

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

**Annex 2: Risk management systems
to detect labour exploitation
at national level**

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Annex 2: Risk management systems to detect labour exploitation at national level

Member States have different approaches concerning the risk management systems they have in place to guide monitoring operations/inspections with a view to detecting severe labour exploitation.

Article 14 of the Employers Sanctions Directive (2009/52/EC) does not mention detection of labour exploitation directly. However, it states: “With a view to increasing the effectiveness of inspections, Member States shall, on the basis of a risk assessment, regularly

identify the sectors of activity in which the employment of illegally staying third-country nationals is concentrated on their territory.” (Article 14 (2)).

Table 1 sets out the risk management systems in place in the eight EU Member States examined in this research in accordance with the Employers Sanctions Directive – noting whether their operations are also conducted with a view to detecting severe labour exploitation.

Table 1: Risk management systems in place to detect labour exploitation in accordance with the Employers Sanctions Directive (2009/52/EC)

Member State	Description of any official risk management systems in place to guide monitoring operations/inspections – with a view to detecting severe labour exploitation? – including which bodies are responsible	To which sectors of the economy do such risk assessments apply, and how often are they carried out?
BE	Specialised police units regularly investigate so-called non-risk and new sectors to identify possible new risk factors for labour exploitation. ¹ These units conduct their own research and publish reports demonstrating current trends and advising on problem areas. The specialised police units investigate and cooperate with other institutions, such as inspection bodies and Europol, on labour exploitation cases. ²	They proactively conduct monthly inspections of high-risk sectors, which are led by the auditor or public prosecutor and with which other organisations (such as labour and social inspectorates, and victim support organisations) cooperate.
DE	While the Financial Control of Undeclared Work (FKS) adopted a more risk-oriented approach to its work in 2015, this work is primarily aimed at detecting illegal employment. No risk-oriented approaches primarily aimed at detecting labour exploitation are known. Detecting labour exploitation is not part of the primary tasks of the FKS. In cases of labour exploitation (§ 233 <i>StGB</i>), the FKS is only competent if the suspicion is directly related to one of the primary tasks (§ 2 para. 1 <i>Schwarzarbeitsbekämpfungsgesetz</i>). For violations of § 233 <i>StGB</i> different authorities are competent and also non-state actors offer support for victims.	
FR	The employment inspectorate does not have a risk assessment system that allows for the identification of sectors of activity where the employment of third-country nationals in an irregular situation is concentrated in France.	
IT	A new Action Plan ³ introduces a monitoring operation based on the cooperation between the different stakeholders involved through a Direction Cabinet ⁴ – created on 2 August 2016 – made of representatives of central authorities, regions and municipalities. This Cabinet is not specifically in charge of organising inspections to detect labour exploitation, but of coordinating the different stakeholders committed to combating exploitation and trafficking (including NGOs and trade unions); of programming actions and measures implementing the Plan; and of producing studies, research and statistics in cooperation with associations and the scientific community.	The Action Plan stresses the relevance of prevention activities, which include awareness-raising campaigns and training activities directed at the most relevant stakeholders. These have to be focused not only on the main trends of the phenomenon but also on risk factors that make some people more exposed to exploitation and trafficking than others.

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NL	<p>The Inspectorate SZW analyses which risks related to fair, safe and healthy work are likely to occur in different target groups. These strategic risk analyses form the main base for the focus of the operational programmes.</p> <p>The labour inspectorate's programme on labour exploitation (2017-2019) pursues tactical and operational risk analysis based on general trends of criminality in the Netherlands and its own experience. It is developing a system for inspectors to signal potential situations of labour exploitation that emerge from a combination of indicators that in practice are not viewed together.</p> <p>Apart from the labour inspectorate, the Expertise Center on Smuggling and Trafficking (government institute, <i>Expertise Centrum Mensenhandel en Mensensmokkel</i>, EMM) is responsible for detecting trends in smuggling and trafficking, also in relation to labour exploitation. It collects information, conducts research, and advises government bodies and others to redirect their policies if needed.</p>	<p>It has identified risk sectors (transport, inland shipping, construction, food and accommodation services, food processing, cleaning, domestic work, agriculture, embassies, recruitment agencies, hotels) and vulnerable groups (EU migrants, asylum seekers, irregular migrants, au pairs, disabled persons, minors, and sect members).</p>
PL	<p>There is an official risk management system that relates to detecting severe labour exploitation. The Ministry of Family, Labour and Social Policy in cooperation with the Ministry of the Interior, determines – based on the risk assessment – economic sectors where it is particularly common that foreigners staying without a valid document authorizing them to stay in the territory of the Republic of Poland work. According to the agreement between the Chief Labour Inspector and the Border Guard Commander in Chief on rules of the cooperation between the National Labour Inspectorate and the Border Guard⁵, these two bodies cooperate with each other to identify, on the basis of the risk assessment, economical sectors in which the employment of illegally staying third-country nationals in Poland is concentrated.</p>	<p>This assessment is carried out on a regular basis. Border Guard and National Labour Inspectorate are then obliged to pass information on the carried-out assessment to the Ministry of Family, Labour and Social Policy, which annually reports to the European Commission.</p>
PT	<p>As a criminal police body with specific competence to control the documental situation of all foreign citizens, the Foreigners and Borders Service (<i>Serviço de Estrangeiros e Fronteiras</i>) (SEF) undertakes inspections on a regular basis, which many times are carried out at the workplace of such citizens (agricultural properties, restaurants, etc.).</p> <p>The Authority for Working Conditions (<i>Autoridade para as Condições do Trabalho</i>) (ACT) “develops its activity based, on one hand, proactively on the annual activity plan of inspective activities with specific programmes destined to safeguard and control the pillars of decent work, verify the minimum standards for working conditions and protect the most vulnerable groups of workers (for example women, minors, immigrants, workers with a disability”.</p> <p>In addition, the Strategic Plan for Migration 2015-2020,⁶ although it does not include measures specifically meant to guide the monitoring action, contains some relevant measures to combat labour exploitation in Part II – Pillar of Immigrant Integration Policies:</p> <p>Measure 20 – Preventing and combating exploitation in the use and recruitment of foreigners in an irregular situation to work, including two actions: the creation of a network of national and regional partners to combat the exploitation of immigrant illegal workforce (the interveners are the SEF, the AT, the ACT, the ISS and the ACM); and the intensification of the combat to the use of illegal workforce by reinforcing the inspective action to employers (ACT and SEF);</p> <p>Measure 21 – Promoting the information on rights and duties of foreign workers through the organisation of awareness/information actions in the fields of labour relations, safety and health at work, equality and no gender discrimination (ACM, ACT, CITE, CIG, municipalities, other);</p> <p>Measure 23 – Promoting the improvement of working conditions by carrying out inspective actions at the workplaces, namely with the aim of combating the illegal use of migrant workforce, gender and racial discrimination, and the trafficking in human beings (ACT and CIG).</p>	<p>The inspective action of the ACT is developed in response to complaints that come to its knowledge or to phenomena known through the inter-institutional cooperation with the social partners and civil society – immigrant associations with recognised representativeness – and even through the media. “All authorities are aware of the seasonal character of some of these phenomena, which are associated with specific seasons, be it in the sector of agriculture and silviculture or in the sector of tourism”. “In both contexts, the intervention by the ACT is frequently organised in a scenario of cooperation with all of the relevant actors in order to ensure a more efficient intervention.”</p>



Member State	Description of any official risk management systems in place to guide monitoring operations/inspections – with a view to detecting severe labour exploitation? – including which bodies are responsible	To which sectors of the economy do such risk assessments apply, and how often are they carried out?
UK	<p>The below-mentioned relevant authorities have their own internal risk management systems in place:⁷</p> <ul style="list-style-type: none"> • The Gangmasters and Labour Abuse Authority (GLAA)⁸ works in partnership to protect vulnerable and exploited workers, and provides licences to employers in the agricultural, horticultural and shellfish gathering sectors (and associated processing and packaging).⁹ • The HM Revenue & Customs (HMRC) – the UK’s tax, payments and customs authority;¹⁰ • The Employment Agency Standards Inspectorate (EAS)¹¹ – located in the Department for Business, Energy and Industrial Strategy. Its role is to guarantee compliance with employment rights, particularly for vulnerable agency workers, and to ensure that everyone using the services of private recruitment agencies is treated fairly. <p>The Director of Labour Market Enforcement, David Metcalf, announced the establishment of an ‘intelligence hub’, which will receive, process and produce information and intelligence assets relating to noncompliance within the labour market.¹² The hub could be used for risk assessment by all three enforcement bodies. The Director is currently welcoming evidence from stakeholders on the establishment of the hub (as part of the development of his 2018 strategy).¹³</p>	

Notes:

- ¹ FRA (2015), *Severe labour exploitation: workers moving within and into the European Union: States’ obligations and victims’ rights*, Luxembourg, Publications Office, p. 86.
- ² Ibid.
- ³ Italy, Council of Ministers (Consiglio dei ministri), *National Action Plan against Trafficking and the Serious Exploitation of Human Beings 2016-2018* (Piano d’azione nazionale contro la tratta e il grave sfruttamento degli esseri umani 2016-2018), 26 February 2016.
- ⁴ Italy, Presidency of the Council of Ministers (Presidenza del Consiglio dei Ministri), Department for Equal Opportunities (Dipartimento per le Pari Opportunità), *Trafficking in human beings: Direction Cabinet* (Tratta esseri umani: Cabina di Regia).
- ⁵ Poland, *Agreement between the Chief Labour Inspector and the Border Guard Commander in Chief of 12 May 2015 on rules of cooperation between the National Labour Inspectorate and the Border Guard* (Porozumienie Głównego Inspektora Pracy i Komendanta Głównego Straży Granicznej z 12 maja 2015 r. w sprawie zasad współdziałania Państwowej Inspekcji Pracy i Straży Granicznej).
- ⁶ Portugal, Office of the Secretary of State for Citizenship and Equality (Gabinete da Secretária de Estado para a Cidadania e a Igualdade), *Strategic Plan for Migration 2015-2020* (Plano Estratégico para as Migrações 2015-2020).
- ⁷ UK, Home Office and Department for Business, Energy & Industrial Strategy (2017), *United Kingdom Labour Market Enforcement Strategy – Introductory Report: 1 April 2016 – 31 March 2017*, July 2017, p. 42.
- ⁸ For more information, see the website of the [Gangmasters & Labour Abuse Authority](#).
- ⁹ UK, HM Government (2004), *Gangmasters (Licensing) Act 2004*, 8 July 2004.
- ¹⁰ For more information, see [HM Revenue & Customs](#).
- ¹¹ UK, Department for Business, Energy & Industrial Strategy (2017), *Employment Agency Standards Inspectorate (EAS): Enforcement Policy Statement*, June 2017.
- ¹² UK, Home Office and Department for Business, Energy & Industrial Strategy (2017), *United Kingdom Labour Market Enforcement Strategy – Introductory Report: 1 April 2016 – 31 March 2017*, July 2017, pp. 11 and 14.
- ¹³ UK, Home Office and Department for Business, Energy & Industrial Strategy (2017), *Informing Labour Market Enforcement – Strategy 2018/19: Summary of Issues*, July 2017, p. 5.

Source: FRA, 2018 [based on sources identified above]