moving within or into the EU – for example in Austria, Germany, Ireland and the Netherlands – should be acknowledged as a promising development.

There is also a clear – and positive – trend for embassies of EU Member States to inform foreign nationals intending to move to their country, or their own nationals when they arrive to work in a host country, about their employment rights. It should also be noted that Article 11 of the Seasonal Workers Directive (2014/36/EU) will make it compulsory for Member States when issuing third-country nationals with an authorisation for the purpose of seasonal work to also provide them with information in writing about their rights and obligations under this directive, including complaint procedures.

FRA opinion

EU Member States should encourage trade unions and other private organisations to provide information to workers before their departure, as well as when they arrive in their country of destination.

The role of embassies in providing information before departure or on arrival should be considered.

Transparent employment relationships

Interviewed experts saw the lack of transparency of employment relationships as a factor adding to the risk of exploitation. Workers often do not have a contract written in a language they understand, do not have a written contract at all, or lose count of the wages owed to them because of the complex legal situation involved – for instance involving labour brokers or subcontracting – or because of employer practices that obscure the situation. Awareness of the absence of transparent employment relationships as a ‘red flag’ indicating the potential for severe labour exploitation should be raised, for example through campaigns or via embassies issuing visas to third-country nationals.

FRA opinion

EU Member States should ensure that the basic terms and circumstances of an employment relationship are transparent, well documented and comprehensible throughout the term of employment. In particular:

- all workers should be given a written contract in a language they can understand, at least as regards the basic terms of their employment;*
- wages should be paid in a transparent manner and at regular intervals but at least once per month and not only at the end of a season or project.*

Consumers' 'right to know' and companies' duty to disclose information

In EU Member States where product branding is common, expert views on the merits of such practices are mixed. While many believe that enabling consumers to make informed decisions is a means of effectively preventing labour exploitation, others emphasised that labelling is not always trustworthy and needs to be improved. Under Article 5 of the Consumer Rights Directive (2011/83/EU), consumers should be provided with information concerning the main characteristics of the goods or services they purchase or use. Consumers who are concerned about humane working conditions should have a right to know when they buy a product that comes with a serious risk of having been produced in exploitative conditions.

FRA SELECTED CASE STUDY

Exploiters mislead consumers

The 'Happy Eggs' brand, supplying eggs to major supermarkets in the United Kingdom, was found to be selling eggs collected by exploited Lithuanian workers. The company claimed to do 'everything in its power to make its farms truly happy places'. However, the gangmaster who supplied the workers physically assaulted them, made deductions from their wages and accommodated them in overcrowded conditions. Although the gangmaster lost his license to operate, no criminal charges were brought.

This relates to obligations on undertakings to disclose information allowing consumers to assess the impact of business activities on fundamental rights. One important step towards improving the transparency of companies' 'non-financial information' is the amendments to the Disclosure Directive (2014/95/EU), which Member States are required to transpose by 6 December 2016. Large companies and groups are obliged to report on 'employee matters', including a description of policies pursued and their outcomes, risks and risk management, and relevant key performance indicators. Under Article 2 of the Disclosure Directive, the Commission 'shall prepare non-binding guidelines on methodology for reporting non-financial information, including nonfinancial key performance indicators, general and sectoral, with a view to facilitating relevant, useful and comparable disclosure of non-financial information'.

FRA opinion

EU institutions and Member States are encouraged to enable consumers to better assess the risk that a product or service offered was created involving severe labour exploitation. The provision of such information could include:

- *effective and reliable systems of certification and branding for products of companies that respect the rights of workers;*
- *public registers of employers and recruiters convicted of labour exploitation, unless they have adopted sufficient measures to reliably prevent further cases of exploitation from occurring.*

In providing guidance and in reporting on the implementation of the amended Disclosure Directive, the Commission could pay due attention to the disclosure of policies concerning equality of working conditions for workers and safeguards countering risk factors for exploitative working conditions, both general and sectoral. Particular attention could be paid to those sectors of the economy that are particularly prone to labour exploitation.

Safeguards in public procurement procedures

Interviewed experts recalled cases in which labour exploitation occurred during projects commissioned by public institutions. Such situations also surface in a number of case studies. This points to the responsibility of EU institutions, bodies, offices and agencies, as well as Member States, to avoid contributing financially to exploitative practices.

FRA SELECTED CASE STUDY

Public procurement

In 2005, a group of Indian men, recruited by a Saudi Arabian subcontractor, worked in Malta on a large, government-funded infrastructural project. They were very badly paid (far less than the statutory minimum wage) and were not allowed sick leave or days off. The little food they received and substandard accommodation costs were also deducted from their wages. A third party informed labour inspectors and a trade union exerted political pressure on the Maltese government through the media instead of taking the case to court, since 'financial penalties against employers were minimal'. The union provided legal aid to the workers and mobilised their embassy: as a result, the workers were fully compensated, including being paid overtime, in accordance with the local minimum wage.

Under Article 31 of the Charter, EU actors have an obligation to respect the rights of workers moving within or into the EU to decent working conditions, in particular in all public procurement procedures with regard to contractors and subcontractors. In particular, when EU Member States implement the legislative package adopted in February 2014 concerning public procurement procedures, they are bound by the Charter, including Articles 5 and 31.

FRA opinion

When implementing the legislative package adopted in February 2014 concerning public procurement procedures, EU Member States are called on to pay particular attention to the necessity of avoiding supporting labour exploitation by contracting companies engaged in – or subcontracting enterprises involved in – the exploitation of workers.

EU institutions, bodies, offices and agencies implementing public procurement procedures are encouraged to lead by example and to pay due attention to preventing labour exploitation committed by subcontracted companies.

Monitoring and workplace inspections

Comprehensive and effective systems of inspections and monitoring

Across all professional groups, respondents saw a lack of effective monitoring as an important risk factor contributing to severe labour exploitation. Representatives of organisations promoting the rights of workers, employers' organisations and judges considered the lack of sufficient monitoring to be the most significant institutional risk factor. Member States must be prepared to carry out more workplace inspections, and improve their effectiveness, paying due attention to risk factors for labour exploitation. In addition, experts highlighted the importance of cooperation between workplace inspectors and the police.

According to experts, complexities arise when certain work, such as agricultural labour carried out on private property or domestic work, is totally exempt from inspections. Similarly, a report published by FRA in 2011, *Migrants in an irregular situation employed in domestic work*, highlighted that the 'legal framework should provide for labour inspection to the

workplaces of domestic workers in order to ensure safe and decent working conditions'.¹

In light of the risk factors identified in the field research, monitoring should focus on groups at increased risk of exploitation, such as persons in an irregular situation of employment, seasonal workers, temporary agency workers, and those in bogus selfemployment. The research found that, rather than focusing on such groups, monitoring is often limited to certain economic sectors viewed as particularly prone to labour exploitation. Research findings on the relevance of various risk factors should be used to design more effective and targeted strategies to detect cases of severe labour exploitation.

The field research also identified risks of labour exploitation arising where workers are not directly employed by the enterprise for which they work but through a recruitment agency or subcontractor (i.e. any natural person or any legal entity to whom the execution of all or part of the obligations of a prior contract is assigned).

FRA SELECTED CASE STUDY

Recruitment agencies

Sixty eight Chinese nationals were working for a cleaning company in Finland. They were recruited by a Finnish recruitment agency, helped by a Chinese recruitment agency, leading to a confused situation for the workers, who did not understand who represented the recruitment agency and who represented the cleaning company. This uncertainty was reflected in the criminal proceedings, as the charges against the Finnish recruitment agency for extortionate labour discrimination were dropped because the recruitment company was found not to have acted on behalf of the employer. The perpetrators were therefore not punished, despite their prosecution for extortionate labour discrimination and aggravated usury. The victims did not receive compensation or back payment of recruitment fees and had to pay a portion of the legal fees.

According to the experts interviewed, complex legal situations make it more difficult for workers who have moved within or into the EU to understand their rights or the remedies available to them and hence increase the risk of being exploited. This is particularly the case when companies based in different Member States are involved. Furthermore, under these conditions, assessing violations of

¹ FRA (2011), *Migrants in an irregular situation employed in domestic work: fundamental rights challenges for the European Union and its Member States*, Luxembourg, Publications Office, pp. 9 and 30.

workers' rights becomes more challenging. Efforts to monitor such complex situations and to investigate in cases of suspicion need to be stepped up and may require effective cooperation among public authorities from more than one Member State.

FRA opinion

EU Member States must ensure a comprehensive system of inspections of working conditions that is effective enough to comply with recognised standards.

- *To this end, legislation must be in place clearly tasking a public authority with monitoring the working conditions of workers moving within or into the EU and with carrying out a sufficient number of inspections.*
- *This authority must be staffed and trained to carry out inspections in a targeted and effective manner, including having the means to overcome language barriers. It should either have its own powers and means of securing evidence relevant in criminal proceedings or be in a position to rely on effective cooperation with the police.*
- *Staff engaged in monitoring must be trained to understand and assess risk factors for severe labour exploitation in practice, should adjust and organise their work in line with these risk factors and should regularly review their system of risk management. The strategic orientation of workplace inspections should be based on all available evidence concerning relevant risk factors.*
- *EU Member States should revise regulations that have the effect of exempting workplaces entirely from inspections, in particular as concerns private farms and domestic work.*
- *EU Member States should design more effective and targeted strategies to bring cases of severe labour exploitation to light and offenders to justice.*
- *EU Member States should enhance the monitoring of recruitment agencies and ensure that legal regulations prohibiting the collecting of fees from the workers are enforced.*
- *EU agencies including EU-OSHA, Europol (the European Police Office) and Eurojust (the European Union's Judicial Cooperation Unit) are invited to contribute to enhancing cross-border cooperation among Member State authorities tasked with monitoring, investigating and prosecuting in cases of labour exploitation involving more than one Member State.*

Article 7 of the International Labour Organization (ILO) Private Employment Agencies Convention² clearly establishes that such 'agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers'. Employers should bear the costs of employment services. Exceptions to this rule for workers seeking jobs that neither require sophisticated skills nor entail managerial responsibilities are hardly acceptable. However, expert interviews and case studies point to recruiters charging workers exorbitant fees, subjecting them to a situation of debt bondage and making them particularly vulnerable to severe exploitation. Therefore, the activities of employment agencies require the particular attention of monitoring bodies.

Victims' access to justice

Criminal law provisions protecting workers moving within or into the EU from severe labour exploitation

The research revealed that the categories of individuals protected by criminal law provisions against severe exploitation in employment relationships vary widely among Member States, ranging from only third-country nationals in an irregular situation to all individuals. What is decisive from a human rights perspective is that the right – under Article 31 of the Charter as well as under Article 2 of the revised ESC – to just working conditions requires workers' effective protection against severe violations. Given the right to equality before the law – Article 20 of the Charter – it is questionable why, in some cases, the right of third-country nationals in an irregular situation to decent working conditions is protected by criminal law provisions while the equivalent right of third-country nationals in a regular situation of residence or of EU citizens is not. Likewise, the protection of children from severe labour exploitation should not be reserved to third-country nationals in an irregular situation.

In addition, some EU Member State legislation criminalises employing third-country nationals in an irregular situation regardless of whether or not they are exploited. This legislation treats situations which are essentially different on an equal footing. Thus the right of workers not to be subjected to exploitative working conditions is not acknowledged or protected.

² Adopted in Geneva on 19 June 1997 at the 85th International Labour Conference (ILC) session.

FRA SELECTED CASE STUDY

Migrants in irregular situations

A Bolivian woman in an irregular situation worked as a carer in a household in Italy, working long hours and receiving very little pay. The employer used her irregular situation to intimidate her.

An Ecuadorian woman in Spain had to do the housework and take care of an older person. She had to work excessive shifts, but was not paid accordingly. She asked an NGO for help, but did not lodge a complaint.

In Ireland, a Nigerian girl worked for a family taking care of their child, and was prohibited from contacting her family or anyone else. Her employer also restricted her physical movements, and when she complained, they threatened to have her returned to Nigeria.

Respondents in Hungary referred to women from Romania taking care of older people as a very frequently exploited group.

In five EU Member States, the offence of employing a third-country national in an irregular situation under particularly exploitative working conditions is punishable with a maximum sentence of less than two years. Such a penalty does not reflect the gravity of violations of fundamental rights encountered by victims of severe labour exploitation. In other EU Member States, penalties threatening imprisonment for a term not exceeding three or five years are common.

The Employer Sanctions Directive obliges Member States to ensure that legal persons may be held liable for employing third-country nationals in an irregular situation under particularly exploitative working conditions where such an offence has been committed for their benefit. A similar provision is included in Article 5 of the Anti-Trafficking Directive (2011/36/EU). Penalties for legal persons should be effective and dissuasive. However, the experts interviewed indicated that the sanctions imposed in practice on enterprises (as legal persons) do not reflect the severity of the rights violations involved. Thus the effectiveness of the Employer Sanctions Directive in practice could be further explored. In addition, the Employer Sanctions Directive points to the possibility that exploitative employers be publicly blacklisted (Article 12 (2)), but only a few EU Member States implement this practice.

FRA opinion

EU institutions and Member States should review relevant EU directives and criminal law provisions with a view to granting to all workers equal and effective protection against severe labour exploitation.

Comprehensive and effective criminal law provisions should ensure the responsibility of business enterprises as legal persons acting as employers; sufficiently dissuasive sanctions against legal entities should be stipulated by national law and effectively implemented. In addition, EU Member States should review the effectiveness of legal provisions allowing for:

- *the closure or the withdrawal of licences of establishments that have been convicted of severe labour exploitation;*
- *the possibility of publishing a list of employers convicted of severe labour exploitation.*

Extending the mandate of institutions dealing with trafficking to include all forms of severe labour exploitation

The field research clearly indicates that institutions involved in monitoring, carrying out inspections, law enforcement, victim support and public prosecution need to invest more resources in tackling the challenges identified in this report. However, such investments in the institutional framework should not target a particular form of labour exploitation. They should aim to address, in a broader perspective, the entire spectrum of criminal forms of labour exploitation, which can range from slavery to severe labour exploitation in the sense of the Employer Sanctions Directive. Given the scale of severe labour exploitation there is a pressing need to extend the mandate of institutions dealing with trafficking.

Both expert interviews and case studies point to difficulties arising when support services, specialised police units or specialised public prosecutors are available to deal with trafficking cases but not with cases of severe labour exploitation, in particular as regards forms of exploitation occurring in employment relationships covered by Article 9 of the Employer Sanctions Directive. In the area of victim support, for example, in two thirds of the EU Member States in which fieldwork was carried out experts view victim support services as lacking or ineffective in practice, with very few services dedicated to victims of labour exploitation specifically, and many services outright excluding them unless trafficking or violence is involved.

Based on this evidence, it can be suggested that the mandate of organisations countering trafficking at EU or Member State level should be extended to cover all criminal forms of exploitation of those persons who have moved from a different country. This would include exploitation carried out under particularly exploitative working conditions, exploitation of victims of trafficking by an employer not involved in the trafficking process and the illegal employment of minors (Article 9 (1) (c) to (e) of the Employer Sanctions Directive).

FRA opinion

EU institutions and Member States should review the mandate of institutions tasked with addressing trafficking or coordinating such action with a view to extending their tasks to address other offences, including those covered by the Employer Sanctions Directive.

Instruments and mechanisms established to address trafficking – such as referral mechanisms or temporary residence permits – should be reviewed with a view to broadening their scope of application to cases of severe labour exploitation that do not involve trafficking.

Encouraging victims to report by granting residence permits

Research findings show that victims of severe labour exploitation who are in an irregular situation of residence are discouraged by their status from reporting to any public authority. Experts identify fear of having to leave the country as the primary reason why victims do not report their exploitation to the police. According to Recital 10 of the Victims' Directive (2012/29/EU), the right of victims to be acknowledged as victims and to access justice should not be conditional on their residence status. In reality, however, the right of irregularly residing victims of severe labour exploitation to access justice remains theoretical as long as they are not offered a safe option of regularising their residence status. Such an option would at the same time improve the functioning of the criminal justice system and counter the climate of impunity for perpetrators of severe labour exploitation.

Article 11 of the Anti-Trafficking Directive obliges EU Member States to 'take the necessary measures to ensure that assistance and support are provided to victims', enabling them to exercise their rights as victims of crime, and specifies that Member States must ensure that such assistance and support is not premised on the victim's willingness to cooperate in the criminal investigation, prosecution or trial. However, this claim is made 'without prejudice' to

the Residence Permit Directive (2004/81/EC). This is a far-reaching qualification. In practice, the Residence Permit Directive, by premising the granting of residence permits to victims of trafficking on the demonstration of a clear intention to cooperate with law enforcement, considerably interferes with victims' rights to have access to support services and justice. It should be noted that the Council of Europe Convention on action against trafficking in human beings (CETS No. 197), which all EU Member States but the Czech Republic have ratified, takes, in Article 14, a more rights-friendly stance, by also including situations in which the 'competent authority considers that their stay is necessary owing to their personal situation' among those where a renewable residence permit should be issued to victims.

In addition, according to the European Commission Communication of October 2014 on the application of the Residence Permit Directive, six EU Member States do not make permits conditional on the victim's cooperation and another seven Member States allow for exceptions.

Obviously, there are also tensions between the Residence Permit Directive and Member States' obligations under the Charter. The right of victims of trafficking and of other forms of severe exploitation under Article 47 of the Charter to be provided with effective access to justice – and, to this end, to be empowered, encouraged and supported according to their needs – corresponds to unconditional obligations of EU Member States, which cannot be premised on the victim's cooperation. The onus should be on public authorities to enable access to justice, not on victims to first earn the privilege of being supported and allowed to participate in proceedings. The practical effectiveness of these rights must not be made conditional on the willingness or ability of the victim to support the police or any other authority in carrying out their tasks. Because of this conflict, it could be maintained that the entering into force of the Charter invalidated the Residence Permit Directive. In the interest of the rule of law and legal clarity, this issue is waiting to be settled.

In its communication to the Council and the European Parliament of October 2014 on the application of the Residence Permit Directive, the European Commission tentatively envisaged an evaluation of the necessity of amending the Residence Permit Directive.³

³ European Commission (2014a), *Communication from the Commission to the Council and the European Parliament on the application of Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, COM(2014) 635 final, Brussels, 17 October 2014.

FRA opinion

EU Member States should adopt measures encouraging victims of severe labour exploitation to come forward and to report – without risk of expulsion – to a monitoring authority or to the police. This should include measures allowing EU Member States to grant, in the event of serious violations of the worker’s rights, a residence permit, on the basis of clear legal terms.

In addition, Member States should consider the suggestions on how to encourage victims and witnesses to report a crime without fear of being apprehended included in point 9 of the 2012 FRA guidance on ‘Apprehension of migrants in an irregular situation – fundamental rights considerations’.

EU institutions are called on to consider revising Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate irregular immigration, who cooperate with the competent authorities. The rights of individuals to be effectively protected from trafficking under Article 5 of the Charter as well as the right of victims of trafficking to have access to justice under Article 47 of the Charter impose unconditional obligations on EU Member States which are in no way premised on the victim cooperating with the police, supporting investigations or performing any other services in the public interest. Such change would also require adaption of the wording of Article 11 (6) of the Anti-Trafficking Directive and of Article 13 (4) of the Employer Sanctions Directive.

Providing targeted victim support services

There is a general lack of comprehensive support service systems for victims of severe forms of labour exploitation, and many existing services exclude particular groups. Experts confirm that not all victims are treated equally. While some groups of victims are prioritised, others, such as migrants in an irregular situation, are in a disadvantaged position regarding access to effective support services and protection in criminal proceedings.

FRA SELECTED CASE STUDY

Access to effective support services

A third-country migrant of eastern European origin came to Belgium in 2013 to work in construction in an irregular situation of residence. He worked long hours and was significantly underpaid. With little knowledge of the local language and Belgian institutions, he did not report his employer for fear of losing his job and income, and getting into trouble with the authorities because of his irregular status. Social workers were aware of his situation but for reasons of confidentiality they did not report to the police without his consent. Victim support is, however, only available for recognised victims of trafficking in human beings who assist the investigation.

Under Article 8 of the Victims’ Directive, all victims have a right to access support services in accordance with their needs. Victim support services must operate in the interest of the victim and be confidential and free of charge. If access is denied, Article 47 of the Charter requires that an effective remedy be available to the victim.

FRA opinion

EU Member States should ensure that:

- *every victim of severe labour exploitation has targeted support services available to them, for example by extending the mandate of support services targeting victims of trafficking to include support service provision to victims of other forms of severe labour exploitation;*
- *mechanisms for the referral of victims to support services are available for victims of all forms of severe labour exploitation;*
- *victims of labour exploitation are not excluded from support services as a result of their irregular residence status;*
- *support services are equally accessible to EU and non-EU citizens.*

Encouraging and enhancing third-party interventions

As experts indicated, given the reluctance of victims of severe labour exploitation to come forward and report to monitoring bodies or the police, as well as a lack of sufficient, proactive police investigation, private or public organisations acting in support or on behalf of victims of labour exploitation, including trade unions, could have an important function in light of Article 13 of the Employer Sanctions Directive. However, the research shows that third-party interventions and collective claims are rare and are often not allowed by law; where admissible, they are rarely applied in cases of labour exploitation. Third-party intervention could also be a means of enabling courts to deal more effectively with cases where a large number of workers have victim status and victims' rights. FRA research published in 2012 in the report *Access to justice in cases of discrimination in the EU* highlighted the advantages of thirdparty interventions. It should be noted that Article 25 of the Seasonal Workers Directive provides for third parties with a legitimate interest in ensuring compliance with the Directive to lodge complaints or engage civil or administrative proceedings on behalf of the seasonal worker.

FRA opinion

To enhance access to justice for all victims of severe labour exploitation, Member States should – within and beyond the scope of the Employer Sanctions Directive – enable third parties, including trade unions and private associations that support workers who have moved either within or into the EU, to act in support of or on behalf of victims.

Providing compensation for damages and back payments to victims

To understand what is important to victims, their economic goals have to be taken seriously. The expert interviews revealed that compensation and back payments are seen as particularly important and as potentially encouraging more victims to report to the police and seek access to justice. However, the research shows that it is often very difficult for victims to obtain compensation from offenders, not least because a company that acted as an employer may prefer to declare insolvency or because responsible individuals disappear. Therefore, compensation from offenders should be reinforced by state compensation funds.

FRA SELECTED CASE STUDY

Redress for victims

A number of Lithuanian citizens worked on farms in Lincolnshire in the United Kingdom, a region well known for its agriculture. They were subjected to very poor living and working conditions by a Latvian gangmaster, including living in 'sheds' with limited access to hygiene facilities and limited contact with the outside world. They came from severely impoverished backgrounds. The situation was monitored by the Gangmasters Licensing Authority (GLA). Despite this, no criminal charges were brought and there was no redress for the victims, as they were not found to have been trafficked and so had no access to justice or support through the National Referral Mechanism.

However, at present Article 12 of the Compensation Directive (2004/80/EC) provides for national compensation schemes only to the benefit of victims of violent intentional crime and hence will very rarely cover cases of severe labour exploitation. Reacting to this deficit, Article 17 of the Anti-Trafficking Directive obliges Member States to ensure that victims of trafficking have access to existing state compensation schemes. In contrast, the Employer Sanctions Directive includes no similar provision. In relation to victims of crime, however, states have an obligation to ensure that they have access to justice. Hence victims of severe labour exploitation – in the sense of Article 9 (1) (c) to (e) of the Employer Sanctions Directive – should not be treated differently from victims of trafficking.

Article 16 of the Victims' Directive recognises the right of victims to obtain in the course of criminal proceedings a decision on compensation from the offender. While Member States' legislation may allow for exceptions, Article 47 of the Charter mandates that a criminal court's refusal to decide on compensation claims must be open to review by another court.

FRA opinion

EU institutions should consider amending the Employer Sanctions Directive to include a provision similar to Article 17 of the Anti-Trafficking Directive, according to which Member States shall ensure that victims of trafficking in human beings have access to existing schemes of state compensation.

EU Member States should ensure that criminal courts decide on all civil law claims of victims

of severe labour exploitation, including claims for back payments, instead of referring victims to civil courts. Member States should consider the possibility that where judges lack the experience to decide on civil law claims they could consult civil law judges instead of referring the victim to civil court proceedings.

Upholding victims' right to effective police investigations

Victims are entitled to thorough and effective investigations capable of leading to the identification and punishment of offenders. To avoid widespread impunity for perpetrators of severe labour exploitation of foreign workers, the police need to respond to indications of labour exploitation in a manner that effectively pursues the objective of bringing offenders to justice and at the same time is sensitive to the rights and the precarious situation of victims.

The research found that specialist police units, trained and experienced in trafficking as well as severe labour exploitation, would most probably respond more effectively than the general police force to workers moving within or into the EU in situations of exploitation. Such units would often be more willing to treat the exploited workers as potential victims of crime, even in cases of irregular residence status. While specialised units tasked

with investigating trafficking cases exist in many EU Member States, police units that also deal with severe labour exploitation exist in Spain and Belgium and can be considered as providing examples of promising practices.

Specialised police units would be particularly beneficial in cases requiring the cross-border cooperation of police services. Often the authorities of more than one EU Member State are required to intervene in situations that involve subcontracting, posted workers, agency workers or recruiters, or when victims or witnesses have returned to their countries of origin before their statement was taken. While experts from Spain and Belgium stressed the challenges faced in cross-border investigations, surprisingly few experts had experienced such cases.

FRA opinion

As a means of improving the effectiveness of police investigations, EU Member States should assess the possibility of creating specialist police units and of establishing close links of cooperation between the police and monitoring authorities, such as labour inspectorates and financial police.

In addition, the cross-border cooperation of law enforcement agencies should be enhanced and brought to the level of cooperation that has been achieved in other areas of organised crime.

The way forward

Unless efforts to protect labour standards are considerably intensified, there is a risk that these will be further undermined. With huge differences in standards of living and increasing mobility pushing workers to accept substandard working conditions, the issue cannot be left to globalised labour markets – it requires rigid monitoring and control, including through criminal law provisions for particularly severe violations.

“Poverty and declining prosperity provide fertile ground for criminal exploitation. [...] Demand for cheap labour is bound to rise significantly as a result of a rapid expansion of the global consumer base, resulting in more labour exploitation in traditionally affected industries such as hospitality, construction or cleaning services. Industries not typically associated with this phenomenon may also be targeted.”

(Europol (2015), Exploring tomorrow's organised crime, The Hague, Europol. p. 26)

In conclusion, the following points warrant emphasis.

Strengthening the legal framework to protect workers' rights to fair and just working conditions

An EU-level consensus stating that severe labour exploitation is unacceptable and that all workers are entitled to effective rights protection is needed. To date, in some EU Member States, criminal law only protects third-country nationals in an irregular situation from severe exploitation. In others, all workers are protected. These discrepancies reflect a lack of clear and reasonable standards.

This lack of a consensus also impedes cross-border cooperation among monitoring authorities and criminal justice systems in cases involving several Member States, particularly when recruitment or temporary work agencies, posting of workers or subcontracting chains are involved, as well as in cases where victims or witnesses travel home before

their statements are taken. Approximating the criminal law basis of cooperation would demonstrate a normative consensus and considerably enhance cooperation. Methods should be sought to follow the example of the Employer Sanctions Directive in using Article 83 (2) of the TFEU as a possible basis for establishing minimum rules to define criminal offences when implementing social policies.

Improving monitoring systems, workplace inspections and investigations

Monitoring bodies that exercise a supervisory function are crucial. Many EU Member States must considerably enhance workplace inspections. In some, promising practices have increased the effectiveness of monitoring or policing, sometimes emphasising cooperation between labour inspectors and the police.

Encouraging victims to report

More also needs to be done to enable and encourage victims to report severe labour exploitation to labour inspectors or the police. EU Member States must make it more attractive and viable for victims to access criminal justice. Back pay and compensation, provided in the framework of criminal proceedings, are just one important factor.

FRA research shows the many obstacles victims face in accessing justice, but also reveals promising practices aimed at raising rights awareness and supporting victims in claiming their rights. Trade unions and other civil society actors are increasingly aware of their important functions in this regard.

Strengthening specialisation and crossborder cooperation in all areas of severe labour exploitation

It should be recognised that criminal networks – often in the form of dubious recruiters and employment agencies operating transnationally – are increasingly involved in severe labour exploitation of migrants. The police and public prosecutors need to intensify efforts to bring offenders to justice. Some EU Member States have established specialised police units; these also facilitate crossborder cooperation, and should be acknowledged as a promising practice.

Institutional structures created to counteract trafficking should also be used to tackle severe labour exploitation. Institutional frameworks and procedures that focus only on trafficking pay insufficient attention to severe labour exploitation that does not meet the definition of trafficking.

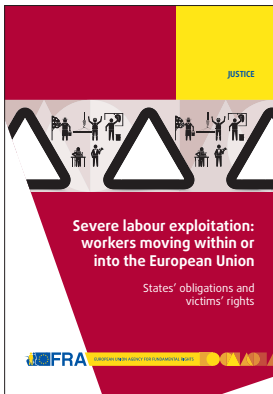
Enhancing prevention, including systems of binding standards and reliable branding

EU institutions and Member States are encouraged to step up prevention measures, including through public procurement procedures that would prevent inadvertent funding of exploiters and more effective systems for defining standards of decent work and branding products and services that meet these standards. This would allow consumers to better assess the risk of purchasing items produced under severely exploitative working conditions.

Creating a climate of zero tolerance of severe labour exploitation in societies

A climate of zero tolerance for severe exploitation is the basis for defending the social rights and human dignity of all workers – important elements of the values on which the EU is founded. Politicians, the media and others whose voice is heard in public need to be aware of the responsibility that comes with that privilege.





Worker exploitation is not an isolated or marginal phenomenon. But despite its pervasiveness in everyday life, severe labour exploitation and its adverse effects on third-country nationals and EU citizens – as workers, but also as consumers – have to date not received much attention from researchers. The extensive fieldwork and desk research carried out by FRA is the first to look comprehensively into various criminal forms of severe labour exploitation of workers who move from one EU Member State to another or from a third country. It aims to fill the knowledge gap, thus challenging the current climate of implicit acceptance of severe labour exploitation. The report identifies risk factors contributing to such exploitation and discusses means of improving the situation and highlights the challenges EU institutions and Member States face in making the right of workers who have moved within or into the EU to decent working conditions a reality. This research aims to support them in preventing severe labour exploitation, monitoring situations where severe labour exploitation occurs and making victims' right to have access to justice a reality.

Further information:

For the full FRA report on severe forms of labour exploitation – *Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights* (2015) – see <http://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>

See also other FRA publications in this field:

- FRA (2015), *Victims of crime in the EU: the extent and nature of support for victims*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims> (available in English); see also the summary available in 23 EU languages, <http://fra.europa.eu/en/publication/2015/victims-crime-eu-extent-and-nature-support-victims-summary>;
- FRA (2015), *Legal entry channels to the EU for persons in need of international protection: a toolbox*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2015/legal-entry-channels-eu-persons-need-international-protection-toolbox> (available in English);
- FRA (2014), *Criminalisation of migrants in an irregular situation and of persons engaging with them*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them> (available in English);
- FRA (2013), *Fundamental rights at Europe's southern sea borders*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders> (available in English); see also the summary available in various EU languages, <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders-summary>;
- FRA (2011), *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2012/migrants-irregular-situation-employed-domestic-work-fundamental-rights-challenges> (available in English, French and German).



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FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel. +43 158030-0 – Fax +43 158030-699
fra.europa.eu – info@fra.europa.eu
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