

## **Working group 8:**

# **The crucial role of employers in combating severe forms of labour exploitation**

## **Background**

The Employer Sanctions Directive obliges Member States to criminalise some forms of exploitation of migrant workers in an irregular situation of residence. Some EU Member States extend the protection of fair and just working conditions beyond their obligations under the Employer Sanctions Directive. However, workers moving within or migrating to the EU risk being severely exploited. To counter this, employers' associations have an important role in preventing exploitation, in raising standards, and in preventing social dumping. There is also a need to raise awareness of legal obligations as well as of the risk factors that contribute to exploitation, such as interventions that increase workers' dependency on employers. Employers also need to be mindful of their responsibilities. For example, they should bear the costs of employment services, not the workers. They should also provide clear contracts and information on rights to workers. For this, cooperation with trade unions is key. Care must also be taken to ensure subcontracting does not lead to exploitation.

## **Objectives**

This workshop sought to highlight the social responsibility of employers' associations in combating severe forms of labour exploitation and to raise awareness of their potentially significant role in preventing such exploitation. The workshop also looked at certification as a means of preventing labour exploitation. Best practices on combating exploitation were explored and shared among participants, drawing on work by FRA and others.

## **Speakers**

- Frances House, Deputy Executive Director, Institute for Human Rights and Business (IHRB)
- Zuzanna Muskat Gorska, Legal Unit, International Trade Union Confederation
- Andrea Fromm, Research Officer, European Foundation for the Improvement of Living and Working Conditions (Eurofound)
- Teresa Albano, Economic Affairs Officer, Office of the Co-coordinator of OSCE Economic and Environmental Activities

## Main messages

1. There is a need for stronger political will to be tough on labour exploitation of workers (foreign workers in particular – both EU and third country nationals); voluntary contributions/soft measures are not enough. Legally binding, enforceable standards/legislation, reinforced by effective remedies, are needed.
2. There is a damaging discourse on the rights of and about foreign workers. This has an impact on them as workers in the labour market. Scapegoating foreign workers can also exacerbate their vulnerability. And lowering of rights, including foreign workers in discussion (SELEX II – important role of FRA research).
3. 'Small' companies or individuals acting as employers are under the radar and may escape regulation and Corporate Social Responsibility policies, and exploit workers. This is especially the case in sectors such as domestic work; fisheries; agriculture.
4. According to OSCE, ILO research, migrant worker fees to recruitment agencies must end. This also applies to linking the right to residence of foreign workers to a particular employers as this puts the worker at the mercy of this employer and adds to vulnerability.
5. Liability in supply chains should also be taken into consideration. For example, those that use subcontractor firms should do not escape responsibility and accountability.
6. Social partners have a crucial role to play, not only in agreeing on standards, but also in supporting implementation measures.
7. There is a risk that labour exploitation is being 'normalised' with people willingly accepting conditions far below legal standards. This is becoming generally accepted by society such as in domestic work. Overall this leads to the erosions of rights for all and social dumping.

## Promising practices

- Booking lists provided by the public employment service for employers to avoid Labour Market Intermediaries, Italy, Finland.
- Compilation of black lists of agencies that do not comply with legal standards, Czech Republic.
- Court access for undocumented workers to claim their rights, Ireland.
- No distinction between workers (irregular vs regular, national vs foreign) when accessing their rights, Belgium.
- The Institute for Human Rights and Business recently launched the [Leadership Group for Responsible Recruitment](#) to call for an end to worker fees within the next decade. The organisations involved included IKEA, Unilever, HP, Hewlett Packard Enterprise and Coca Cola, supported by IOM, Verité and Interfaith Center for Corporate Responsibility. Part of this endeavour will be engagement with employers' associations and industry bodies such as the Consumer Goods Forum, IPIECA, International Tourism Partnership, Foreign Trade Association etc. to follow the lead of the Electronics Industry Citizenship Coalition to include 'no worker fees' within industry codes of conduct, various.

- Role Model Tariff Act (1930); this act states that employers have to ensure that contractors do not exploit the workforce / that products are not produced under conditions of labour exploitation; Tariff Act had some remaining loopholes that were closed by President Obama in February 2016, US.

## Next steps

- The EU should ensure that the Employer Sanctions Directive is implemented to its full extent, especially when it comes to accountability of legal entities / objective responsibility.
- The EU should also look into how existing laws apply to supply chain liability.
- The EU and its Member States should make more use of existing laws governing the responsibilities of legal entities to prosecute perpetrators.
- Firms that hire workers from Labour Market Intermediaries (LMIs) should be also held responsible for labour exploitation. There is a need for clear national definitions of LMIs, trafficking and labour exploitation, improved data collection, and increased coverage of LMIs who are registered, licensed and/or certified. Social partners should be supported in increasing their membership, which vulnerable workers should also be able to join.
- Member States should prosecute perpetrators from a criminal law approach as a human rights violation) and not a civil law perspective.
- The EU and its Member States should create grievance mechanisms in line with EU Council Conclusions on business and human rights (20 June, para 17).
- EU Member States should implement the Resolution on global supply chains adopted at the 105<sup>th</sup> International Labour Conference (June 2016).
- Member States and business should raise awareness of labour exploitation among workers including translating relevant information material.
- Member States should provide victims with easier access to court proceedings. This tends not be an option for irregular migrants who especially have no access to criminal justice proceedings.
- Leading global companies should provide strong leadership to better combat exploitation and the further erosion of workers' rights.
- There is poor compliance with regulations and legislation is poorly enforced. Member States and social partners should therefore carry out more monitoring with collective agreements in certain sectors.
- Governments should consider introducing legislation on grievance mechanisms at operational levels.