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Guidelines to prevent abusive recruitment, exploitative employment and trafficking of migrant workers in the Baltic Sea region

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Foreword

The Guidelines to Prevent Abusive Recruitment, Exploitative Employment and Trafficking of Migrant Workers in the Baltic Sea Region is the culmination of the project "ADSTRINGO − Addressing Trafficking in Human Beings for Labour Exploitation through Improved Partnerships, Enhanced Diagnostics and Intensified Organisational Approaches". The project is implemented by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) together with the Ministry of the Interior of the Republic of Lithuania, the University of Tartu in Estonia and the Council of the Baltic Sea States Task Force against Trafficking in Human Beings (CBSS TF-THB).

The aim of these guidelines is to address and tackle the different forms of exploitation and trafficking of migrant workers in the Baltic Sea Region that were identified as problematic in the joint ADSTRINGO research report "Exploitation of Migrant Workers in Finland, Sweden, Estonia and Lithuania. Uncovering the Links between Recruitment, Irregular Employment Practices and Labour Trafficking". In addition, many of these problematic practices and issues have been identified and discussed in the national experts meetings which have been organised under the ADSTRINGO umbrella in Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Sweden, as well as in Poland and Russia. The guidelines have been produced in English and translated to the four other project languages Finnish, Swedish, Estonian and Lithuanian. Ultimately, it is our hope that the guidelines will be utilised in efforts to prevent trafficking for forced labour and to protect the rights of migrant workers in the different countries in the Baltic Sea region. In order to achieve best possible impact a shorter and easy to use version of these guidelines is available for practitioners in the five project languages.

The authors and the ADSTRINGO partners would like to thank all the national and international actors who have been involved in the project activities, events as well as national and international expert meetings. A special thanks also to the CBSS TF-THB delegates for their efforts in implementing this project in the CBSS Member States. We would also like to thank all the experts who attended the two expert meetings organised in Stockholm and Vilnius to discuss the guidelines for their insightful ideas and suggestions in developing this document (they are listed in Annex 1). Finally, we especially would like to thank Aimée Comrie, Mike Dottridge, Astrid Ganterer, Katharine Jones, Natalia Ollus, Klara Skrivankova and Neill Wilkins for their thoughtful comments and help in finalising the guidelines and Matti Joutsen for language editing.

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Introduction

Background

Over the past decades the labour market has been changing in most countries of the world, including in Europe and in the Baltic Sea region. Increased competition and restructuring of work production is pressing down prices both nationally and internationally. All of this has affected how work is organised and contracted out in today's societies. Nowadays especially low-skilled and low-paid jobs are built on an increasingly flexible work force which consists to a large extent of migrant workers, who undertake work that no-one else wants to do. These workers can be especially vulnerable to discrimination and to exploitative practices, including trafficking for forced labour.

International sources suggest that trafficking for the purpose of forced labour is on the increase globally, at least when measured by the number of victims identified by the authorities and other organisations.[1] The International Labour Organization (ILO) estimates that 21 million individuals are trapped into situations akin to slavery, forced to work or trafficked globally; 610,000 of them are victims of forced labour in the European Union.[2] People are abused, exploited and trafficked to supply unpaid or very low-paid work and/or services without receiving any remuneration and while being kept in conditions contrary to human dignity. The lost income i.e. unpaid wages and recruitment fees suffered by workers who are victims of forced labour amounts to 21 billion USD, according to an ILO 2009 estimate.[3]

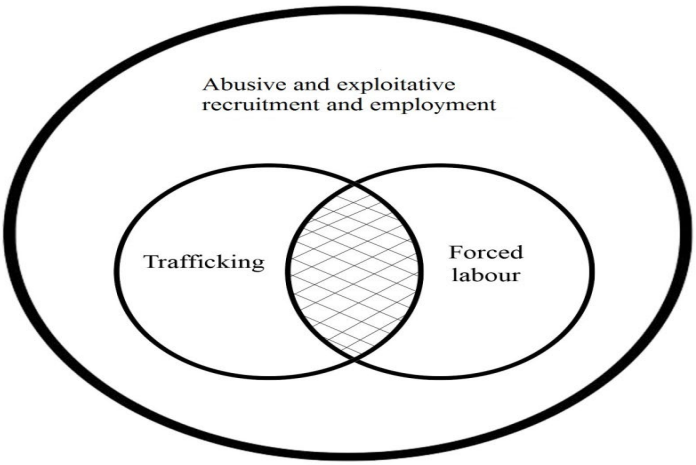
Empirical evidence across the globe indicates a strong correlation between abusive recruitment and employment practices and trafficking for forced labour (see Figure 1). This holds true also in the Baltic Sea region.

[1] UNODC (2012): Global Report on Trafficking in Persons. Vienna: UNODC; IOM (2012): Counter Trafficking and Assistance to Vulnerable Migrants. Annual Report of Activities 2011. IOM.

[2] ILO (2012): ILO 2012 Global Estimate of Forced Labour. Regional Factsheet European Union.

[3] ILO (2009): The Costs of Coercion. ILO.

Figure 1. Trafficking, forced labour and exploitation



Recent research findings from Finland, Sweden, Estonia and Lithuania confirm that it is not uncommon for migrant workers to pay exorbitant fees for recruitment, travel, accommodation and other "services", and to be deceived about working conditions. These workers often end up in situations of labour exploitation, especially in sectors employing low-skilled, low wage, seasonal, part-time, precarious workers, often agency workers (e.g. in the cleaning, construction, restaurant and agricultural sectors). People often move along a continuum of exploitation in which they experience a wide range of abusive situations from poor living conditions to long working hours with very low wages, to more severe forms of exploitation such as trafficking for forced labour. Table 1 summarises the different forms of abuse, exploitation and forced labour encountered.

This is why, to be effective, prevention needs to address those multiple violations of the law (especially labour protection standards), which are more easily detectable and are often precursors to trafficking.[4] Promoting equality and labour rights for all workers is thus the most efficient way of improving the general standards of employment, which will also enhance the situation of the most vulnerable workers. [5]

[4] David, Fiona (2010): Labour Trafficking. AIC Reports Research and Public Policy Series 108. Australian Institute of Criminology, 60.

[5] Ollus et al. (2013): Exploitation of Migrant Workers in Finland, Sweden, Estonia and Lithuania: Uncovering the links between recruitment, irregular employment practices and labour trafficking. HEUNI Publication Series No. 75.

Table 1. Examples of abusive and exploitative recruitment and employment practices encountered by migrant workers

- Violence and threats
- Confiscation of passports, identity cards, bank cards, work permits
- Underpayment or non-payment of wages
- Debt bondage
- Secret contract clauses, illegal salary deductions and overcharged loans
- Overpricing of accommodation, food, transport and other items
- Controlling freedom and movement of worker
- Irregular deductions from wages for tools, mandatory certificates etc
- Excessively long working hours with no overtime compensation, mandatory allowances for evening, night and weekend work
- Denying the right to holiday and holiday compensation
- Isolation, denying contacts with others and with family members
- Denying access to language courses
- Threats of dismissal, of reporting the worker to authorities, of returning the worker back to country of origin,
- Threat of providing insufficient working days/hours to secure minimum income for the renewal of the work permit
- Charging illegal recruitment fees
- Deception over the contents of work, contracts, terms of employment and work permits
- Denying the right to join trade union
- Provision of unsafe and unhealthy working and living environment
- Denying access to medical care

These findings create the background context for the development of the Guidelines to prevent abusive recruitment, exploitative employment and trafficking of migrant workers. The Guidelines were developed in the framework of the ADSTRINGO project, "Addressing trafficking in human beings for labour exploitation through improved partnerships, enhanced diagnostics and intensified organisational approaches".[6] This is a transnational project coordinated by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) and has been carried out in nine countries in the Baltic Sea region.[7] The project partners are the Ministry

[6] EC project HOME/2011/ISEC/AG/4000002202. The project is being carried out with the financial support of the Prevention of and Fight against Crime Programme European Commission – Directorate-General Home Affairs and it is a flagship project of the European Union Strategy for the Baltic Sea Region (EUSBSR) in line with the priority area focusing on the prevention of trafficking in human beings in the region.

[7] Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway and Sweden.

of the Interior of the Republic of Lithuania, the University of Tartu in Estonia and the Council of the Baltic Sea States' Task Force against Trafficking in Human Beings (TF-THB), which coordinated a parallel project in Poland and in the Russian Federation. [8]

Objectives

These Guidelines provide action-oriented recommendations and practical guidance to enhance prevention of trafficking for forced labour, especially through addressing the specific mechanisms that foster abusive and exploitative recruitment and employment of migrant workers in the Baltic Sea region. More specifically, they intend to contribute to:

- Promoting decent work and protecting fundamental rights at work,
- Strengthening enforcement of existing labour standards, especially in sectors prone to exploitation and employing migrant labour,
- Fostering a level playing field for ethical recruiters and employers,
- Promoting strategic partnerships among public authorities, businesses, trade unions and NGOs in the prevention of abuse and exploitation at national, regional and international level.

Methodology: evidence-based policy making

The Guidelines are based on solid research and empirical evidence gathered in the course of two HEUNI research projects[9] on the exploitation and trafficking of migrant workers in the Baltic Sea region, as well as on other research conducted in the region.[10] Research findings map the vulnerabilities, factors, methods and channels that may increase risks of crime and exacerbate vulnerability to abuse and exploitation. They provide practical insights on the

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[8] Project activities in Poland and Russia are implemented with the support of The Swedish Institute and the Danish Ministry of Gender Equality and Ecclesiastical Affairs.

[9] Jokinen et al. (2011a): Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia. HEUNI Report 68; Ollus et al. 2013, op. cit.

[10] Ryazantsev, Sergei (2014): Trafficking in Human Beings for Labour Exploitation and Irregular Labour Migration in the Russian Federation: Forms, Trends and Countermeasures. The Council of the Baltic Sea States; Lasocik et al. (2014): Trafficking in Human Beings for Labour Exploitation in Poland: Legal Regulations, Trends and Countermeasures, CBSS, forthcoming publication; Mygind Korsby, Trine (2011): Menneskehandel i rengøringsbranchen? En kvalitativ undersøgelse af migrations- og arbejdsvilkårene for en gruppe migrantarbejdere i Danmark. Servicestyrelsen; Lisborg, Anders (2011): Menneskehandel i den grønne sektor? En undersøgelse af migrations- og arbejdsvilkårene for migrantarbejdere i landbrug og gartneri i Danmark. Servicestyrelsen.

functioning and enforcement of labour and migration laws and regulations, as well as criminal law on trafficking and related crimes. This knowledge and evidence served to identify critical issues and to inform the design of practical measures to prevent and address labour exploitation and trafficking.

The Guidelines build also on a desk analysis of recent literature on ethical recruitment and labour trafficking by a number of research institutes, businesses, international organizations and NGOs. These include the Institute for Human Rights and Business' Dhaka Principles for Migration with Dignity, the European Commission Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, and the Verité Fair Hiring Toolkit.[11] Furthermore, the 'protect-respect-remedy' framework of the UN Guiding Principles on Business and Human Rights underpins the guidelines.

In addition, two experts meetings were convened to consult main stakeholders from the Baltic Sea region and other European countries. Experts included labour inspection authorities, licensing authorities, law enforcement, recruitment and employment agencies representatives, employer associations' representatives, trade union representatives, NGOs, migrant service providers and experts from international organisations (See Annex 1).[12] Experts discussed the draft guidelines and contributed examples of relevant practices and initiatives.

Scope

The Guidelines provide a framework that allows national stakeholders to select, develop or strengthen a number of preventative policies to address exploitation that arises in the recruitment and employment of migrant labour. To this end, they provide key evidence-based recommendations and discuss considerations in their implementation. The guidelines are especially focused on addressing abusive and exploitative practices in the following sectors: cleaning, restaurants, and agriculture.[13] Yet, most of the issues discussed and addressed are relevant also for other economic sectors prone to exploitation, such as construction and domestic work.

The Guidelines mainly focus on addressing abuses that arise in the process of recruitment of and employment of migrant workers, with a specific focus on

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[11] IHRB (2012): The Dhaka Principles for Migration with Dignity. Available online at: http://www.dhaka-principles.org (accessed on 22 April 2014); European Commission (2013): Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights. IHRB & Shift 2013; Verité (2011): Fair Hiring Toolkit. Available online at: https://www.verite.org/helpwanted/toolkit). (accessed on 22 April 2014).

[12] Expert consultation meetings were held in Stockholm on 11–12 December 2013 and in Vilnius on 12–13 March 2014; see Annex 1 for list of experts consulted.

[13] These sectors were specifically investigated in the ADSTRINGO research.

the role of private employment agencies, and of employers operating in the above-mentioned sectors. When examining recruitment practices, the guidelines refer both to cases when workers are recruited from abroad and to cases when migrant workers are recruited while already resident in the country. Although the guidelines mainly refer to migrant workers − both EU/EEA citizens and third country nationals − it is important to note that the vast majority of measures are relevant and applicable to all workers.

Given the variety of private agencies involved in the recruitment and employment sector, we use the term "Private Employment Agencies" in line with ILO standards to refer to actors involved in selecting and recruiting workers who are then employed by a business, actors who recruit and employ workers and place them in a user enterprise which supervises the working activity but has no contractual relationship with the worker, as well as actors providing other services related to job seeking.[14] This is the reason why the guidelines include some specific measures to tackle abuse and exploitation in the workplace.

The guidelines are evidence-based and focus on the main critical issues identified in the research. The issues and topics related to labour trafficking are quite complex and include many dimensions such as child trafficking that could not all be assessed by the guidelines. The guidelines call for a mainstreamed gender-sensitive approach in their implementation, yet they do not detail gender specific measures. The guidelines also do not examine European mobility schemes and the mechanisms related to social dumping, exploitation of posted workers and bogus self-employment, facilitated and encouraged by recruitment agencies. There is no discussion of issues related to the return of migrant workers.

Target group

Like many challenging issues, the prevention of exploitation and trafficking of migrant workers requires actions by a variety of actors ranging from states to businesses, employers' associations, trade unions and NGOs. More specifically the guidelines are addressed to the following actors in the Baltic Sea region:

- Policy makers and decision-makers in the Ministries of Labour, Justice, Home Affairs and Foreign Affairs,
- Top management of private employment agencies and their sector associations,
- Top management of businesses operating in the cleaning, agriculture and restaurant sectors and their sector associations,
- Representatives of trade unions, especially those operating in

[14] ILO, Private Employment Agencies Convention, C181, Art.1. See definition in the "Key terms".

the sectors of agriculture, cleaning, restaurants and agency work,

- Representatives of NGOs, especially migrant rights groups, migrant service providers and anti-trafficking NGOs.

The Guidelines target this diverse group of stakeholders and intend to assist them in making informed decisions as they develop country-specific policies and interventions to prevent labour trafficking and exploitation of migrant workers. These guidelines serve also to promote more effective action and collaboration between these different actors.

Structure and summary of the document

These Guidelines are based on international standards on trafficking in human beings and on the UN Guiding Principles on businesses and human rights. They are articulated in a set of key principles and four main sections addressing the main stakeholders and calling for cooperation amongst them. The four main sections of the Guidelines are:

- Guidelines for States to prevent abusive and exploitative recruitment and employment practices;
- Guidelines for businesses: Due diligence to prevent abuse and exploitation;
- Guidelines for states, business, trade unions and civil society: Joining efforts to protect the rights of migrant workers;
- Multidisciplinary cooperation and coordination at international level.

Each chapter includes a number of operational guidelines and practical measures organised thematically, in other words they are issue-based. A commentary on the rationale of the measures proposed and the key contextual factors they intend to address supports each guideline. In addition, examples of innovative and/or promising practices - especially from countries in the Baltic Sea region - have been included to foster the exchange of information and experiences, and to encourage national stakeholders to further develop their practices.

Chapter 1 illustrates the key principles and standards that apply in the design and implementation of all policy interventions and practical recommendations included in these guidelines. They are six fundamental standards, which call for mainstreaming a human rights and gender sensitive approach, and reiterate the States obligation to act with due diligence in protecting human rights, as well as the business responsibility to act with due diligence in respecting human rights. Moreover, they include the principle of equality and non-discrimination and the principle of protection of migrant workers by the employment law in the place where the work is performed.

Chapter 2 provides guidelines for States to fulfil their obligations to prevent trafficking for forced labour and protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. The guidelines address specific issues in labour market policies and regulations that give rise to vulnerability to exploitation and trafficking of migrant workers. These relate to: establishing clear, transparent and proportional regulation of labour providers; conducting targeted, systematic and thorough field visits and inspections to monitor and enforce the law in sectors prone to exploitation (agriculture, especially berry picking, cleaning and restaurants), and applying effective and proportional sanctions to address those unlawful conducts that occur along the continuum from decent work to forced labour /trafficking and that often constitute the precursor practices of trafficking.[15] Then the Guidelines address the role of States in providing effective guidance to businesses on how to prevent exploitation and trafficking. They deal with ethical public procurement policies and transparency and accountability in labour supply chains with a view to promoting ethical recruitment and employment.

Chapter 3 provides guidelines for businesses with regard to their responsibility to respect human rights, and more specifically to ensure that they are not involved in trafficking in human beings, nor do they aid or abet trafficking. The Guidelines put forward measures businesses should consider when developing their own self-regulation on ethical recruitment and employment of migrant workers, including for example no-recruitment fee costs for workers, transparency of services, written contracts, more specific measures to manage potential risks of abuse, and grievance mechanisms. The third set of measures in this chapter relates to self-regulation to prevent abuse and exploitation in the workplace and in labour supply chains, including for example mapping the risks and screening sub-contractors, requiring that their subcontractors respect labour standards and adhere to their code of conduct; and introducing specific termination clauses in case of detection of exploitative practices.

Chapter 4 is focused on the protection of rights of migrant workers. The Guidelines here address simultaneously multiple stakeholders (i.e. States, businesses, trade unions and NGOs) to underline that joint action is essential to ensure decent work and prevent exploitation. The first set of measures aims at empowering migrants through awareness about their rights and obligations and practical information and about concrete opportunities, realistic benefits, and potential risks in the migration process. It continues outlining measures to strengthen protection of fundamental rights at work, outreach and support services for migrant workers at destination. Then, the focus of the guidelines is on measures to enable migrants to enjoy effective access to remedies. The

[15] Skrivankova, Klara (2010): Between Decent Work and Forced Labour: Examining the Continuum of Exploitation. Joseph Rowntree Foundation.

concluding part of the chapter relates to more systemic issues to enable protection of migrants' rights and ensure policy coherence.

Chapter 5 puts forward guidelines for further developing bilateral, regional and international cooperation in the prevention of trafficking for labour exploitation. The measures relate mainly to labour protection agreements for low-skilled workers between sending and receiving countries, strengthening cross-border cooperation between trade unions and NGOs, among private employment agencies and their business associations, as well as among labour inspectorates and other law enforcement agencies.

Table 2. Key terms used in this document

Term	Meaning in this Guideline
Trafficking in persons for forced labour	It means "the recruitment, transportation, transfer, harbouring or receipt of 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. Exploitation shall include […] forced labour or services, slavery or practices similar to slavery, servitude [..]"[16]
Migrant worker	"a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."[17]
Forced labour	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."[18]
Grievance	It refers to "a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinised, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought[19]
Private Employment Agency (PrEA)	It refers to "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, (referred to as a "labour user") which assigns their tasks and supervises the execution of these tasks; (c) other services relating to job seeking.[20]

[16] UN Protocol to Prevent, Suppress and Punish; Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, art. 5
[17] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 2
[18] ILO, Forced Labour Convention, 1930, N.29, art.2.
[19] Human Rights Council (HRC) (2011): Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, para. 25.
[20] ILO Convention on Private Employment Agencies C181, 1997, Art.1

Chapter 1. Key Principles and Standards

The following key principles and standards should inform all policies and practices of preventing exploitation and trafficking of migrant workers and of protecting their rights.

1. A human rights-based approach

The primacy of human rights is an overarching principle that shall guide and inform all anti-trafficking interventions. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. [21] Anti-trafficking measures shall not adversely affect the human rights or dignity of persons, in particular the rights of those who have been trafficked, or of migrants, internally displaced persons, refugees and asylum-seekers.[22]

A human rights-based approach shall also inform migration policies, laws, regulations, and organizational frameworks, ensuring respect for the human rights of migrants and recognizing that migrants, especially those in an irregular situation, are particularly vulnerable to human rights violations and abuses.[23] The human rights approach shall also be gender sensitive. All policies and actions should therefore adequately take into account how men and women are differently affected by trafficking and migration, including differences and similarities in relation to their vulnerabilities and to the impact on them. All policies and actions should also avoid exacerbating existing inequalities and strive to empower and promote gender equality.

2. States shall act with due diligence to respect, protect and fulfil human rights, and in particular States are responsible for preventing trafficking in human beings, investigating and prosecuting traffickers, and for assisting and protecting trafficked persons.[24]

States shall prevent trafficking in human beings through the adoption of laws, which fully criminalise such conduct, provide for its effective prosecution and

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[21] UN OHCHR (2010): Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary, Principle 1, 49–74.

[22] Ibid., Principle 3, 83–94.

[23] UN OHCHR advocates for a human rights based approach to international governance of migration which can be understood "as a process in which the combined framework of legal norms and organizational structures regulate and shape how states act in response to international migration, addressing rights and responsibilities and promoting international cooperation". UN OHCHR (2012): Migration and human rights. Improving Human Rights-Based Governance of International Migration, 9.

[24] Ibid., 75 and for an illustration of the due diligence standard see 75–82.

punishment,[25] and for effectively protecting the rights of trafficked persons. States shall also take a wide range of other actions aimed at preventing trafficking in human beings, such as measures to address vulnerability to trafficking (e.g. related to inequality, poverty, discrimination etc.), measures to address demand, and measures to address corruption and complicity.[26] In addition, recent jurisprudence of the European Court of Human Rights has established that the positive obligations of States include:

- Establishing legislation adequate to ensure the practical and effective protection of the rights of victims and potential victims of trafficking;
- Carrying out effective investigations of potential trafficking including of the recruitment aspect;
- Putting in place adequate measures to regulate businesses used as a cover for trafficking or that benefit from it by acting recklessly;
- Establishing immigration rules that address relevant concerns relating to encouragement, facilitation or tolerance of trafficking.[27]

[25] Prohibition of trafficking in human beings is established i.a. in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, art. 5; in the Convention on the Elimination of All Forms of Discrimination against Women, art.6; in the Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197), art. 18; EU, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (5 April 2011), art.2-5; EU Charter of Fundamental Rights (art. 5). The ECHR in its art. 4 prohibits slavery, servitude and forced labour and although it does not specifically mention THB, the jurisprudence of the ECtHR has clarified that trafficking falls within the scope of art. 4 (Rantsev Case, Para 282). Furthermore, there are several other relevant international treaties including: Slavery Convention, 1926, ILO, Convention Concerning Forced and Compulsory Labour, N. 29, 1930; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1956; ILO, Convention Concerning the Abolition of Forced Labour N. 105, 1957.

[26] UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime, (Trafficking Protocol) Art. 9-13. CETS 197 Art 5-9. EU, Directive 2011/36/EU art. 18. See also UN ECOSOC (2002): Recommended Principles and Guidelines on Human Rights and Human Trafficking, principles 1-6 and guidelines 1, 3, 4, 5 and 7.

[27] ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, 7 January 2010, Para 284, 306. See also Piotrowicz, R (2012): States' Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations. International Journal of Refugee Law: Volume 24. Issue 2, 181−201.

3. All workers shall be treated equally and without discrimination.[28]

All workers have the right to equality and non-discrimination on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, gender identity or place of residence.[29] "Migrant workers should be treated no less favourably than other workers performing the same or similar work."[30] States shall ensure protection from discrimination in the employment and occupation of migrant workers. Protection of fundamental rights at work shall be extended to all migrant workers in the country without discrimination, and, in particular, regardless of their status and place of recruitment.[31]

4. All migrant workers shall enjoy the protection of employment law.[32]

"Migrant workers should have a legally recognised employment relationship with an identifiable and legitimate employer in the country where the work is performed."[33] In other words, migrant workers shall receive a written contract, which clearly identifies their employer(s), shall enjoy the protection of core labour standards and the right to seek remedies in case of abuse and/or exploitation regardless of their residence status.[34]

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[28] IHRB 2012, op. cit., Core Principle A.

[29] Universal Declaration of Human Rights, art. 2; International Covenant on Civil and Political Rights (ICCPR), art. 2 and 26; International Covenant on Economic, Social and Cultural Rights (ICESCR), art.2(2). International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), art. 1and 5; International Convention on the Protection of the Rights of All Migrant Workers (ICRMW) art.7; International Convention on the Elimination of All Forms of Discrimination against Women, art. 4, 11; European Convention on Human Rights (ECHR) art. 14; EU Charter of Fundamental Rights (art. 21). See also EU Directive 2000/43/EC on Racial Equality and EU Directive 2000/78/EC on Employment Equality as well as Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for person eligible for subsidiary protection and for the content of the protection granted.

[30] IHRB 2012, op. cit.

[31] Protection against discrimination in respect of employment and occupation is a core principle of the ILO Declaration on Fundamental Principles and Rights at Work. Available online at: http://www.ilo.org/declaration/lang--en/index.htm (accessed on 22 April 2014).

[32] IHRB 2012, op. cit., 9, Core Principle B. In addition, the ICCPR establishes the principle of equality before the law and of equal protection of the law without discrimination (art.26).

[33] IHRB 2012, op. cit., 9, Core Principle B.

[34] The ILO Declaration on Fundamental Principles and Rights at Work Declaration covers four fundamental principles and rights at work: 1. Freedom of association and the effective recognition of the right to collective bargaining (ILO, Freedom of Association and Protection

5. Businesses, including Private Employment Agencies (PrEAs), shall be responsible for acting with due diligence in respecting human rights.

Businesses have a corporate responsibility to respect human rights, and they should develop policies and processes appropriate to their sizes, circumstances and operational contexts to fulfil this responsibility, including:

- "A policy commitment to meet their responsibility to respect human rights;
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."[35]

6. Cooperation and coordination among multiple stakeholders

Public authorities, NGOs, trade unions, migrant rights organisation and businesses and other relevant stakeholders are to work together in cooperation and coordination at national and international levels to effectively deal with the multiple and complex challenges posed by exploitation and trafficking of migrant workers. Public institutions, civil society and the private sector - especially police, prosecutors, immigration, labour inspectorates, health authorities, NGOs, trade unions, businesses, trade bodies and Private Employment Agencies PrEAs, should therefore systematically cooperate in the prevention of trafficking and in the protection of rights of trafficked and exploited workers at national and local level. Furthermore, given the regional and global nature of trafficking, cooperation and coordination are particularly crucial between countries of origin, transit and destination. [36]

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of the Right to Organise Convention, 1948, N.87; ILO, Right to Organise and Collective Bargaining Convention, 1949, N.98); 2. Elimination of all forms of forced or compulsory labour (ILO, Forced Labour Convention, 1930, N.29; ILO, Abolition of Forced Labour Convention, 1957, N. 105); 3. Effective abolition of child labour (ILO, Minimum Age Convention, 1973, N.138; ILO, Worst Forms of Child Labour Convention, 1999, N. 182); 4. Elimination of discrimination in respect of employment and occupation (ILO, Equal Remuneration Convention, 1951, N.100; ILO, Discrimination Convention, 1958, N.111). See also IHRB 2012, op. cit., 9.

[35] HRC 2011, op. cit., Principle 15.

[36] UN OHCHR (2010): Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 11.

Chapter 2. Guidelines for States to prevent abusive and exploitative recruitment and employment practices

In recent years the labour market has been changing and also in the Baltic Sea region there has been an exponential growth in flexible agency labour recruited domestically and abroad.[37] Furthermore, certain sectors of the economy have witnessed a rapid growth in the number of low-skilled migrant workers.[38] These workers are often employed in so-called 3D-jobs, i.e. dirty, dangerous and demeaning occupations and often exposed to discrimination and to abusive and exploitative practices, including their extreme forms such as trafficking, most frequently when employed in sectors such as agriculture, cleaning and restaurants.[39] Moreover, there is empirical evidence of a clear correlation between abusive recruitment, exploitation and trafficking for forced labour.[40]

This chapter focuses on action that States can and should take to respond to the growing dimension of trafficking for forced labour, and more broadly to the exploitation of migrant workers, with a particular focus on abusive and exploitative recruitment and employment practices.

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[37] According to the Eurociett report, temporary agency employment grew in all European countries during the last decade, despite declines experienced in most countries during the 2008–2009 crisis. Some of the most significant increases in agency employment in 2000–2008 took place in countries such as Poland, Finland and Germany due to changes and liberalization in the regulatory frameworks of temporary agency work. Voss et al. (2013): The Role of Temporary Agency Work and Labour Market Transitions in Europe: Institutional frameworks, empirical evidence, good practice and the impact of social dialogue. Eurociett /UNI Europa.

[38] In Finland the number of migrant workers in low-paid service sector positions has increased in the recent years. Asa & Muurinen (2010): Maahanmuutto työvoiman tarpeen täyttäjänä? Maahanmuuttovirasto & European Migration Network. In Sweden increasing numbers of work permits have been granted to third country nationals, who mainly work in the agricultural, restaurant and cleaning sectors. Quirico, Monica (2012): Labour migration governance in contemporary Europe. The case of Sweden. FIERI, 28–29. In Denmark a 2010 study by Rambøll revealed that 40 % of green card holders had found only unskilled jobs, and 60 % of those in work were only working part-time. Rambøll (2010): Integrationsministeriet undersøgelse af greencardordningen. The green card scheme allows skilled migrant workers permission to stay in Denmark for three years while searching for a job. Mortensen, Mia (2012): Greencard-indehavere i Danmark: En analyse af hvordan arbejdsmigranter fra tredjelande forstår og praktiserer at være i Danmark på greencard. Roskilde Universitet.

[39] Jokinen, Anniina & Ollus, Natalia (2013): Recruitment, Exploitation of Migrant Workers and Labour Trafficking in Finland, Sweden, Estonia and Lithuania: Introduction and Research Findings. In Ollus et al. 2013, op. cit., 9-30; Mygind Korsby 2011, op. cit.; Lisborg 2011, op. cit.; Jokinen et al. 2011a, op. cit.; Ollus et al. 2013, op.cit.; Ryazantsev 2014, op. cit.; Lasocik et al. 2014, op. cit.

[40] Ollus et al. 2013, op. cit.; IHRB (2013): Fees and IDs: Tackling recruitment fees and confiscation of workers passports. IHRB; Verité (2010): Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy. Regional Report – Immigrant Workers in US Agriculture. The Role of Labor Brokers in Vulnerability to Forced Labor.

In line with international standards on trafficking in human beings and with the UN Guiding Principles on Business and Human Rights, the measures suggested in this chapter should be considered in the context of the state's obligations to prevent trafficking in persons and protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. On the one hand, these measures attempt to address specific key issues and structural factors in labour market policies and regulations that give rise to vulnerability to exploitation and trafficking of migrant workers.[41] On the other hand, these measures intend to promote a level playing field for businesses and emphasise the role of States in guiding business enterprises on how to ensure respect of human rights and how to prevent exploitation and trafficking.[42]

In line with these objectives, the chapter starts by providing operational guidelines to regulate the activities of labour providers with a view to preventing abuse, exploitation and trafficking of migrant workers both during recruitment and in the workplace. Then, it offers strategic indications to detect and tackle common patterns of abuse and exploitation during recruitment and in the workplace through a combination of monitoring, enforcement and sanctioning. It concludes with a specific focus on measures to promote respect of human rights by businesses, including promoting ethical public procurement policies at all levels of state administration, and strengthening transparency and accountability in supply chains. Each of the eight operational guidelines comprising this chapter is accompanied by specific practical measures and a commentary on the rationale of the measures proposed and the key contextual factors they intend to address. In addition, examples of relevant practices complement the guidelines.

These operational guidelines are intended for action by States, primarily by the Ministry of Labour and its services such as labour inspectorates, but also by the Ministries of Interior, Justice, and Foreign Affairs, and more broadly by national and local public authorities and public sector organizations. Although States are the primary duty bearers in the prevention of trafficking, the successful design and implementation of their preventative action depends on the quality and scope of their cooperation with civil society, trade unions, businesses and other relevant stakeholders.

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[41] These factors include for example 'light touch regulation of businesses', in particular of labour providers, and immigration work permits linked to a single employer or other immigration regulation that increases precariousness and dependency of migrant workers. See, Allain et al. (2013): Forced Labour's Business Models and Supply Chains. Joseph Rowntree Foundation, 4, 16; See also Ollus & Jokinen 2013, op. cit.

[42] HRC 2011, op. cit., p. 8 on State regulatory and policy function.

2.1 Regulate labour providers i.e. Private Employment Agencies

→ States should introduce legislation to regulate the activities of Private Employment Agencies (PrEAs) and of informal labour providers through the introduction of a system of licensing or registration. Such legislative and policy initiatives should be developed in consultation with employers' and workers' organisations, comply with the ILO Private Employment Agency Convention C181[43] and other relevant standards,[44] and take into account the particular vulnerability of migrant workers to abuse.

2.1.1 Assign clear institutional responsibility

→ Regulation should clearly and precisely determine which public institution has institutional responsibility for licensing/registration, monitoring and enforcement of regulations on PrEAs.[45] Responsibility could be assigned to labour inspectorates or other specific institution with a mandate to monitor, investigate and enforce regulation.

2.1.2 Ensure transparency and clarity of requirements for compliance

→ The competent licensing/registration authority should establish a one-stop service that provides clear and easy-to-access information and assistance to businesses on how to comply with licensing/registering requirements, and other relevant regulations for the employment of migrant workers. Moreover, it should engage in wide dissemination and training to inform PrEAs about the requirements.

→ The competent licensing/registration authority should also maintain a public register of licensed or registered PrEAs, and ensure easy access to such information for both job seekers and labour users. It should also consider maintaining a list of non-complying PrEAs, and regularly analyse PrEAs compliance, publish statistics and identify trends and patterns of abuse.

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[43] See ILO Convention on Private Employment Agencies C181, 1997; ILO, R188 − Private Employment Agencies Recommendation, 1997 (No. 188); ILO, ILO Multilateral Framework on Labour Migration, 2006; ILO (2007), Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement.

[44] For example, the European Directive 2008/104/EC on Temporary Agency Work leaves it to Member States to decide on arrangements for the registration, licensing, certification and monitoring of temporary agency work, as long as these measures do not place disproportionate administrative burdens on businesses. Article 4.4.

[45] This is usually a service of the Ministry of Labour and hereinafter the reference shall be to the competent licensing/registration authority.

→ The competent licensing/registration authority should develop mechanisms and procedures to encourage labour users to actively seek information about their labour suppliers to better manage risks of non-compliance.[46]

2.1.3 Provide businesses with incentives for good performance

→ The competent licensing/registration authority should ensure that those PrEAs which maintain a good record of compliance enjoy some concrete benefits, such as quicker and easier procedures of licence/registration renewal, reduction in licensing/registration costs, extension of licence duration, waiver of renewal requirement, tax incentives, inclusion in a public list of law-abiding/recommended agencies etc.[47]

Rationale and context

Migrant workers in the Baltic Sea region are often recruited in countries of origin using personal relationships, social networks and on-line advertisements, as well as through unscrupulous Private Employment Agencies (PrEAs). Research found evidence of PrEAs charging excessive fees for recruitment, travel, accommodation, and deceiving workers about working conditions, wages, job typology, location and even recruiting for non-existing jobs etc. These deceptive practices often lead to situations of exploitation and debt bondage.[48] Research in Sweden and Finland also confirmed similar exploitative recruitment practices through which migrants were recruited from abroad or among those already residing in the country (especially asylum seekers) by unscrupulous middlemen and/or PrEAs taking advantage of their socio-economic vulnerability and lack of knowledge of language, rights and regulations.[49] It is precisely to prevent such fraudulent practices, which start at the time of recruiting migrant workers and increase their vulnerability to trafficking, that it is recommended to effectively implement international standards such as the ILO Convention C.181 and introduce measures to regulate and/or register PrEAs.

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[46] For example, business who uses agency labour may actively request the licensing/registration authority to be informed in case of licence revocation or other breach of licensing standards by their labour providers; they might also cooperate with the licensing/registration authority to identify at-risk labour suppliers. See UK Gangmaster Licensing Authority, Supplier/Retailer Protocol, (2013): 4.

[47] OSCE, ILO, IOM (2006): Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 50.

[48] Soo, Kadri & Markina, Anna (2013): Estonian Migrant Workers as Targets of Trafficking for Forced Labour and Labour Exploitation. In Ollus et al. 2013, op.cit., 238–304; Janušauskiene, Diana (2013): Lithuanian Migrants as Victims of Human Trafficking for Forced Labour and Labour Exploitation Abroad. In Ollus et al. 2013, op. cit., 305–356.

[49] Ollus, Natalia & Jokinen, Anniina (2013): "We've Got People Lined Up Behind the Door": Placing the Trafficking and Exploitation of Migrant Workers in Context in the Restaurant and Cleaning Sectors in Finland. In Ollus et al. 2013, op. cit., 31–170; Vogiazides, Louisa & Hedberg, Charlotta (2013): Trafficking for Forced Labour and Labour Exploitation in Sweden: Examples from the Restaurant and the Berry Industries. In Ollus et al. 2013, op. cit., 171–237.

Regulation should be clear, transparent and proportional and should avoid creating disproportional administrative burdens on businesses. It should also be targeted and consistently implemented thus ensuring accountability of all actors, including informal intermediaries. For example, the requirement that PrEAs and/or labour users demonstrate compliance could be realised by requesting that they provide a number of documents such as job advertisements, copies of work permits and job descriptions, payroll records, time sheets, workplace safety insurance certificates etc., depending on compliance requirements. These documents should serve to confirm that the actual job corresponds to the job offer, and that wage, overtime and appropriate social insurance and other contributions are paid.[50] In addition, document checks should be accompanied by targeted field visits and inspections.

Transparency should also be ensured by maintaining lists of licensed/registered PrEAs and making them publicly available on the Internet. Furthermore, such regulatory measures are also meant to contribute to creating a level playing field for this sector; regulation should establish concrete benefits and incentives that encourage and foster business compliance avoiding excessive administrative burden on business. This approach also allows focusing enforcement resources to monitor and detect informal and non-compliant PrEAs, including all actors – be they individual brokers or informal actors who mediate between individual job seekers and labour users. In all these activities, in most countries the role of the Ministry of Labour – with its labour inspectorates – is crucial, as they are usually designated as the competent licensing/registration authority.

Box 1. Russian Federation: public list of complying licensed businesses

The Labour Inspectorate in St. Petersburg in the Russian Federation publishes on its website a list of reliable companies which are licensed and for which no serious complaints have been received from workers. They also publish a list of companies that have been known for not paying or delaying the payment of wages, and/or for mistreating workers etc. The Labour Inspectorate also sends out SMS to registered migrants informing them about the possibilities to complain and seek assistance in case their rights are violated. In addition, the Labour Inspectorate arranges meetings with representatives of diaspora communities to inform them about labour rights and complaint mechanisms in case of abuse.[51]

2.2 Raise the costs of non-compliance: targeted sanctions

2.2.1 Ensure that workers are not charged fees for recruitment and placement

→ States should introduce legal provisions to ensure that migrant workers are not charged directly or indirectly any fees or costs for recruitment and placement, and ensure widespread dissemination of this information to the

[50] In Finland and Sweden the ADSTRINGO research found evidence that migrant workers accepted reduced wages or deductions from wages because they were made to pay the employer's share of social insurance and other contributions. Vogiazides & Hedberg 2013 op. cit., 196, 225; Ollus & Jokinen 2013, op. cit.

[51] ADSTRINGO expert consultation meeting in Vilnius 12–13 March 2014 See also the website of the labour inspectorate of St. Petersburg http://git78.rostrud.ru/news.shtml

public.[52] Furthermore, it should be illegal for employers to recover costs of recruitment and employment services from the migrant employees.

→ With a view to reducing costs of cross-border recruitment and risks of excessive charges on migrant workers, States should attempt to reduce their own administrative fees for issuance of visa and work permits, and try to simplify and render quicker procedures for recruitment and employment of migrant workers.[53]

→ States (e.g. through their Ministries of Labour) should introduce provisions to ensure that it is not legal to require migrant workers to provide unfair deposits or other unfair forms of bonds in case of earlier termination or non-completion of the work contract. Furthermore, States should also consider requiring PrEAs to provide insurance for migrant workers to cover financial losses stemming from the failure of an agency to meet its contractual obligations to them.[54]

2.2.2 Provide effective and proportional sanctions in order to deter non-compliance and unethical recruitment practices

→ States should establish a system of warnings and penalties for PrEAs engaging in exploitative practices and in other breaches of licensing/registration requirements and labour standards. Such penalties, depending on the gravity of the violation(s), could range from warnings to correct behaviour to administrative and/or criminal sanctions, including for example:

- Licence/registration revocation,
- Temporary suspension of PrEAs licence/registration in the specific low-skilled sector,
- Publication of name and address of the non-compliant PrEA on a public website for a specified time period,
- Temporary suspension of PrEAs licence/registration in a high-skilled sector,

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[52] See ILO C181 Art. 7 1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. See also EU, Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, art. 6.3.

[53] Martin, Philip (2012): Reducing Migration Costs and Maximizing Human Development. In Omelaniuk, Irena (ed.): Global Perspective on Migration and Development. IOM.

[54] See ILO (2006): ILO Multilateral Framework on Labour Migration, 25. Article 13.6 invites States to "consider establishing a system of protection, such as insurance or bond, to be paid by the recruitment agencies, to compensate migrant workers for any monetary losses resulting from the failure of a recruitment or contracting agency to meet its obligations to them".

- Temporary or permanent ban on business activity,
- Financial penalties,
- Ineligibility for participation in tenders for public contracts and/or for access to government-backed loans or subsidies.[55]

→ Competent licensing/registration authorities should ensure that before renewing a license or registration the record of the PrEA is reviewed to verify respect of compliance requirements, including provisions related to job offer conditions, labour protection standards and other relevant regulations when previously employing migrant workers.

2.2.3 Introduce a specific offence of fraudulent recruitment

→ States should consider introducing legal provisions to criminalize fraudulent recruitment, i.e. using deceptive means (e.g. materially false or fraudulent promises regarding employment) to recruit foreign labour for work in the home country or for work performed on government contracts abroad.

2.2.4 Provide effective and proportional sanctions in order to deter abusive employment practices conducive to exploitation

→ States should ensure effective sanctioning of abusive practice conducive to exploitation such as:

- systematic underpayment of wages (compared to minimum wage or collective agreement, or compared to quantity and quality of work provided) and late payment or withholding of wages,
- confiscation of passports or other identity documents,
- systematic violation of working hour regulations (overtime, paid leave etc.) and occupational health and safety standards,
- provision of unsuitable, degrading and unhygienic accommodation, and overpricing accommodation, food and transportation to work site,
- intimidation and threat of physical, pecuniary, moral or other penalty (e.g. threats of reporting the worker to the authorities for expulsion, denying workers contact with their family) including suspension or revocation of any national or regional public subsidy or aid.

[55] See ILO C181 Article 8.1.

Rationale and context

Empirical evidence gathered through research on recruitment, irregular employment practices and trafficking for forced labour in the Baltic Sea region[56] and beyond indicates that the payment of recruitment fees, which are all too often exorbitant and excessive, is repeatedly confirmed as the mechanism by which migrant workers are often trapped in debt-bondage. The principle of free job recruitment and placement services for job-seekers is internationally recognized and it is a crucial measure to prevent exploitation.[57] In cases where legislation allows charging workers with certain costs associated with international migration (e.g. related to visa, skills testing, medical checks and security clearance), it is recommended to establish a maximum amount for such costs to avoid migrant workers being overcharged and becoming vulnerable to exploitation, debt bondage and trafficking. To this end, tripartite consultations could lead to the definition of a maximum threshold (e.g. no more than one month's salary), payment modalities and to the introduction of a Model Service Contract for job seekers. It is also important to ensure that there is clarity about the type of services permitted that fall in the category of free recruitment and placement services (see Box 2).

Regulation of foreign labour providers requires also establishing proportional and effective sanctions and allocation of adequate financial resources and trained personnel to ensure consistent enforcement. At the same time, new regulation may pose challenges to businesses, which need to be addressed by providing adequate, easily accessible and clear information about the compliance requirements. Moreover, the competent licensing/ registration authorities should cooperate with businesses, guiding and supporting them in meeting compliance requirements and allowing them the opportunity to provide a justification and to document corrective actions taken before initiating civil or criminal prosecutions against them.[58]

Research findings in the Baltic Sea region and elsewhere in Europe reveal also that unscrupulous employers and intermediaries devise a wide variety of ways to control migrant workers so that they will work for no or almost no pay. Most of these unlawful conducts go undetected and unpunished, also due to a lack of effective sanctions.[59] By addressing systematically such violations, states can more effectively prevent future abuse and serious forms of exploitation. Furthermore, by focusing on those specific unlawful conducts that often constitute per se administrative, labour or criminal offences, law enforcement can better detect indications of trafficking in persons.

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[56] Ollus et al. 2013, op. cit.; Jokinen, Anniina & Ollus, Natalia (2014): "Tuulikaapissa on tulijoita": Työperäinen ihmiskauppa ja ulkomaalaisten työntekijöiden hyväksikäyttö ravintola- ja siivouspalvelualoilla. HEUNI Publication Series No. 76; Jokinen et al. (2011b): Work On Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland. In Jokinen et al. 2011a, op. cit.

[57] ILO, Private Employment Agency Convention C181, 1997, Art.7

[58] Andrees, Beate (2008): Forced Labour and Human Trafficking. Handbook for Labour Inspections. Geneva: ILO, 15.

[59] Ollus & Jokinen 2013, op. cit., 130; Ollus et al. 2013 op. cit.

Several European countries have introduced legislation that aims at addressing also those exploitative conducts that do not amount to trafficking in persons but contribute to fostering an environment conducive to slavery-like practices such as trafficking.[60] Furthermore, the EU Employer Sanctions Directive requires Member States to prohibit the employment of illegally staying non-EU nationals, and to provide for criminal penalties when there are particularly exploitative working conditions, i.e. "working conditions, including those resulting from gender based or other discrimination, 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". [61]

Box 2. Estonia and the definition of labour exchange services by court

In Estonia there have been several cases where job seekers have had to pay fees of several hundreds of euros to recruitment agencies for their services in securing jobs abroad, even though Estonian law prohibits this. According to Estonian law, labour exchange and posting of workers should be free of charge for jobseekers, and such services also involve giving information about the labour market situation, services and benefits. Unscrupulous agencies have tried to define their services as provision of information and/or consultancy services which include e.g. help in writing a CV, booking a job position, arranging an interview and filling out visa applications. By the judgment of Tallinn District Court no 3-10-2781, consultation, arrangement of transportation abroad and a job interview, and other management services are, however, elements of the labour exchange process. Also the arrangement of the reception of a job seeker in the target country is a component of labour exchange. Demanding fees for such services is thus illegal no matter how the contract between the job seeker and agency names such services.[62]

2.3 Ensure corporate liability for trafficking offences

→ States should ensure that jurisdiction is established over the offence of trafficking in human beings, where the offence is committed for the benefit of a

[60] For example, in Italy, the Security Law n.94 of 15 July 2009 introduces the offence of taking unfair advantage of the irregular status of a foreigner to rent accommodation at a disproportional market price, i.e. to make unfair profit. At: http://www.asgi.it/public/parser_download/save/legge.15.luglio.2009.n.94.pdf. (accessed on 23 April 2014). A similar provision is also foreseen in the Belgian Criminal Code, which criminalises abusing the vulnerability of others by selling, renting or providing property with the aim of making an abnormal profit. Centre for Equal Opportunities and Opposition to Racism (CEOOR) (2005): Annual Report Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights, 15. In Finland, the criminalisation of underpayment of wages has been suggested mainly by the trade union movement as a way of protecting the rights of workers. Ollus & Jokinen 2013, op. cit., 131.

[61] EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Art.2(i), Art.3, Art.9.

[62] Soo & Markina 2013, op. cit.

legal person (business) including when committed outside of their territory. Liability of a legal person shall be civil, criminal or administrative.[63]

Rationale and context

Research findings confirm that at times legal entities such as businesses are responsible for committing trafficking, or are associated with the commission of this serious offence through complex subcontracting schemes. Corporate liability in addition to the criminal liability of any natural person who commits trafficking is a mandatory requirement in international law on trafficking. The rationale of this provision is "to make commercial companies, associations and similar legal entities ("legal persons") liable for criminal actions performed on their behalf by anyone in a leading position in them".[64] The EU Directive on trafficking in persons provides that in order to ensure effective prosecution of trafficking, EU member states could establish jurisdiction also where "the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State".[65] In the Baltic Sea region, authorities in some countries have also been considering the possibility of extending and/or strengthening corporate liability to other offences related to the exploitation of work.[66]

2.4 Monitor and enforce standards of recruitment and employment in order to curb abuse and exploitation

2.4.1 Prioritise protection of migrant workers' rights over immigration control

→ Monitoring and enforcement activities should aim at protecting the fundamental rights of migrant workers at work and at preventing their abuse and exploitation. As such, authorities competent for reviewing compliance and labour protection standards should not be investigating the immigration status of workers but rather seeking to detect and address indications of labour exploitation.

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[63] UN Convention against Transnational Organized Crime, art. 10; Council of Europe Convention on Action against Trafficking in Human Beings (CETS 197), art. 22–23; EU, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Art.12–13.

[64] Council of Europe, Explanatory Report to the Convention on Action against Trafficking in Human Beings, para. 247.

[65] EU, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (5 April 2011), Recital 16, art. 10.

[66] Ollus & Jokinen 2013, op. cit., 130–131, 151.

2.4.2 Implement pre-departure and post-arrival measures in order to detect abusive practices

→ In countries of origin, States should assign responsibility to appropriate institution to conduct pre-departure checks to verify the legitimacy of the business/es involved in job recruitment and placement.

→ In countries of destination, States should assign responsibility to appropriate institution to conduct post-arrival checks to ensure the employer respected the job offer and provided the migrant worker employment in the same sector, and that wage and working conditions were essentially the same as those stated in the job offer.[67]

→ Furthermore, States should develop mechanisms to enhance accountability of foreign PrEAs operating in sectors prone to exploitation such as:

- Developing cooperation with authorities in the country of origin to exchange information and verify the legitimacy of the foreign company and its record of compliance with licensing and labour standards.
- Requesting the foreign PrEA to open a local branch to respond to the licensing/ registration authority, and be accountable to workers in case of abuses and exploitation.
- Inviting the foreign PrEA to come and meet the competent licensing/registration authority to familiarise with standards and regulations prior to deployment of migrant workers.

2.4.3 Strengthen the role and capacity of labour inspectors

→ States should strengthen the role of labour inspectorates and prioritise actions to prevent exploitation of migrant workers. To this end, States should ensure that the mandate of labour inspectorates or equivalent authority includes:

- Competence to carry out initial investigations into recruitment and employment practices to detect abuse and exploitation and power to refer cases to criminal justice institutions and/or labour courts,
- Monitoring of wage-related issues in sectors prone to exploitation (such as agriculture, cleaning, and ethnic restaurants) and in all workplaces where migrants are employed, and

[67] Dottridge, Mike (2011): Methods to Prevent Trafficking for Labour Exploitation: What to do and how. In OSCE: An Agenda for Prevention: Trafficking for Labour Exploitation. OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

- Competence to refer migrant workers/possible victims of exploitation and/or trafficking to assistance and support services to claim their rights.[68]

2.4.4 Invest in awareness-raising and capacity building of front-line officials

→ States should enhance awareness-raising and capacity-building activities of labour inspectorates, police, immigration, prosecutors and judges to detect and respond to indications of abuse, exploitation and trafficking of migrant workers.

2.4.5 Specialise and target inspection and enforcement activities

→ States should ensure that monitoring and inspection of recruitment and labour standards foresee:

- desk audits of PrEAs and labour users of migrant workers, as well as on-site visits, including visits without a warrant or prior notification,
- interviews with migrant workers (including where necessary with the assistance of an interpreter) and their representatives both on-site and/or in public offices or other places as well as interviews of employers and their staff,
- requests of relevant documentation, registers, and cross-checks of information with other relevant public authorities such as tax, custom and social security authorities, and
- gathering information from migrant rights NGOs and trade unions if relevant.[69]

→ States should ensure that monitoring and inspections pay particular attention to detecting situations of:

- deception, including false or fraudulent pretences or promises regarding the employment and working hours,
- illegal fees, overcharging costs for recruitment, accommodation[70] and transport,

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[68] For details on the mandate of labour inspectors, see ILO, Labour Inspection Convention No. 81 (1947); and ILO, Labour Inspection (Agriculture) Convention, No. 129 (1969). See also Dottridge 2011, op. cit.; Vanaspong, Chitraporn (2012): A case study of Thai migrant workers in Sweden. ILO, 31.

[69] ILO Convention No. 81; ILO Convention No. 129.

[70] In addition to costs of accommodation, competent authorities (be they local housing services, labour/health/social inspectors or municipalities) should also monitor and inspect the condition

- secret contract clauses, illegal salary deductions and overcharged loans from the recruitment agency and subcontractors or from the employer,
- retention of passports, identity or travel documents or bank cards,
- threats of penalties (including threat of providing insufficient working days to secure minimum income for the renewal of the work permit, and eviction from accommodation and), unfair threats of dismissal, and of reporting the worker to authorities or returning the worker back to the source country without delay and without pay etc.

→ States should enhance control and enforcement measures in cases of recruiting, placing and employing low-skilled migrant workers and prioritise labour inspections in sectors prone to exploitation and that employ significant numbers of migrant workers such as agriculture, cleaning, and ethnic restaurants. [71]

→ States shall take "all practicable measures"[72] to prevent debt bondage, including requiring that wages shall normally be paid directly and regularly to the individual worker.[73] States should also establish mechanisms to monitor and control payments of wages, which are made through non-cash transactions.[74]

Rationale and context

Policing and monitoring the recruitment and employment of migrant workers to ensure effective application of core labour standards is a central part of prevention and is essential to curb exploitation. To be effective, these efforts require prioritising labour protection over immigration control. In this regard, the ILO Committee of Experts on the Application of Conventions and Recommendations stated: "the primary duty of labour inspectors is to protect workers and not to enforce immigration law as a

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of collective accommodation (both dormitories, lavatories and kitchen) where migrant workers live, and which is often arranged by the employer.

[71] Ollus et al. 2013, op. cit.

[72] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, art.1.

[73] ILO Convention concerning Basic Aims and Standards of Social Policy, 1962 (No. 117), art. 11 (2), (3), (6). See also: ILO Protection of Wages Convention, 1949 (No. 95), which additionally prohibits methods of payment that deprive workers of the genuine possibility of terminating their employment

[74] Competent authorities must ensure that when food, housing, clothing, or other essential supplies and services are being used to pay the worker, their cash value is fairly assessed. Ibid., art 11 (7).

primary activity". Labour inspectors should therefore focus on the abusive working conditions to which irregular workers are most often subjected, and they should ensure that all workers benefit from statutory rights resulting from the employment relationship.[75]

Both countries of origin and destination have the responsibility to implement pre-departure and post-arrival measures to monitor the recruitment and employment of migrant workers and curb abuse of their rights. For example, in countries of origin, it is important to check the legitimacy of the Private Employment Agency (PrEA) and its sub-agents recruiting and/or employing workers overseas; while at destination post-arrival checks are crucial not only to verify respect for contractual obligations and actual payment of salaries but also to detect and tackle abusive and exploitative practices. Moreover, international labour standards specifically require states to establish mechanisms to monitor and control payments of wages, which are made through non-cash transactions. The rationale for this is to avoid abuse by the employers who may charge inflated prices for goods and services in lieu of wages and increase the dependency of the worker or foster a situation of debt bondage.

Ensuring adequate resources, a clear and comprehensive mandate and appropriate legal tools to monitor and enforce labour providers regulation and labour protection law is a fundamental premise to prevent abuse and exploitation. Indeed, conducting labour inspections to monitor the activities of PrEAs and ensuring enforcement of regulation requires additional resources, specific training, and often guidance and support to promote cooperation with national stakeholders and with counterparts in countries of origin. Furthermore, conducting labour inspections in places employing migrant workers also often requires additional resources to assist with interpretation services or to provide for transport to remote locations.

Detecting and addressing exploitation and trafficking of migrant workers therefore requires political will and mobilization of adequate state budget allocations for labour administration and adequate human resources to ensure that desk and field checks are thorough and systematic. Yet, considering that resources are often limited, strategizing is crucial. On the one hand, this may result in the establishment of a core group of specialized labour inspectors who can act as resource persons for the labour administration and assist inspectors in dealing with cases of exploitation and trafficking.

On the other hand, inspections need to be targeted and focus on sectors known to be prone to exploitation and employing large numbers of migrant workers. For example, in the agriculture sector labour inspections should be carried out especially during intensive picking season also in remote and isolated locations (e.g. through specialised mobile teams) where migrant labour is concentrated. In the cleaning industry inspections should focus especially on businesses employing large numbers of migrant workers and operating as sub-contractors for large-building owners, and they should be carried out especially at peak times of work e.g. late evening and early mornings. Similarly in the restaurant sector, monitoring efforts should focus especially on small and medium-size businesses not belonging to employers' associations, with a special focus on ethnic restaurants where exploitative practices have been encountered across

[75] Andrees 2008, op. cit., 36.

Europe.[76] Research also suggests that exploitation tends to occur in sub-contracted low-value adding activities, managed by mala fide players, which "tend to happen 'backstage', sometimes at night, and are generally less visible to observers, including other workers, managers and auditors".[77]

Cooperation between authorities such as labour, tax and social authorities, police and border guards, as well as with trade unions, NGOs and business association in detection and investigation of cases has brought good results in countries such as Belgium, the Netherlands, Finland and Poland. Indeed, such interagency cooperation can be very helpful in gathering intelligence about the recruiting methods of migrant workers, the routes and means of transport and the type of employment and accommodation at destination, as well as the related financial transactions. In other words this cooperation can help in informing and targeting monitoring and enforcement, as well as it can help in detecting PrEA activity disguised under other businesses.[78]

Box 3. Labour inspectors specialised in monitoring use of migrant labour, Finland

In Finland the Occupational Safety and Health Inspectorates of the Regional State Administrative Agencies have appointed a total of 17 labour inspectors to specially monitor the use of migrant labour. They do inspections particularly in the restaurant, cleaning, construction and agricultural sectors, focusing on companies that employ migrant workers. While inspections largely focus on making sure the employers have fulfilled their legal obligations, inspectors also try to interview the migrant employees to find out about potential problems. They also do inspections based on tips received from the public and other authorities, including inspections without prior notice. By law, labour inspectors are obliged to report certain labour violations and offences to the police. However, trafficking in persons for the purpose of forced labour is not included among these offences. This has caused discussion regarding the role and responsibilities of labour inspectors, especially since the specialised labour inspectors have been instrumental in uncovering several cases of exploitation of migrant workers, as well as trafficking for forced labour.[79] In 2012 at the explicit recommendation of the Finnish National Rapporteur on Trafficking in Persons, the Ministry of Social Affairs and Health developed guidelines for the labour inspectorates on the identification of victims of human trafficking including referral of potential victims to the official assistance system for victims of trafficking.[80]

2.5. Request that businesses comply with their corporate responsibility to respect human rights

→ The UN Guiding Principles on Business and Human Rights (UN GPs) indicate that, "States should set out clearly the expectation that all business

[76] Ollus & Jokinen 2013, op. cit.; Jokinen et al. 2011b, op. cit.; Dutch National Rapporteur on THB (2009): Trafficking in Human Beings – Seventh Report of the Dutch National Rapporteur. Bureau NRM; Scott et al. (2012): Experiences of Forced labour in the UK food industry. Joseph Rowntree Foundation; Kagan et al. (2011): Experiences of Forced Labour Among Chinese Migrant Workers. Joseph Rowntree Foundation.

[77] Allain et al. 2013, op. cit., 42.

[78] ILO (2005): Trafficking for Forced Labour. How to Monitor the Recruitment of Migrant Workers. Training Manual, 51–53.

[79] Ollus & Jokinen 2013, op. cit.

[80] Sosiaali- ja terveysministeriö: Ohje ulkomaisen työvoiman valvonnasta. STM/3424/2012.

enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations".[81] Businesses are expected not only to declare respect of human rights but also to know and show how they ensure such commitment wherever they operate. To this end, States should develop policies, laws, regulation and guidance to foster respect of human rights by business enterprises, and should make it clear that the exercise by businesses of a human rights due diligence process is a matter of legal compliance.[82]

2.5.1 Promote business self-regulation on ethical recruitment

→ States should encourage businesses, especially PrEAs that recruit, hire or employ migrant workers, to commit to ethical standards of recruitment (e.g. the Dhaka Principles for Migration with Dignity) and to implement relevant measures for the prevention of abuse, exploitation and trafficking of migrant workers.[83]

2.5.2 Promote and support businesses, especially Private Employment Agencies in acting with due diligence to ensure respect of human rights in recruitment and placement practices

→ States should promote understanding by businesses of how addressing and managing financial, legal and reputational risks related to exploitation and trafficking of migrant workers can help them become more successful in their business. To this end, States should develop a variety of resources and tools to raise awareness and capacity to practically support businesses, especially small-medium enterprises, in exercising due diligence, such as providing guidance, information, training, and disseminating good and promising practices to prevent abusive recruitment and exploitative practices of migrant workers.

2.5.3 Engage business associations in order to promote ethical standards of recruitment and employment

→ States should support the work of sector/trade associations assisting their members in implementation of the UN Guiding Principles on Business and Human Rights, and especially in the implementation of ethical standards of recruitment to prevent exploitation and trafficking in persons.

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[81] HRC 2011, op. cit., Principle 2.

[82] See for example UK Government (2013): Good Business Implementing the UN Guiding Principles on Business and Human Rights.

[83] IHRB 2012, op. cit. See also Box 11.

→ States should encourage and support National Recruitment Associations or other related trade bodies to promote good practice in ethical recruitment, especially amongst small medium enterprises.[84]

Rationale and context

In the context of the prevention of exploitation and trafficking by business enterprises, the most relevant applicable framework is provided by the 2011 UN Guiding Principles on Business and Human Rights (UN GPs). The measures here comply with the State duty to provide effective guidance to businesses on how to prevent exploitation and trafficking, starting with supporting them in assessing the legal, reputational and financial risks that they may encounter, raising awareness on business responsibilities and obligations, and sharing information on promising practices to tackle such risks and to ensure a human rights due diligence process throughout their operations. States should also facilitate the access of businesses to information about risks of exploitation and trafficking domestically and abroad, especially in the recruitment process of migrant workers. To this end, State diplomatic missions could facilitate businesses having access to information about legal requirements related to recruitment and labour protection in the foreign country; they could also assist businesses in making contacts with local authorities, business associations, trade unions and NGOs to help businesses in identifying, preventing, and mitigating risks of abuse, exploitation and trafficking of workers. States should especially encourage national recruitment associations or similar bodies to promote good practice for ethical recruitment amongst small medium enterprises, which might be vulnerable to additional risk by lacking adequately resourced human resources functions, knowledge, and which are more vulnerable to price inducements.

Moreover, the recent European Employment & Recruitment Agencies Sector Guide on Implementing the UN GPs provides detailed operation guidance for businesses in this sector, including to a certain extent in relation to the prevention of human trafficking.[85] It is also important for States to clarify their expectations with regard to what is intended as a due diligence process. Here the UN GPs provide that a human rights due diligence process by a business enterprise "should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."[86]

2.6. Promote ethical public procurement measures in order to prevent exploitation and trafficking of migrant workers

→ States should ensure that when purchasing goods, works and services all public sector organisations, including state-owned, controlled or supported

[84] For example, National Recruitment Associations could document and disseminate good practice in the implementation the code of conduct of the International Confederation of Private Employment Agencies (CIETT).

[85] European Commission 2013, op. cit. See also: Verité 2011, op. cit.

[86] HRC 2011, op. cit., para 17; see also para 18–21.

enterprises, have in place appropriate due-diligence procedures to guarantee respect of human rights wherever they operate, and can track and document their compliance in line with the UN Guiding Principles on Business and Human Rights.[87]

→ States should consider developing ethical procurement guidelines for use by public sector organisations in tenders for public contracts at international, national and local level. Guidelines should support the integration of **ethical criteria and social clauses** throughout their public procurement processes. Such criteria should receive due weight and inter alia include amongst their objectives the prevention of labour exploitation and trafficking. To this end, public contracting authorities could request their contractors' commitment to:

- Respect human rights and comply with domestic and international obligations set in labour, social and equality and non-discrimination law;
- Have in place an explicit policy commitment and corresponding processes to ban exploitation, forced labour and trafficking in human beings;
- Provide evidence of regular payment of workers' wages in line with the sector's collective agreement or other minimum wage standard and of compliance with occupational health and safety, and social insurance;
- Respect ethical standards of recruitment of migrant workers (e.g. Dhaka Principles for migration with dignity[88]);
- Inform public contracting authorities about whether they intend to subcontract any share of the contract to third parties and any proposed subcontractors.[89]
- Include in their sub-contracting contracts for goods and services a provision obliging the subcontractor (including a PrEA) to respect the sector's national minimum wage or collective agreement regarding the terms and conditions of employment; in case of more tiers of sub-contracting, the contractor should require that his or her subcontractors in the chain also require that their clients respect the minimum wage or collective agreement regarding the terms and conditions of employment, and workers' right to freedom of association;

[87] Ibid.

[88] See: IHRB 2012, op. cit.

[89] EU, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, Art. 71.2.

- Conduct due diligence process on its operations, including in respect to its supply chain partners to identify, prevent and mitigate risks of adverse human rights impact, including exploitation. [90] More specifically, when conducting due diligence process businesses should inter alia ensure that they and their partners do not engage in any of the following practices, e.g. withholding of identity or other worker's document, charging workers recruitment fees, overcharging costs for boarding, lodging and transportation; [91]
- Document that where abuses have been found in their operations or in those of their sub-contractors, all reasonable steps have been taken to prevent further violations of rights and standards throughout their supply chain, to provide remedy for abuses and to refer cases to the authorities where appropriate;[92]
- Report on their efforts to prevent exploitation and trafficking in their operations and in their supply chain;
- Have an independent social audit to provide evidence for compliance with human rights standards, social, labour and equality law,
- Fully cooperate with authorities in case of inquiries or investigations related to allegations of exploitation and trafficking for forced labour.

→ Furthermore, States procurement policies should include the following **exclusion criteria**:

- Exclusion from bidding of economic operators that have participated in a criminal organisation or have been found guilty of child labour, corruption, fraud, fraudulent recruitment, withholding of identity or other worker's document, non-payment of taxes or social security contributions;[93]

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[90] Ibid., para 79–86.

[91] Business enterprises should prioritise those partners on which they have leverage and on those which are crucial to their business. See UN Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises (2010): The Corporate Responsibility to Respect Human Rights In Supply Chains. 10th OECD Roundtable on Corporate Responsibility Discussion Paper, 30 June 2010, Para 10. See also HRC 2011, op. cit. 1 A/HRC/17/31, 2011 Para 17.

[92] A similar requirement is foreseen in the US President Executive Order - Strengthening Protections Against Trafficking In Persons In Federal Contracts, 2012, US.

[93] EU, Directive 2014/24/EU op. cit., Art. 57.

- Exclusion from bidding for public tenders where there is evidence showing significant breaches of human rights by a company in the course of its business;
- Exclusion of 'abnormally low' bids resulting from lack of compliance with social and labour law or from abusive practices;[94]

Rationale and context

The public sector in most countries is the largest buyer and consumer of goods and services, and therefore has a large responsibility. The rationale for these provisions is that public authorities and all public sector organisations at central and local level should first of all exercise due diligence and ensure that they are not complicit in exploitation and abuse. Secondly, they should set the example and lead the way in being ethically responsible, and in supporting, encouraging and requiring that their partners do the same. High social and ethical requirements should therefore be recognised and have an important weight among the award criteria in public tenders, while price consideration should not overwhelmingly prevail. This means demanding that services and goods that the public sector purchases are delivered and produced in compliance with high ethical social requirements and do not contribute in any way to abuse and exploitation and trafficking. This also means demanding that ethical standards of recruitment and decent working conditions be secured when workers, including migrant workers, are recruited and employed in the framework of public sector contracts domestically or abroad. Moreover, the evidence of serious risks of exploitation, especially in certain economic sectors, and the gravity of the trafficking offence, provide enough reasons for States to require businesses to specifically report on their efforts to prevent exploitation and trafficking. (See examples in Box 5 and 7 from the US.)

In the EU the recently adopted Directive on public procurement[95] establishes that public contracting authorities may introduce a social clause to ensure compliance with national, European and international obligations in the fields of environmental, social and labour law (including collective agreements) that apply at the place where the works are executed or the services provided.[96] Most importantly, these new criteria apply to the entire procurement process, including to award contracts but also to exclude those who do not comply with environmental, social and labour obligations.[97] The exclusion criteria of the Directive also include any economic operator who has been convicted of child labour and trafficking in persons.[98] Importantly the new Directive provides that public authorities may exclude abnormally low bids, i.e. those "tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or

[94] Ibid., Art. 69.

[95] Ibid.

[96] Ibid., Paras 37, 92.

[97] Ibid., Para 40.

[98] Ibid., Art 57.

practices". It also encourages public authorities to ensure close monitoring of compliance with social and labour law obligations".[99] Furthermore, the Directive includes stricter rules on subcontracting. For example it states that public authorities are "to ensure some transparency in the subcontracting chain, as this gives contracting authorities information on who is present at building sites on which works are being performed for them, or on which undertakings are providing services in or at buildings, infrastructures or areas, such as town halls, municipal schools, sports facilities, ports or motorways, for which the contracting authorities are responsible or over which they have a direct oversight." Therefore procurement procedures will have to include provisions that place the obligation to deliver the required information upon the main contractor.[100]

In conclusion, these EU legislative developments pave the way to positive changes at national level, and leave significant room to states to transpose and further improve this legal basis. These developments will also require investing in raising awareness and building capacity of all those who will administer and monitor public tenders, as well as of those who might bid for public tenders to foster human rights due diligence in public procurement all through the often long supply chains. Developing ethical public procurement to prevent exploitation and trafficking is an area in which countries in the Baltic Sea region are already leading the way with innovative practices (see Box 4). In the future these efforts can be utilised to enhance prevention of trafficking for forced labour domestically and abroad.

Box 4. Ethical trading initiatives in the Nordic countries

Ethical Trading Initiative Norway (IEH)[101] has acted as a central advocate of ethical requirements in public procurement in Norway since 2007. It is a multi-stakeholder initiative involving NGOs, trade unions, businesses and the Enterprise Federation of Norway. IEH calls on public authorities to act responsibly and purchase goods and services that are manufactured according to high ethical and social standards, including decent work. In 2013, IEH together with the Norwegian Ministry of Foreign Affairs launched "A Guide to Human Rights Due Diligence in Global Supply Chains".[102] The Guide describes how all enterprises, including small and medium-sized enterprises can carry out due diligence to prevent violations of human rights. IEH has developed qualification criteria, which can be used to exclude suppliers who do not take an interest in promoting ethical trade in their supply chains.[103]

There is a similar body in Denmark, the Danish Ethical Trading Initiative (DIEH), which was founded in 2008. It is a multi-stakeholder initiative that brings together trade unions, business associations, NGOs and companies and promotes ethical trade and responsible supply chain management among Danish companies and public institutions. DIEH functions as a resource centre, which seeks to identify and promote good practices and support the implementation of corporate codes of conduct focusing on human rights and decent work in global supply chains.[104]

[99] Ibid., Para 103, 69

[100] Ibid., Para 105.

[101] http://etiskhandel.no/English (accessed on 28 April 2014)

[102] http://etiskhandel.no/noop/file.php?id=10082 (accessed on 28 April 2014)

[103] http://etiskhandel.no/English/Public_procurement/index.html (accessed on 28 April 2014)

[104] http://www.dieh.dk/in-english/who-we-are/ (accessed on 28 April 2014)

IEH and DIEH have also started to cooperate with the Nordic Council of Ministers with the purpose of establishing a Corporate Social Responsibility program within the Nordic region with a focus on ethical trade and responsible supply chain management. The aim of this Nordic Ethical Trade Framework is to share knowledge and information among multi-stakeholder initiatives in the Nordic countries, coordinate joint efforts and strengthen competencies of Nordic companies in implementing responsible business conduct.[105] These initiatives, however, mainly aim at promoting responsible business activity abroad and do not focus on issues of misconduct and labour exploitation within the Nordic countries.

Box 5. Executive Order on Strengthening Protections Against Trafficking in Persons in Federal Contracts, US

In 2012 the President of the United States of America issued an Executive Order on Strengthening Protections Against Trafficking in Persons in Federal Contracts. The aim of this executive order was to ensure that as the largest single purchaser of goods and services in the world, the United States Government does not contribute to trafficking in persons. The Order expressly prohibits federal contractors, contractor employees, subcontractors and their employees from i.e. using misleading or fraudulent recruitment practices, such as misrepresenting the key terms and conditions of employment, including wages and benefits, the location of work, and housing; charging employees recruitment fees; or confiscating employee's identity documents, such as passports or drivers' licenses.

Furthermore, the Government contractors and their subcontractors are mandated by contract clauses to agree to cooperate fully and to allow contracting agencies and authorities to conduct audits and investigations. Very detailed procurement provisions are established in relation to contracts and subcontracts, where the estimated value of supplies acquired or services required to be performed outside the United States exceeds $500,000. These include i.e. that the company has a policy in place to ensure that its employees do not engage in trafficking, the employees are aware of this and that there exists a process for employees to report, without fear of retaliation, any activity that would justify termination of contract. In addition, companies must ensure that their recruitment and wage plan only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees, and ensures that wages meet applicable host country legal requirements.[106]

2.7 Promote transparency: Clear liability and accountability rules for recruiters and employers, including in supply chains

→ States should adopt legislation that requires businesses operating in sectors prone to exploitation to disclose information on their labour supply chain and on respect of core ILO labour standards.[107]

→ States should review and strengthen regulations and or equivalent arrangements on joint and several corporate liability/responsibility for respecting collective agreements and/or minimum wages and labour standards, particularly occupational health and safety obligations, in supply chains for services and goods, especially in sectors prone to exploitation and employing migrant workers.

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[105] DIEH & IEH (2013): Nordic Ethical Trading Framework.

[106] http://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe (accessed on April 28 2014).

[107] See ILO, Declaration on Fundamental Principles and Rights at Work, 1998, which includes the eight ILO Core Conventions. See also Chapter I on Key Principles and Standards.

→ States should review the application of regulations on corporate liability/responsibility in cross-border situations. More specifically, States should clarify the obligations of the various actors in the recruitment and employment chain and explore ways to tackle dubious strategies, which may stem from outsourcing and result in bogus self-employment schemes and other ways of shifting costs and risks to workers.

→ Where an employer is a subcontractor, the contractor of which the employer is the direct subcontractor shall be held liable in addition to or in place of the employer for payment of any outstanding wages, taxes, and social contributions.[108] States should consider extending this provision and establishing joint and several liability systems for minimum wages or equivalent standard (e.g. collective agreement), and for health and occupational standards in all economic sectors, especially in those prone to exploitation, and make them binding for all contractors in the chain.[109]

→ States should periodically review and clarify legislation, regulation and policies that govern the liability of recruiters and employers with a view to ensuring that workers can seek remedies for violations of their rights from any or all of the actors involved in their recruitment and employment in countries of origin and destination, be they physical or juridical persons.[110] Rules should set clear criteria to establish who has primary responsibility for terms and conditions of employment of the worker.

Rationale and context

The recruitment and employment of workers increasingly involves multiple subjects and even a network of recruitment agencies and subcontractors, so there is no longer only the typical triangular employment relation or 'three-way relationship'[111] between a labour user, an employee and a PrEA, and there is instead a multiple or multi-sided employment relationship. This results often in uncertainty over the identity of the employer and the status of the worker (an employee or a self-employed person etc.) and in lack of clarity and transparency into which terms and conditions of employment apply. This situation has clearly strong limiting effects on the possibility of enforcing labour law and protecting workers rights.

[108] EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Para 20, Art. 8.

[109] A due diligence provision should be defined in national law so that contractors that have undertaken due diligence obligations may be held not liable.

[110] ILO (2006): ILO Multilateral Framework on Labour Migration.

[111] Often the worker is an employee of the PrEA and has a contract with the agency. However, he/she is placed in a user enterprise (labour user) and the latter supervises his/her working activity but has no contractual relationship with the worker.

Research findings in some countries in the Baltic Sea region show how these complex work arrangements, especially in relation to the posting of workers or to the use of bogus self-employment schemes, are increasingly used and are often abused, making it very difficult to identify the parties to the employment relationship and the various responsibilities.[112] A case in point in this regard relates to the situation of berry pickers in Sweden. Research findings pointed to the fact that a high number of actors is involved in the berry-picking industry and there is lack of accountability mostly because of lack of clarity about who bears the responsibility for the pickers' working conditions.[113] In Finland the situation is even more difficult since foreign wild berry pickers are considered self-employed entrepreneurs and for this reason, labour inspectors cannot monitor possible violations of working hours, conditions, or terms of employment.[114] Many are, however, challenging this lack of recognition of what seems to be a de facto employment relationship.[115]

Today's complexity of labour market relations demands that States exercise due diligence and review their legislation and regulation to ensure that workers can claim their rights in case of violations and that there is clarity to establish who should be held accountable for the violations among the multiple actors involved in their recruitment and employment. This clarity of rules is also necessary to ensure a level playing field for businesses and to address mala fide operators who take advantage of the loopholes.

Another overarching challenge that research on labour exploitation and trafficking has highlighted relates to the lack of transparency throughout the supply chain, and persistent violations of the rights of migrant workers, especially at the lower ends of long sub-contracting chains in labour-intensive sectors of the economy (e.g. cleaning, agriculture, restaurants, construction etc.).[116] In some Nordic countries, NGOs have launched awareness-raising initiatives about the human rights impact of Nordic global corporations in far-away countries where they delocalised production. However, whilst the public may be aware of dodgy sub-contractor schemes and abusive employment practices in the production of goods for the Nordic market, most public opinion ignores the fact that exploitation of migrant workers occurs also in their own countries.

Given this evidence, States should consider requiring businesses, especially those operating in risk sectors, to exercise and disclose due diligence to know and show how they avoid adverse human rights impact. Increased labour supply chain transparency would also help workers to make informed decision when they are deciding to migrate to work abroad.[117] In addition, given the gravity and persistence of violations detected

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[112] Soo & Markina 2013, op. cit., 262, 297.

[113] Vogiazides & Hedberg 2013, op. cit., 222–223.

[114] Jokinen, Anniina (2012): Berry Pickers – Victims of Trafficking?. In Joutsen, Matti (ed) (2012): New types of crime, 31–32.

[115] See e.g. Wallin, Markku (2014): Ehdotuksia ulkomaalaisten olosuhteisiin liittyvien epäkohtien korjaamiseksi. TEM.

[116] See footnote 1 and also Allain et al. 2013, op. cit.

[117] van Opijnen, Marjon & Oldenziwl, Joris (2011): Responsible Supply Chain Management. Potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies, 97.

and the frequent lack of access to effective remedies for victims of labour exploitation in supply chains, it would be important to also review existing legislation to clarify liability rules and strengthen accountability of actors in sub-contracting processes. In this regard, the EU Employer Sanctions Directive already introduces a mechanism of joint and several liability which under certain conditions provides that the contractor of which the employer is a direct subcontractor may be liable with respect to both payment of financial sanctions, back wages and social funds contributions.[118] The main rationale for chain liability rules is to raise the costs of non-compliance, creating disincentives for crime because risks of punishment are higher.

Recent research on responsibility and liability arrangements in sub-contracting in respect of workers' rights and labour protection law in the EU outlines the variety of legislative schemes and business self-regulatory measures adopted with a view to preventing abuse of workers' rights and social dumping.[119] The study indicates that only in a few countries in the Baltic Sea region (e.g. Finland, Norway and Germany) some general joint and several liability arrangements with respect to wages and/or labour conditions are in place.[120] In some countries, collective agreements oblige the subcontractor – including where this is a PrEA – to apply the sector collective agreement and respect the foreseen minimum terms and conditions of employment (see also Box 6). However, differences among countries are significant, very often these arrangements have different legal scope and nature, and they are limited to certain sectors, especially construction, thus excluding other sectors prone to exploitation. Furthermore, in very few instances these arrangements extend to full chain liability, and are instead usually limited to the first tier of subcontracting. Therefore, they seem to have a quite limited impact on prevention of labour exploitation by mala fide business players, especially in complex cross-border situations. To this end the regulations need to be reviewed carefully.[121] It is crucial that legislation is very clear about the scope of responsibility that a business enterprise has for the actions of its partners, including criteria to determine which partners in the subcontracting chain are to be considered. Furthermore, such law and regulation need to be realistically implemented, and this is why also conditions under which contractor liability can be excluded should be defined because the contractor fulfilled its due diligence obligations.[122]

Box 6. Full chain liability in the Netherlands

The Dutch system on corporate liability is comprehensive and includes a full chain liability in terms of taxation of wages and social insurance payments in all business sectors. In the construction sector this full chain liability arrangement also covers minimum wages, holiday allowances and other terms of employment specified in the collective agreement. The corporate liability also applies to temporary work agencies and labour users.

[118] EU, Directive 2009/52/EC op. cit., Para 20, Art. 8. However, information and data on the implementation of this Directive is still lacking.

[119] Jorens et al. (2012): Study on the Protection of Workers' Rights in Subcontracting Processes in the European Union: final study (research commissioned by the European Commission). Project DG/Empl/B2-VC/2011/0015.

[120] Ibid., 144. See also Ollus & Jokinen 2013, op. cit., 88.

[121] Jorens et al. 2012, op. cit., 144–154.

[122] HRC 2011, op. cit. 1 A/HRC/17/31, 2011 Para 17.

In general the full chain liability covers not only the main contractor, but also all the sub-contractors as well as self-employed persons who work in the chain under a business name. It is possible for contractors to be freed from the chain liability if they transfer a certain proportion of the contract price to a separate guarantee account. In case of misconduct, the authorities can confiscate this guarantee money directly from the account. After the law amendment in 2012, migrant workers have the right to claim due wages from another sub-contractor or contractor if they have not been able to get their wages from their own employer.

Overall, the Dutch authorities estimate that their system of liability works well and efficiently. It emphasizes the responsibility of contractors and sub-contractors to keep track of their business activities and encourages them to make sure that their partners are registered and have a record of good behaviour. The guarantee account system has worked particularly well in the construction sector where many contractors have decided not to enter into contract with such sub-contractors who do not have guarantee accounts. This system has not been as efficient in the agency work sector.[123]

Box 7. The California Transparency in Supply Chain Act

The California Transparency in Supply Chains Act of 2010, which came into force at the beginning of 2012, requires large retail sellers and manufacturers (i.e. with global revenues of more than USD100m) doing business in the state of California to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale. This disclosure must be available for consumers and is thus posted on the retail seller's or manufacturer's website in an easily understood form. This disclosure should at a minimum describe to what extent the retail, seller or manufacturer 1) engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery, 2) conducts audits of suppliers to evaluate supplier compliance with company standards, 3) requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business, 4) maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking, and 5) provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products. Verifications should be done by independent audits and if they are not done in such a way, this should be disclosed.[124]

2.8 Establish regulatory oversight over audit firms

→ States should consider establishing regulatory oversight over audit firms, including those engaging in social audit, with a view to enhance transparency and accountability of the audit industry, as well as of their work in supply chain auditing. Furthermore, States in cooperation with business associations, audit firms and trade unions should establish mechanisms for audit firms to report to law enforcement about indications and suspicions of exploitation and trafficking for forced labour.[125]

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[123] Ministry of Employment and the Economy (2012): Selvitys eurooppalaisista tilaajavastuujärjestelmistä. Raportti 27/2012.

[124] Senate Bill No. 657: http://www.state.gov/documents/organization/164934.pdf (accessed on 28 April 2014).

[125] Allain et al. 2013, op. cit., 66–67.

Rationale and context

Several businesses undertake social or ethical auditing to monitor, verify and report on the respect of social and other standards (e.g. environmental ones) in their operations, including by their partners and subcontractors in the supply chain. However, such audits are nearly always a lagging indicator, whereas effective due diligence should be a proactive on-going process. Audit practices vary from one business to another and have so far only in a few cases resulted in detection of trafficking for forced labour. Some argue that this is for three main reasons. First, businesses often limit the scope of such auditing efforts only to their main subcontractors, thus excluding the small actors at the end of the chain. Secondly, social audits are usually focused on the product supply chain, and examine the working conditions of direct hire employees, and much less frequently those of workers employed at the lower end of the labour supply chain. Thirdly, social audits are commissioned by businesses for their own use. It should not be taken for granted that a social audit is an independent verification mechanism. On the contrary, social audits respond to the mandate given to them by the business enterprise. Furthermore, the outcome of their investigation is confidential and auditors are not always obliged to report abuses to law enforcement.[126] This is why it is recommended to establish a regulatory oversight for social audit industry, thus enhancing overall transparency and accountability. Moreover, it will be necessary to specifically train and build the capacity of audit firms to detect exploitation and trafficking along complex supply chains.

[126] Ibid., 58–59.

Chapter 3. Guidelines for businesses: Due diligence in order to prevent abuse and exploitation in recruitment and employment of migrant workers

Over the past few years there has been significant progress in the business community engagement in promoting respect of human rights and preventing trafficking in human beings. In 2006 a number of global business enterprises, also from the PrEA sector, signed the Athens Ethical Principles,[127] which articulate a "zero tolerance" policy towards trafficking in human beings. Since then there have been several other similar initiatives[128] and a proliferation of awareness raising and training materials directed to engage and mobilise the business community in the prevention of trafficking.[129] Yet, it is the 2011 adoption of the UN Guiding Principles on Business and Human Rights (UN GPs) that marks a turning page in the global policy agenda and makes the responsibility to respect human rights a global standard of expected conduct for all business enterprises.[130]

"Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse

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[127] End Human Trafficking Now, Athens Ethical Principles, adopted in Athens, 23 January 2006. Available online at: http://www.ungift.org/docs/ungift/pdf/Athens_principles.pdf (accessed on 24 April 2014).

[128] For example, the International Confederation of Private Employment Agencies (CIETT) committed itself to the prevention of human trafficking and adopted a code of conduct, which inter alia foresees no recruitment fee charge for job-seekers. In 2008, CIETT corporate members and the Union Network International (UNI) launched a global initiative to secure fair conditions for persons recruited by temporary work agencies, and to fight human trafficking by preventing unfair competition by fraudulent agencies. Available online at: http://www.ciett.org/fileadmin/templates/ciett/docs/Press_release_UNI_Ciett_CMC_on_MoU_12-11-08.pdf (accessed on 24 April 2014). Among other initiatives: IHRB 2012, op. cit.; Verité 2011, op.cit; Verité and Manpower (2012): An Ethical Framework for Cross-Border Labor Recruitment: An Industry/Stakeholder Collaboration to Reduce the Risks of Forced Labor and Human Trafficking. Among the multi-stakeholders initiatives, the UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, including a commitment to the elimination of forced labour. Available online at: http://www.unglobalcompact.org/AboutTheGC/index.html (accessed on 24 April 2014).

[129] UN GIFT: End Human Trafficking Now! Campaign (EHTN!), eLearning Tool on Human Trafficking. At: http://www.ungift.org/knowledgehub/en/tools/elearning-tool-for-the-private-sector.html (accessed on 28 April 2014); ILO (2011): Eradicating Forced Labour from Supply Chain; ILO (2008): Combating Forced Labour. A Handbook for Employers & Business. Geneva: ILO; US Department of Labor Bureau of International Labor Affairs, Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses. Available online at: http://www.dol.gov/ilab/child-forced-labor/index.htm. (accessed on 24 April 2014).

[130] HRC 2011, op. cit.

human rights impacts with which they are involved."[131] This is a foundational principle of the UN GPs together with the State duty to protect human rights and the need for effective remedies in case of violations. "Violations of human rights are both a cause and a consequence of trafficking in persons."[132] "States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons".[133]

While the primary responsibility to protect human rights and ensure enforcement of the law rests with States, business enterprises have to ensure that they are not involved in any trafficking activity, nor do they aid or abet trafficking, i.e. that they do not knowingly provide "practical assistance or encouragement that has a substantial effect on the commission of a crime", in this case trafficking.[134] In other words, based on the UN GPs, the corporate responsibility to respect requires that businesses do not contribute to or cause trafficking through their operations i.e. 'through their own activities or as a result of their business relationships'.[135]

Business enterprises have a great deal that they can contribute to the prevention of trafficking, starting with their role as recruiters and employers. In accordance with the UN GPs their duty to respect amounts at a minimum to respect of the International Bill of Human Rights[136] and the principles set out in the ILO Declaration on Fundamental Principles and Rights at Work,[137] thus ensuring decent work and respect of national labour law is a first fundamental starting point.[138] Furthermore, the business sector can play a significant role against trafficking through its corporate social responsibility and accountability initiatives (CSR) aiming at minimising risks of business enterprises involvement in trafficking and at safeguarding their image and branding. In addition, the private sector in partnership with public authorities, trade unions

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[131] Ibid., Para 11.

[132] UN OHCHR (2010): Recommended Principles and Guidelines on Human Rights and Human Trafficking. Commentary, Guideline 1.

[133] Ibid., Principle 2.

[134] HRC 2011, op. cit., Para 17.

[135] For an analysis of the application of the UN Guiding Principles and the corporate responsibility to respect in relation to human trafficking, see Jägers, Nicola & Rijken Conny (2014): Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations. Northwestern Journal of International Human Rights, Volume 12, Issue 1, Article 3. Interestingly they argue that given the jus cogens character of the prohibition of slavery, one should speak of a corporate obligation, not simply corporate responsibility.

[136] The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

[137] ILO, Declaration on Fundamental Principles and Rights at Work, 1998.This includes the eight ILO Core Conventions.

[138] HRC 2011, op. cit., Para, 12.

and civil society can also contribute to addressing those social, economic and other factors (e.g. infiltration by organised crime of legal economy) that foster an environment conducive to the exploitation of workers, and that distort competition and fair play among businesses. Last but not least, business enterprises can play a decisive role in supporting the social inclusion and insertion in the labour market of victims of trafficking.

There are numerous reasons why respect of human rights has become an expected standard of business conduct, and why preventing exploitation and trafficking for forced labour is in the interests of businesses. This is about managing very serious legal, reputational, economic, financial and social risks that can have wide-ranging impact on various aspects of a business operation. Indeed, at times businesses, especially Private Employment Agencies (PrEAs), may face significant challenges in meeting their responsibility to respect human rights, including because of absence of effective regulation, weak enforcement, widespread abusive practices by mala fide and informal operators, and state failure to protect human rights.

The reputation of companies, which are exposed as being associated to, or having tolerated, trafficking can be very seriously affected. It may result in significant loss of profit and job losses, and it can turn away potential investors. It may also jeopardize access to government funds or contracts, or result in being involved in time-consuming investigations. In addition, there may also be considerable media attention and public criticism from civil society with the risk that this brings of compromising the image and branding of the enterprise. Legal risks should also not be underestimated. Although they are still very few, trafficking-related lawsuits against companies have started to be increasingly filed and companies face serious risk of criminal and civil sanctions.[139]

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[139] In the US there have been a number of cases. See for example "Top U.S. Law Firms File Multiple Human Trafficking Lawsuits Against Signal International, LLC - https://www.aclu.org/human-rights-immigrants-rights/top-us-law-firms-file-multiple-human-trafficking-lawsuits-against; http://www.usnews.com/news/articles/2013/08/08/more-human-trafficking-lawsuits-filed-against-major-us-shipbuilder; Global Horizon case http://thecnnfreedomproject.blogs.cnn.com/2011/04/21/feds-file-human-trafficking-suit-against-farm-labor-contractor/ - Adhikari v. Daoud & Partners et al., 697 F. Supp. 2d 674 (S.D. Tex. 2009) (denying motion to dismiss TVPA action by Nepali laborers and surviving family members against a US contractor and its affiliates); US v. Kil Soo Lee, 472 F.3d 638 (9th Cir. Haw. 2006) (owner of garment factory in American Samoa convicted of holding workers in a condition of involuntary servitude. Also some major Nordic companies have been associated with the use of child labour and/or forced labour in Asia. See for example H&M comes under pressure to act on child-labour cotton http://www.theguardian.com/business/2012/dec/15/cotton-child-labour-uzbekistan-fashion; Stora Enso admits child labour an issue in Pakistan http://www.helsinkitimes.fi/finland/finland-news/domestic/9704-stora-enso-admits-child-labour-an-issue-in-pakistan.html?ref=uutiskirje; Serious human rights violations at Natural Fruit company http://finnwatch.org/images/finnwatch_pl_press%20release_thailand.pdf; Grocery chains looking into report of inhumane conditions at Thai suppliers http://yle.fi/uutiset/grocery_chains_looking_into_report_of_inhumane_conditions_at_thai_suppliers/7055601

Working to prevent exploitation and trafficking is in the interest of businesses. Corporate social responsibility and accountability is the way of managing such complex risks and transforming them into an opportunity for branding, for earning a positive reputation, creating a new positive public image and generating new financial returns. It is in the interest of businesses to be proactive and engage by accounting for the growing public concerns of labour exploitation and trafficking, by working actively with their partners in the value chain, by partnering with NGOs, and especially by listening to their workers, to workers' representatives, in order to identify together the best ways to prevent abuse and exploitation and safeguard their common interests.

In addition, the recent developments in ethical public procurement are one more reason to proactively engage in identifying, preventing and mitigating potential adverse human rights impact such as exploitation and human trafficking. To this end, the UN GPs require businesses to develop a policy commitment, conduct an appropriate due diligence process and establish processes for remediation.[140]

These guidelines are mainly addressed to businesses operating in the employment and recruitment sector. [141] Private Employment Agencies in some cases provide only recruitment services, and so they provide workers to a company that hires workers directly. In other instances, the agencies provide both recruitment and placement services to a third party (user enterprise). In this scenario the agency is the employer of the worker and is responsible for payroll and other employment services, while the supervision and daily management of the worker's tasks is usually left to the user enterprise where the worker is placed; this is what is usually defined as a triangular employment relationship.[142] Increasingly, employment relationships are becoming even more complex and networked with a growing number of sub-agents and intermediaries involved in the recruitment and employment of workers. It may even be difficult to identify all parties, their roles and responsibilities.

Yet, it is important to note that some of the measures suggested in these guidelines (i.e. those on prevention of exploitation in the workplace) are also very relevant to the operation of other businesses in their role as employer and more specifically to businesses using the services of labour providers in sectors prone to exploitation such as cleaning, agriculture and restaurants. Indeed, according to the International Organization of Employers, "The key actions that businesses can take, based on voluntary codes of conduct or other procedures, to stop people being trafficked or subjected to labour exploitation,

[140] HRC 2011, op. cit., Para 15.

[141] For a definition of Employment and Recruitment agencies see ILO, Private Employment Agencies Convention, C181, Art.1.

[142] See also European Commission 2013, op. cit., 7–8.

centre on recruitment procedures and on ensuring that workers are free to leave their jobs if they wish."[143]

Guidelines in this chapter build on existing initiatives aimed at supporting PrEAs in the implementation of the UN Guiding Principles on Business and Human Rights and take a specific focus on how these principles can be translated in respect of the obligation not to commit, aid or abet trafficking.[144] The measures proposed also reflect input and suggestions deriving from consultations with government, civil society, academics, and international organizations experts on labour and human trafficking issues, and most importantly the guidance benefits from the contribution and perspective of several PrEAs operating in the Baltic Sea region.[145]

The chapter starts with measures to conduct a due diligence process to prevent abuse and exploitation. Then, it moves on examining issues to consider for developing self-regulation on ethical standards for recruitment and employment of migrant workers. It concludes with self-regulatory measures that businesses may consider to prevent abuse and exploitation in supply chains. Each of the four operational guidelines comprising this chapter is accompanied by specific practical measures and a commentary on the rationale of the measures proposed and the key contextual factors they intend to address. In addition, examples of relevant practices complement the guidelines.

3.1 Ensure acting with due diligence in order to prevent abuse and exploitation

→ Businesses are to demonstrate that they exercise due diligence to "identify, prevent, mitigate and account for how they address their impacts on human rights".[146] More specifically, Private Employment Agencies (PrEAs) and other businesses that recruit, hire or employ migrant workers especially in sectors prone to exploitation such as cleaning, agriculture and restaurants in the Baltic Sea region are encouraged to:

- Build knowledge of the risks of abuse, exploitation and trafficking for forced labour of migrant workers;

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[143] International Organization of Employers (IOE) (2013): Meeting of Experts on Forced Labour. Preparatory Document For Employers, 19.

[144] UN OHCHR (2011): Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework".; IHRB 2012, op. cit.; European Commission 2013, op. cit.; Verité 2011, op. cit.; Verité & Manpower (2012): An Ethical Framework for Cross-Border Labor Recruitment: An Industry/Stakeholder Collaboration to Reduce the Risks of Forced Labor and Human Trafficking.

[145] ADSTRINGO expert consultation meetings in Stockholm 11–12 December 2013 and Vilnius 12–13 March 2014.

[146] HRC 2011, op. cit., Principle 15.

- Develop a specific commitment to prevent trafficking for forced labour, abuse and exploitation in all their business activity, including in their supply chain;
- Integrate and translate such commitment into a strategy to screen, manage and mitigate such risks, implement the strategy through their business policies and practices, track and document its implementation;
- Establish operational level grievance mechanisms to respond to labour abuses of migrant workers, and make them easily, safely and confidentially accessible to migrant workers so that they understand the process, are not afraid of complaining, and are confident of receiving an effective and timely response. Furthermore, in designing these procedures businesses should take into due account gender and cross-cultural considerations, and cooperate with trade unions.[147]
- Establish independent monitoring, verification and certification mechanisms to document compliance and implementation of codes of conduct or self-established ethical standards.
- Committing to sharing data with law enforcement authorities in cases where monitoring, verifications and certification systems (e.g. social audits) detect indications of suspected exploitation and criminality.[148]

Rationale and context

The corporate obligation to respect human rights requires action on the part of businesses; to make a genuine claim, businesses need to effectively show and document such respect.[149] The UN Guiding Principles make it clear that this requires first a specific policy commitment that in turn should explicitly include commitment to respect labour standards and zero tolerance to exploitation and trafficking in its direct operations and in those of its partners. Secondly, this requires conducting and documenting a due diligence process, and thirdly, enabling access to processes for remediation in case of breaches. Responsible businesses may also seek guidance from state authorities on how to avoid contributing to exploitation and trafficking. National anti-trafficking coordination mechanisms should include representatives of the business sector and through them ensure that information on trafficking patterns and risks reaches businesses. This is important not only to warn them about the specific risks, but also to provide them with first-hand information on what exploitation of

[147] For detailed guidance see European Commission 2013, op. cit.

[148] Allain et al. 2013, op.cit., 66–67.

[149] UN OHCHR 2011, op. cit., 23–24.

migrant labour looks like and how it may be hidden in their operations or in those of their partners.

Research findings on exploitative recruitment and employment practices in the Baltic Sea region indicate that these practices are often taking place in the labour supply chain. Also informal middlemen, recruiters and controllers are often involved operating in an abusive and criminal way. Businesses operating legally may not be aware of these risks or may not recognise signs of exploitation. There are also cases in which "employers or labour providers unwittingly or through ambivalence allow recruitment or supervisory models to exist that permit such exploitation to flourish. […] Hidden third party exploitation occurs where one person holds a position of power over another and abuses that position for personal gain. It is often well hidden by the perpetrators with victims reluctant or too frightened to come forward".[150] Thus in some cases these practices may expose labour providers and employers to the risk of being associated with labour exploitation and trafficking. To meet these challenges, in some countries in Europe businesses have been quite proactive and engaged in multi-stakeholder partnership with other businesses (major supermarkets and retailers), public authorities, and NGOs to detect and minimise risks of trafficking (see Box 8). Indeed, cooperation with public authorities (e.g. law enforcement and labour inspectors) and with NGOs and trade unions providing assistance to migrant workers can prove quite effective to help businesses detect hidden patterns of labour exploitation and developing alert flags (i.e. practical indicators) and other management and training tools to screen their operations and to engage with their suppliers.

Self-regulation and corporate social responsibility and accountability policies are a company strategy to manage risks, maintain and care for their reputation, as well as a response to market, civil society and public opinion regulatory demands. Effective social auditing, transparency and/or independent verification and certification are key to demonstrate to stakeholders that businesses comply with the ethical self-regulated standards they have adopted, and that they exercise due diligence in respecting human rights. The goal for businesses is clearly to gain further market benefits through such verification and certification. Such verification mechanisms also serve to track and credibly document business social and ethical performance vis-a-vis its self-established standards. Further they help to identify ways to improve and measure such performance. In addition, such verification more generally contributes to informing and showing how a business delivers on its commitment to human rights. In other words, it is a way for businesses to demonstrate their accountability and reinforce their credibility. However, a number of questions remain open, such as who conducts social auditing i.e. private auditing companies or NGOs, how to ensure that findings are reported in a transparent manner and that they translate into corrective actions to enhance compliance with self-regulated standards and remediate to potential human rights impact, and when and how findings eventually translate into penalties. In addition, with regard to self-regulation aimed at preventing exploitation and trafficking of migrant workers, it seems that additional guidance may be necessary not only for businesses but also for the third party auditors to understand and detect the

[150] Stronger together (2013): Tackling hidden labour exploitation: A toolkit for employers and labour providers, 8.

specific features and challenges of hidden and deceptive schemes typical of labour trafficking.[151]

There is also a role for responsible business to use its leverage, either independently, collectively or through trade associations and other business bodies to advocate for industry wide best practice and effective enforcement of legislation. In this way the rewards of responsible practice are safeguarded and a level playing field for law abiding business maintained.

The corporate responsibility to respect includes also enabling migrant workers to access remediation. Migrant workers should have access to grievance procedures to file complaints against any of the actors involved in their recruitment and employment process without intimidation and/or fear of retaliation. Trade unions play a critical role in supporting and assisting migrant workers in filing complaints, and in accessing grievance procedures and justice proceedings.

Box 8. A multi-stakeholder partnership to prevent human trafficking: the Stronger Together initiative

In the UK, a new multi-stakeholder initiative called "Stronger Together" was launched in late 2013 to reduce human trafficking, forced labour and hidden third party exploitation of workers. It provides guidance, resources and a network for employers, labour providers, workers and their representatives to work together to reduce exploitation.[152] The initiative was developed by the Association of Labour Providers, the Gangmasters Licensing Authority and Migrant Help with sponsorship by leading UK supermarkets, the Co-operative Food, Marks & Spencer, Sainsbury's, Tesco and Waitrose. Supporting partners are Anti-Slavery International, the British Retail Consortium, British Growers Association, Food & Drink Federation, Salvation Army and Sedex.[153]

Stronger Together provides employers and labour providers with a range of free very practical resources to help them deter, identify and tackle hidden labour exploitation. These resources include best practice guidance and a toolkit containing multi-language workplace posters and worker leaflets, which are all freely available to download through their website. In addition to the online resources, a series of workshops are organised across the UK to help companies in the food industry understand their responsibilities and learn about best practice in tackling hidden labour exploitation. The goal is to engage over 1000 farms, food producers and labour providers who in turn will reach more than 100,000 workers.[154]

[151] Detailed and comprehensive guidance and tools for social auditors and certifiers is provided by Verité. An Introduction to the Fair Hiring Toolkit for Social Auditors and Certifiers. Available online at: http://www.verite.org/helpwanted/toolkit/auditors (accessed on 28 April 2014).

[152] http://stronger2gether.org/ (accessed on 28 April 2014)

[153] Stronger Together − tackling hidden labour exploitation. Summary provided by David Camp.

[154] Ibid.

3.2 Develop business self-regulation on ethical standards for recruitment and employment of migrant workers

→ In developing and implementing self-regulation on ethical standards for recruitment and employment of migrant workers, businesses should consider taking the following measures to:[155]

- Establish clear recruitment policies and ensure that **neither the PrEA nor its sub-agents or the labour user charge fees or costs to job-seekers for their recruitment and placement**. Such costs or fees shall be the responsibility of the future employer and include at minimum all costs associated with processing the request to employ foreign workers or with attempting or finding employment for an individual and with his/her job placement.[156]
- Ensure **full transparency of services and related costs** of recruitment and placement thus providing labour users with a schedule of all fees charged; at the same time inform workers about the no-recruitment fee policy and provide them with a list of all expenses that labour users cover in line with the no-recruitment fee policy or "employers pay" policy.
- Establish **systems to verify, demonstrate and document** that costs of recruitment were not recovered, directly or indirectly, from workers through salary deductions, reductions of other benefits or other type of charges or changes in the terms and conditions of work.[157]
- Ensure **respect of job seekers and workers privacy** in accordance with national law, regulation and practice when processing personal data collected about them.[158]
- **Prohibit the withholding of a worker's passport or other identity document, or driving licence or bankcard by** the PrEA and/or its agents and/or the labour user.[159] "Where presentation of these documents is required by law they are returned promptly, and in all cases immediately upon

[155] An excellent compilation of business benchmarks for ethical recruitment is made by Verite. Fair Hiring Toolkit, 1. Improving Codes of Conduct & Company Policies. TOOL 2: Sample Benchmarks of Good Practice in Recruitment and Hiring. Available online at: https://www.verite.org/node/718/lightbox2 (accessed on 28 April 2014).

[156] See Verité and Manpower 2012, op. cit., 16–17. CIETT code of conduct also forbids the charging of fees to workers.

[157] European Commission 2013, op. cit., 37–38.

[158] ILO C181 art. 6, art. 13; ILO R188 para 11 and 12.

[159] Verité and Manpower 2012, op. cit., 20.

demand."[160]

- **Check user enterprise** reputation and ability to pay wages, for example requesting samples of wage slips or current income statements, balance sheets, and bank statements or a deposit to guarantee in case of contract violations or other damages.[161]
- Introduce the practice of **acquiring information about occupational health and safety in client user enterprise**, including assessment of accommodation and transport where relevant. Implement this practice at minimum prior to the deployment of large numbers of migrant workers. Furthermore, where possible, request that a client company managing accommodation for migrant workers provides a certificate of compliance with local housing standards.[162]
- Ensure that the work **contract** is provided to the worker in **written** format**,** in a language that the person understands;[163] a copy of the contract should be available for the worker prior to deployment.
- Ensure that the **contract includes** information about: wage level, payment modalities, working hours, overtime, frequency of rest days, indemnities and bonuses if any, safety of working conditions, responsibility for occupational health and safety, insurance, availability and accessibility of grievance mechanisms.[164]
- Ensure that a worker can terminate a contract at any time by giving **reasonable notice and without penalty,** such as withholding of wages or having to pay a fee for early termination of work.
- Ensure that the recruiting process and the contract of employment of migrant workers do not derogate from the principle of **equality of treatment and opportunity**, regardless of whether they are in a regular or irregular situation, i.e. migrant workers "shall enjoy treatment not less

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[160] Ibid., 20

[161] See OSCE, ILO & IOM (2006): Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 47

[162] European Commission 2013, op. cit., 37. See also ILO R188 which establishes in art 8(a) that PrEAs should "not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind".

[163] ILO R188 para. 5, 8(b).

[164] Ibid., 51.

favourable than that which applies to nationals of the State of employment in respect of remuneration and other conditions [...] or terms of employment".[165]

- Ensure that workers recruited and/or employed by the PrEA retain right to **freedom of association** and to **collective bargaining**.
- Train middle management and staff supervisors so that they can spot indications of hidden third party exploitation and trafficking.
- Conduct **on-site random visits to labour users** after the deployment of workers. Such visits should serve to maintain contacts with workers supplied, verify respect of contracts and check that there are no abuses (e.g. no supplementary contract, no document retention, actual working conditions etc).[166] To the extent possible, independent third-parties should be involved in interviewing workers to avoid that they do not complain due to being afraid of blacklisting.Establish operational level **grievance mechanisms** and ensure that they are accessible to both direct-hire employees and to agency workers with user enterprises. Preference should be given where possible to allowing workers to access the grievance mechanism available in the workplace. Such mechanisms should ensure that where there is evidence that migrant workers paid illegal or unauthorised recruitment fees, businesses' grievance and remediation procedures allow rapid refunding.

Box 9. Self-regulatory initiatives on responsible conduct by employer and sector associations in Sweden

Almega is the Swedish employer and trade organisation for the service sector.[167] It is an umbrella organisation and has seven employer and sector association members. Two of these associations, the Swedish Staffing Agencies Association and Almega Service Contractors, have control programmes in place, which require their members to comply with set standards.

[165] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. Art. 25. See also ILO, Convention concerning Discrimination in Respect of Employment and Occupation, 1958 No. 111 (C111); Recommendation concerning Discrimination in Respect of Employment and Occupation, 1958, No. 111 (R111).

[166] For detailed guidance about common risks and red flag indicators of debt-bondage and trafficking, and how to assess them, see: Verite. Fair Hiring Toolkit. 4. Managing Labor Recruiters & Monitoring for Ethical Recruitment & Hiring. TOOL 2: Monitoring the Performance of Labor Recruiters – Introduction and Key Issues of Concern, Available online at: https://www.verite.org/node/727/lightbox2 (accessed on 28 April 2014).

[167] http://www.almega.se/om-almega/in-english (accessed on 28 April 2014)

The Swedish Staffing Agencies Association[168] has established a self-regulatory initiative to promote the recruitment and employment industry as a safe and legitimate business. It lists on its website all companies that comply with the self-regulation. To be part of this network and list, business enterprises need to inter alia adhere to the Association's Code of Conduct, respect collective agreements of the sector of operation (if there are agreements in place), and ensure that their subcontractors are VAT registered and pay taxes and duties. The board of the Swedish Staffing Agencies Association approves membership and carries out yearly checks to ensure that companies - members of the network - respect the self-adhered standards. The situation is monitored on a yearly basis, and the board decides whether the authorisation can be continued, whether more documentation is required or if exclusion from the network is necessary. This would also result in expulsion from the association as a whole.

Almega Serviceentreprenörerna (Almega Service Contractors) runs a similar authorisation programme for service contractors in Sweden.[169] The authorisation requirements include being a member of Almega, and compliance with the appropriate collective agreements, provision of name badges for all employees and compliance with all decisions and recommendations made by the National Board for Consumer Complaints. Furthermore, companies, who use subcontractors, have to request that their subcontractors adhere to the requirements as well (i.e have liability insurance and a business tax certificate and follow collective agreements). In order to become a member, the board of Almega Service Contractors makes sure that the company in question complies with their requirements. All members are subject to controls on a yearly basis.[170]

Rationale and context

Guidelines in this section outline the key elements that a Private Employment Agency (PrEA) should consider to prevent abuse, exploitation and trafficking of migrant workers. Depending on the size of the business, the scale of operation and the level of risk in the economic sector of operation, a business will decide and establish its own code of conduct, operational policies and procedures for its effective implementation. Among the clearest and more widely accepted ethical standards for recruitment of migrant workers, it is important to mention the Dhaka Principles for migration with dignity by the Institute for Human Rights and Business, the European Commission Employment & Recruitment Agencies Sector Guide on Implementing the UN GPs and the Ethical Framework for Cross-Border Labor Recruitment by Verité & Manpower.[171]

[168] The Swedish Staffing Agencies Association is an employer and trade federation for staffing, placement and recruitment companies in Sweden.

[169] Auktoriserad serviceentreprenör. Become a certified service contractor. Available online at: http://www.serviceentreprenorerna.se/auktorisation/om-auktorisationen (accessed on 28 April 2014).

[170] Almega Serviceentreprenörerna. FAQ Auktoriserad Serviceentreprenör. Available online at: http://www.serviceentreprenorerna.se/auktorisation/om-auktorisationen (accessed on 28 April 2014).

[171] IHRB 2012, op. cit; European Commission 2013, op. cit. See also: Verité 2011, op. cit; Verité & Manpower 2012, op. cit. These tools are the result of extensive research and multi-stakeholder consultations, and provides operation guidance for employment and recruitment businesses, including to a certain extent in relation to the prevention of trafficking in persons.

Most of the elements proposed here are commonly included in self-regulatory codes in this sector, for example the measures related to no-recruitment fee, written and clear contracts, and non-discrimination. However, challenges remain in respect of the no-recruitment fee policy or employer-pay policy because recruitment costs are often not defined in national law or regulation and there is lack of clarity about what they include (e.g. administrative costs of recruitment and immigration procedure such as preparation and translation costs of CV and other documentation, costs of skills-testing, medical checks, insurance, training and orientation to prepare to work abroad). (See also Box 2.)

Some measures, such as those related to assessing the reputation of a user enterprise or occupational health and safety in a user enterprise, may be reference points that each business develops and adapts to its own context. For example, some PrEAs introduce field visits to their client/user enterprise to assess occupational health and safety, accommodation and transportation services only prior to beginning a new business relationship or prior to deploying large numbers of workers or when they are providing labour in risky sectors.[172] Moreover, PrEAs should verify that working and safety instructions are made available and explained to a migrant worker in a language that s/he understands to prevent work-related accidents and health hazards for workers and others stemming from lack of knowledge and training on occupational safety and health standards.[173]

With regard to occupational health and safety, research findings indicate that accidents at work are particularly common among migrant workers, especially those employed as cleaners, farm workers or in construction. The reasons are multiple and include limited knowledge of the local health and safety system, language difficulties, as well as excessive working hours (e.g. working up to 12 hours a day 6−7 days a week).[174] This is why it is very important to assess those standards beforehand and to ensure that migrant workers will be informed and trained in occupational health and safety issues in a language that they understand.

For a PrEA, maintaining contact with its clients (i.e. workers recruited to work abroad) is an important way to learn about customer satisfaction, since satisfied workers may either come back when seeking new employment or recommend the agency services to others. In addition, in line with the UN GPs, interviewing workers should also be seen as part of the due diligence process, it is indeed crucial to provide insight into the perspective and concerns of workers and to adequately inform the process of assessment of potential adverse human rights impact.[175]

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[172] Information received during ADSTRINGO expert consultation meetings in Stockholm 11–12 December 2013 and Vilnius 12–13 March 2014.

[173] Ollus & Jokinen 2013, op. cit., 128–129

[174] Irastorza, Xabier (2013): EU-OSHA and Migrant Workers. Presentation at SELEX Expert Meeting European Union Agency for Fundamental Rights; McKay et al. (2006): Migrant workers in England and Wales. An assessment of migrant worker health and safety risks. Working Lives Research Institute, London Metropolitan University; Eskola, Kaisa & Alvesalo, Anne (2010): Ulkomaiseen työvoimaan liittyvät väärinkäytökset – poliisin tutkimat tapaukset. Työterveyslaitos, 33.

[175] HRC 2011, op. cit., Para 18.

Box 10. Verité Fair Hiring Toolkit

Verité[176] is a US-based NGO that promotes fair work and labour rights and cooperates with different companies, NGOs, trade unions and governments to achieve this. Verité's Help Wanted initiative focuses on labour broker practices and provides concrete tools for private sector, civil society and State actors to reduce risks for workers of exploitation and forced labour. As part of this initiative, Verité has launched a Fair Hiring Toolkit which provides web-based guidance to multinational companies and their suppliers to address labour brokerage risks in recruitment and hiring. It includes tools to help companies assess whether their current monitoring and corporate accountability activities protect them from broker-induced forced labour. The toolkit provides also guidance on management structures, processes and indicators to reduce and manage risks of labour exploitation in supply chains. Moreover, the toolkit examines what grievance policies and mechanisms companies can put in place to address workers' complaints.[177] The toolkit is available online and it details in very practical ways what different business actors such as brands, suppliers, auditors and investors can do, but also what governments, advocates and multi-stakeholder partnerships can do in promoting fair hiring of workers and reducing the risk of exploitation.[178] The toolkit addresses each group of actors separately, and provides an overview of the most relevant tools and guidance for their specific sector.[179] Furthermore, Verité has recently launched a website that focuses on responsible recruitment and offers a wide variety of resources.[180]

Box 11. The Dhaka Principles for migration with dignity

The Dhaka Principles for migration with dignity provide a very good standard for ethical recruitment of migrant workers. They are principles that responsible recruiters and employers of migrant workers should respect. They were developed by the Institute for Human Rights and Business following a wide range of consultations with stakeholders. Indeed, the Dhaka Principles are supported by businesses (including International Confederation of Private Employment Agencies), governments, trade unions (including International Trade Union Confederation) and civil society organisations.

The Dhaka Principles set two core principles of non-discrimination and equal protection under employment law and articulate the following ten standards:

1. No fees charged to migrant workers
2. Clarity and transparency of worker contracts
3. Inclusive policies and procedures
4. Non-retention of passports or ID documents
5. Regular, direct and timely remuneration
6. Right to worker representation
7. Safe and decent working conditions
8. Safe and decent living conditions
9. Access to remedies
10. Freedom to change employment and safe return guaranteed.[181]

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[176] http://www.verite.org/ (accessed on 28 April 2014)

[177] Verité 2011, op. cit.

[178] Ibid.

[179] Ibid.

[180] http://www.responsiblerecruitment.org/ (accessed on 28 April 2014)

[181] IHRB 2012, op. cit.

3.3 Promote the self-regulation of business in order to prevent abuse and exploitation in the workplace and in the labour supply chain

→ Businesses (e.g. agriculture, cleaning, and restaurant companies) that outsource partially or fully the recruitment, hiring, or management of migrant workers should commit to **carefully screen** their **sub-contractors and partners** with whom they operate in the recruitment of migrant workers. Screening should aim at verifying that their partners do not engage in abusive and fraudulent practices or charge recruitment costs to job seekers. Furthermore, businesses should be suspicious and report to the licensing/registration authority when a PrEA is offering a "'too good to be true' price for the provision of labour".[182]

→ Businesses should commit to **respect labour standards** and not to interfere with worker's freedom to choose and join a union, and should not use any coercive means to control workers' choices or to limit their freedom of association.[183]

→ Businesses should establish **proactive policies to map out risks of trafficking in their supply chain** and report in a transparent manner about such risks and the corrective actions taken. With a view to mitigating risks of labour exploitation, businesses should consider limiting their recourse to labour sub-contractors and/or recruitment agents and/or labour intermediaries to a minimum of well-trusted and licensed partners.[184]

→ Businesses should consider introducing clauses in their contracts with companies in their supply chain that foresee **contract termination in case of detection of abusive and exploitative practices of workers**, including specific mention of no-recruitment fee policy and no-withholding of passports or other identity documents. Furthermore, information about these policies should be disseminated among actual and potential partners, as well as among other relevant stakeholders.

→ With a view to preventing abuse and exploitation, businesses which operate in the sectors of agriculture, cleaning, and restaurants, and which outsource the recruitment, hiring, or management of migrant workers, should **require** that their labour providers make available a **list of the names of all workers who**

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[182] Gangmasters Licensing Authority (2011): Supermarkets and Suppliers' Protocol with the Gangmasters Licensing Authority – Best Practice Guide, 6.

[183] The International Labor Recruitment Working Group (2013): The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse, 42.

[184] European Commission 2013, op. cit., 36–37.

work on their work site(s),[185] and provide access to wage slips, working hours and overtime sheets, transportation and accommodation conditions.[186]

Rationale and context

Research findings in the Baltic Sea region and elsewhere indicate that in certain economic sectors (e.g. cleaning and agriculture) the demand for low-skilled migrant labour is volatile and often time-sensitive and this may result in frequent and rapid recourse to sub-contacting to meet production targets. Yet, at the same time there is evidence that in such situations mala fide operators – middlemen and brokers – may infiltrate business operations, quickly supply labour, and often charge recruitment fees to workers, abusing or exploiting them.[187] These situations of exploitation at the hands of intermediaries are sometimes referred to as hidden third-party exploitation and may be happening at a level of sub-contracting quite distant from the main contractor who may be unaware of such situations. In this context defining the scope of corporate responsibility to respect human rights in the supply chain is important. The UN Guiding Principles state: "Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence."[188]

In the context of preventing trafficking, business enterprises should build on research findings to identify risk sectors and population at risk, such as migrant workers, especially those in an irregular situation. Businesses can take a number of proactive measures to enhance transparency in their supply chains, including ensuring that they use only licensed or registered PrEAs, requiring that their subcontractors uphold labour standards, adhere to their code of conduct and provide information about grievance mechanisms; they may also request auditing of subcontractors.[189] Moreover, given the risk of exploitation in supply chains, and the potential consequences of being

[185] Ibid.

[186] Verite 2011, op. cit.

[187] Allain et al. 2013, op. cit., 18.

[188] HRC 2011, op. cit., para, 17.

[189] For a detailed list of measures that businesses are encouraged to take to carefully screen and monitor their supply chain see Verité 2011, op cit., in particular the Section on Suppliers subsections N.3. Screening & Evaluating Labor Recruiters and N.4. Managing Labor Recruiters & Monitoring for Ethical Recruitment & Hiring. http://www.verite.org/helpwanted/toolkit/suppliers/screening-evaluating-labor-recruiters (accessed on 24 April 2014) and http://www.verite.org/helpwanted/toolkit/suppliers/managing-labor-recruiters (accessed on 24 April 2014)

associated with these practices, businesses may find it convenient to limit wherever possible subcontracting for labour supply to a limited number of trustful partners.[190]

Responsible business parties wish to be fully aware of the identity of all their suppliers in their labour supply chain. Trade bodies or industry associations should cooperate with their associate members to build their capacity and support them in detecting and preventing abuses in sub-contracting, which otherwise may ruin company reputation, cause financial/market losses, expose to risks of criminal proceedings and result in abuse and exploitation of migrant workers.

Box 12. Code of Ethics by Real Estate Employers Association, Finland

The Real Estate Employers (Kiinteistötyönantajat ry) is an organisation representing employers in the Finnish real estate sector, including the cleaning service sector. They have developed their own Code of Ethics, which members are committed to respect. The Code includes provisions on e.g. acting responsibly by taking care of social obligations, competing with integrity and a commitment to combating the shadow economy and promoting equality and diversity in working life. Members introduced photo identification cards for their employees, which include their personal tax numbers. Moreover, statutory information about their businesses and subcontractors is available online at "Tilaajavastuu.fi." The portal makes it possible for contractors to check whether their partners and sub-contractors act responsibly and fulfil their obligations according to the law on the Contractor's Obligations and Liability when Work is Contracted Out (statute numbers 1233/2006 and 469/2012). The Real Estate Employers Association has also introduced a logo for those adhering to the Code of Ethics, which says "Responsible Company – Member of The Real Estate Employers.[191]

[190] In Finland, some labour users and businesses in the cleaning sector have stopped using sub-contractors altogether after discovering problems in monitoring their supply chain. One company decided to directly hire the employees of its sub-contractors. This has enabled them to better monitor the situation and to ensure that no irregular practices or misconduct take place. Jokinen & Ollus 2014, op. cit., 64.

[191] http://www.kiinteistotyonantajat.fi/tietoaliitosta/eettisetohjeet/ (accessed on 28 April 2014)

Chapter 4. Guidelines for states, businesses, trade unions and civil society: Joining efforts to protect the rights of migrant workers

In December 2013 the UN General Assembly – aware of the growing vulnerability of migrants to exploitation, forced labour and trafficking, adopted an important resolution calling on States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status and in conformity with international standards.[192] The resolution further requests States "to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association".[193] Importantly, the resolution also calls upon States to provide for the protection of the human rights of women migrant workers, to promote fair labour conditions and to ensure that all women […] are legally protected against violence and exploitation".[194] These are only a few of the issues raised in this resolution, yet these - together with the right to non-discrimination and to effective remedies - are crucial in protecting the rights of migrant workers; they are central to a human rights and gender sensitive approach, and are at the core of this section.

This chapter focuses on the protection of the rights of migrant workers as an essential way to prevent their abuse and exploitation, and ensure decent work. Although States are primary duty bearers to ensure such protection, the cooperation, coordination and strategic partnership with civil society, trade unions, and businesses is of outmost importance to the implementation and success of these efforts. This is why the measures proposed in this chapter address States and their public authorities, especially labour inspectors, immigration, consular offices, social services police, prosecutors and judges, and they also address other important civil society stakeholders. Furthermore, the implementation of several measures would significantly benefit where NGOs, business enterprises and public authorities, would join their efforts and actions, sharing common understanding of common challenges, mutually influencing and enriching their practices and widening the scope of their impact.

This chapter provides guidance to the implementation of measures to ensure respect of standards of legal protection of migrant workers, regardless of their

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[192] UN Resolution adopted by the General Assembly on 18 December 2013 [on the report of the Third Committee (A/68/456/Add.2)] 68/179. Protection of migrants, A/RES/68/179, 2014, para 1.

[193] Ibid., para 4 (i).

[194] Ibid., para 5(d).

status, i.e. also in situations in which they may have an irregular status or irregular employment. The fundamental premise is the principle of equality and that all migrant workers enjoy the protection of employment law.[195] When migrant workers do not enjoy the protection of labour law, this in turn contributes to weakening the overall protection for all workers. Furthermore, additional specific protection kicks in where migrant workers are particularly vulnerable and become victims of more serious violations of their rights, such as trafficking, forced labour, servitude, debt-bondage or other slavery-like practices. In these instances, while exploited workers and trafficked persons may have many needs in common, others are quite specific and States' obligations of protection are far-reaching and include psychological, medical, material and legal assistance and representation. In other words, administrative, labour and criminal justice frameworks are all relevant to the protection of migrants' rights.

The chapter starts with guidance to fulfil the right of migrant workers to information in countries of origin and destination. This is the basic of prevention, as the less migrants know their rights, the easier it is to exploit them. The chapter continues by outlining measures to promote and ensure freedom of association and collective bargaining. Then, the focus of the guidelines is on measures to enable migrants to enjoy effective access to remedies. The guidelines attempt to focus on addressing practical, legal, administrative and discriminatory barriers that hamper the enjoyment of their rights by migrant workers. The concluding part of the chapter touches upon more systemic issues to enable protection of migrants' rights and ensure policy coherence. Each of the seven operational guidelines comprising this chapter is accompanied by specific practical measures and a commentary on the rationale of the measures proposed and the key contextual factors they intend to address. In addition, examples of relevant practices complement the guidelines.

4.1 Protect and promote the right to information

→ States shall introduce legal provisions and practical mechanisms to provide migrant workers full information about their rights and obligations, as well as conditions related to their admission, stay and eventual employment. Information shall be provided free of charge, and, as far as possible, in a language they are able to understand.[196]

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[195] See Chapter 1 Key Principles and Standards 3 and 4. See also: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990; ILO, Migration for Employment Convention, 1949 (C-97); ILO, Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143); ILO, Migrant Workers Recommendation, 1975 (R151).

[196] ICRMW art. 33, 37 and 65.

→ States shall also require that Private Employment Agencies (PrEAs) and/or other businesses inform migrant workers about their conditions of work and provide them with written employment contracts.[197]

4.1.1 Ensure orientation and information on safe and legal migration opportunities in countries of origin and destination

→ States of origin and destination and in cooperation with trade unions, NGOs and businesses, should develop initiatives for dissemination of information on safe and legal migration opportunities, such as through TV, radio, and social media or through outreach at places of departure and arrival (train stations, seaports and airports).

→ States should also explore innovative ways to support potential migrants in making informed decisions; they could e.g. promote civil society initiatives about developing tip-sheets on factors to consider and check when choosing a PrEA and a sort of TripAdvisor for labour recruitment, or a "RateMyAgency" service, i.e. a user-generated source of information where migrant workers can comment and rate their experiences with PrEAs, as well as learn about the experiences of others and see the reviews and scores of various PrEAs.

Box 13. Living for Tomorrow hotline in Estonia +372 6607320

The Estonian NGO Living for Tomorrow[198] runs a hotline service for people who are planning to go abroad for work or study. Also people who have been abroad and experienced some form of labour exploitation can contact the hotline. The aim of the hotline is to inform people about opportunities, conditions, rules, and risks of work, study and marriage abroad and to provide assistance. They offer free legal consultations and advice on working agreements, work permits and labour law and help verify whether a contract or promised wage is legitimate. Living for Tomorrow also helps victims to contact NGOs that assist victims abroad or help them in contacting Estonian authorities and NGOs. Also authorities call the service and ask for advice regarding i.e. suspicious cases. The hotline service is available during weekdays from 10am to 6pm and it is free of charge. Advice and assistance is available in Estonian, Russian, Ukrainian and English, and all consultations are anonymous and confidential.[199] Yearly the hotline receives around 550-670 calls from Estonia and abroad. In 2013, Living for Tomorrow identified 15 cases of labour exploitation.[200]

[197] See for example paragraph 5 of ILO Recommendation No. 188, which contains the requirement that all contracts concluded between private employment agencies and jobseekers regarding employment conditions have to be in writing. Recommendation No. 188 also stipulates, as a minimum requirement, that workers should be informed of the conditions of their future assignment.

[198] http://www.lft.ee/about (accessed on 28 April 2014)

[199] http://www.lft.ee/human-trafficking/hotline-service (accessed on 28 April 2014)

[200] Blumberg, Sirle (2014): Why Estonian victims of labour exploitation are not identified in Finland and other Estonian experiences. Seminar Presentation.

4.1.2 Arrange targeted pre-deployment and post-arrival orientation

→ States of origin and destination, in cooperation with businesses, trade unions and NGOs, should support targeted pre-deployment and post-arrival orientation and dissemination of information for migrant workers. Orientation and information dissemination should be targeted both at a country and at a specific sector of occupation (e.g. agriculture, cleaning, restaurants), and should be provided in a language that migrants understand. Information should be provided not only in written form, but efforts should be made to inform migrant workers also orally in order to take into account cross-cultural and gender differences and possible illiteracy or poor reading skills. Such information should be disseminated especially at the time of applying for a work permit and/or for its renewal.

Rationale and context

Awareness raising on safe migration opportunities should aim at empowering potential migrants to make informed decisions on the basis of accurate and practical information about concrete opportunities, realistic benefits, as well as potential risks. This means avoiding misrepresentation of migration prospects and providing clear information on the procedures to follow in the migration process and concrete tips on how to protect themselves from deceptive recruitment, where and how to report abuse and seek assistance. For example, trade unions, NGOs and migrant rights groups could gather information about non-compliant PrEAs, and about employers, which recurrently violate labour protection standards and inform migrant workers accordingly. Awareness raising activities may take a wide range of formats, may be provided at different venues and through a huge variety of media. Practice shows that public authorities, trade unions and NGOs can perform these activities, yet often NGOs are better placed to reach out to potential migrants and obtain their confidence and support them. Boxes 14–16 provide examples of services for migrant workers in the Baltic Sea region.

A study on trafficking prevention in Latvia highlighted the importance and significance of supporting and empowering young people through confidential pre-travel consultations. These consultations assist in making informed decisions and provide concrete guidance on taking precautions before going abroad, such as verifying the legitimacy of the PrEA, requesting a copy of the contract, leaving a copy of their passport with a trusted person and informing them about their itinerary to reach the destination country. In addition, providing contact information at destination, establishing a code language to seek help in case of necessity and collecting contacts of consular offices and organisations that might provide help if needed were suggested.[201]

A new study on trafficking for labour exploitation in Poland analyses Polish electronic media and Internet forums used by job-seekers looking for employment abroad.[202] It

[201] See, Boak, Alison, Boldosser, Amy & Biu, Ofronama (ed.) (2003): Smooth Flight: A Guide to Preventing Youth Trafficking. IOFA, 83.

[202] Lasocik et al. 2014, op. cit.

shows that although most of the forums are not explicitly directed at the prevention of exploitation and trafficking, they do provide a peer-to-peer forum for exchanging information, tips, and practical advice on risks and factors to consider when seeking work abroad. In some instances, this peer exchange of information leads to listing mala fide recruiters and employers and may be quite significant in influencing job-seekers behaviour. Overall social media and Internet resources are a very relevant means to reach out to potential job-seekers and to enable them to make informed decision about migrating abroad for work.[203]

Once migrants have an employment contract, they need more specific and practical information targeted at the country and labour sector of employment. This is the purpose of pre-deployment and/or post-arrival orientation. These orientation activities may be arranged by public institutions in partnership with trade unions, NGOs and businesses (including their trade associations), and they may be delivered in both the origin and destination country. Grassroots organisations in countries of origin and migrant community organisations in countries of destination may be among the best placed to disseminate such information. Trade unions are also generally recognised as providing valuable information and support to migrant workers.[204] Findings also suggest the need to enhance the scope and quality of such information and to provide it in the early stages of the migration process, and especially at the time of applying for a work permit and/or for its renewal.[205] Migrant workers should be requested to handle the visa or work permit procedure in person, so to have an opportunity to meet public officials, receive information on their rights and be referred to further services if needed.

In terms of the practical content of pre-deployment orientation, this can range from information related to travel and visa procedures (including time and admissible costs) to general information about work and living conditions, including costs of accommodation, low-cost ways and ordinary charges to transfer remittances, possibilities to learn the local language, to more specific information related to the work, wage and other benefits, reputation of the employer, available support services by trade unions and/or migrant organizations and where and how to report abuse.[206]

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[203] Ibid.

[204] Jokinen & Ollus 2013, op. cit., 23–26.

[205] Ibid., 124; Vogiazides & Hedberg 2013 op. cit., 229. It is also recommended to conduct sample Knowledge Attitude and Practice (KAP) to assess the impact of awareness raising activities, see OSCE, ILO & IOM 2006, op. cit., 55.

[206] See Ibid., 51–55; ILO (2005): Trafficking for Forced Labour. How to Monitor the Recruitment of Migrant Workers. Training Manual. Geneva: ILO, 47.

Box 14. Public services to support migrant workers, Norway and Finland

There are three Service Centres for Foreign Workers in Norway. The Centres are run in cooperation between the police, the Labour Inspection Authority, the Tax Administration and the Directorate of Immigration. The purpose of the Centres is to offer both employers and employees information about working in Norway and assistance with initiating fast-track handling of applications. They offer support services to submit documentation for residence permit, application for tax deduction card, and issuance of registration certificates for EU citizens. They provide assistance in multiple languages. In addition, they have a website which explains the different steps and regulations from finding a job to legally coming to Norway.[207]

"In To Finland" is a shared service point of the Social Insurance Institution of Finland and the Tax Administration in Helsinki, intended for advising migrant workers in Finland. In addition to migrant workers, they provide services and advice in multiple languages to entrepreneurs and students from other countries, along with agencies and companies recruiting and hiring migrant workers. Migrant workers can for example apply for a tax card and obtain a Finnish personal identification number without having to visit the local register office.[208]

Box 15. Handbook for labour migrants coming to Germany

As part of the European Commission funded project "An informed person is a protected one" the Ecumenical Association of Churches in Romania AIDRom[209] in cooperation with Lampas Foundation,[210] Verein für Internationale Jugendarbeit VIJ e.v.[211] and Diakonisches Werk Bremen[212] published a guide to inform Romanian workers about employment in Germany.[213] The 2012 guide extensively outlines the rights and duties of workers, as well as lists indicators of labour exploitation. The purpose of the guide is to equip labour migrants with knowledge and tools to prevent falling victim to labour exploitation. It gives practical advice on numerous important topics such as how to find work, employment regulations, finding accommodation and accessing social services in Germany.[214]

[207] http://www.sua.no (accessed on 28 April 2014)

[208] http://www.intofinland.fi/en (accessed on 28 April 2014)

[209] http://www.aidrom.ro/public_en/index (accessed on 28 April 2014)

[210] Lampas Foundation is a non-profit, non-governmental organization affiliated with the Christian faith. For more information: http://www.diakonie-bremen.de/fileadmin/user_upload/media/PDF/Presentation_Lampas_Foundation.pdf (accessed on 28 April 2014)

[211] http://www.vij.de/ (accessed on 28 April 2014)

[212] http://www.diakonie-bremen.de/startseite/ (accessed on 28 April 2014)

[213] AIDrom. Wer informiert ist, ist geschützt: Was muss ich wissen, um in Deutschland sicher zu arbeiten? Wir können Dir helfen, wenn Du willst!

[214] Ibid.

Box 16. Work time calendar (Germany)

Within the project "Alliance against human trafficking for labour exploitation"[215] the German Confederation of Trade Unions DGB[216] in cooperation with several counselling services launched in 2013 a work time calendar, where migrant workers are advised to write down their working hours so to document whether they are properly and regularly paid. The calendar is a pdf document, which can be downloaded in five different languages. It explains workers' rights and advises on how to enforce these rights. The calendar includes tips for employees on how they can secure their right to a fair wage. For example, workers are advised to have someone present when talking to the employer, to collect evidence of their work by taking photos of themselves at work and to contact a trade union for further assistance.[217]

4.2 Ensure just and favourable conditions of work, legally binding job offers and written employment contracts

→ States shall safeguard migrant workers' right to just and favourable conditions of work.[218] This right encompasses: fair wages and equal remuneration for work of equal value, decent living, safe and healthy working conditions, rest, leisure and reasonable limitation of working hours and periodic holidays with pay. [219]

→ States through their Ministries of Labour or other competent authorities should require that businesses, especially PrEAs, provide a migrant worker prior to entry with a written legally binding job offer, or a valid contract of employment.[220] Both documents should be provided in a language that the worker understands, and contain clear and fair terms of employment so that s/he can give her/his informed consent. Furthermore, both the job offer and the contract should contain information about the recruitment agency and any other actor involved in the recruiting, hiring and employing of the migrant worker.

→ Employment law and/or regulation should require that the job offer for the recruitment and employment of migrant worker specifies *inter alia* the sector

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[215] The project "Alliance against human trafficking for labour exploitation" is part of the framework-program Xenos – Integration and Diversity, which is funded by the European Social Fund and the German Ministry of Labour and Social Affairs. The project is run by the coordination team "Arbeit und Leben e.V. and three partner organizations in three different federal states. Available online at: http://www.buendnis-gegen-menschenhandel.de/en/about-project-alliance-against-human-trafficking-labour-exploitation (accessed on 28 April 2014)

[216] http://en.dgb.de/ (accessed on 28 April 2014)

[217] Bündnis gegen Menschenhandel zur Arbeitsausbeutung (2013): Infomaterial: Arbeitszeitkalender - "Schreibe Deine Arbeitszeiten auf! Sichere Deinen Lohn!".

[218] UDHR art. 23 and 24; International Covenant on Economic, Social and Cultural Rights (ICESCR art. 6 and 7); EU Charter of Fundamental Rights (art. 31).

[219] ICESCR art. 7

[220] See for example the requirement for admission for employment as a seasonal worker in the EU, Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, 2010/0210(COD), PE Cons 113/13 7-2-2014, art. 5.

of employment, place and type of work, duration of employment, working conditions, particularly the remuneration, the working hours, and the amount of any paid leave.

→ Employment law and/or regulation should require that contracts of employment indicate conditions and terms of work, and include the following information:

- personal details of the worker (incl. country of residence at the time of recruitment),
- nature of work and sector of occupation,
- details on minimum terms and conditions, such as salary, hours and place of work, overtime, etc.,
- social insurance and other benefits,
- conditions for entry, residence and work in the foreign country as well as conditions for renewal and termination, and
- details of the recruitment agency and of the employer(s).[221]

Rationale and context

Introducing the requirement of a legally binding job offer is intended to protect migrant workers and to ensure that they are not misled about the type and conditions of work. It is then the responsibility of the PrEA and/or of the employer to provide binding job offers and written employment contracts and to ensure that migrant workers understand the terms of employment.[222]

A similar requirement of a legally binding job offer or contract is foreseen in the recently approved EU Directive on the conditions of entry and residence of third-country nationals for the purpose of seasonal employment.[223] The Directive requires that employers provide seasonal workers with a work contract or a binding job offer specifying payments, working hours, as well as evidence that the worker will have appropriate accommodation (i.e. in compliance with the country health and safety standards). In case of breach of these obligations, employers will face penalties and will have to compensate the affected seasonal worker(s). Furthermore, one of the most important rules of the seasonal workers directive establishes the right of seasonal workers to equal treatment, i.e. they are entitled to the same labour rights to minimum pay, dismissal, working hours, holidays, and health and safety requirements as EU

[221] In some instances it may be necessary to also specify who bears the travel costs, conditions for provision of boarding and lodging etc. See ILO, Migration for Employment Recommendation (Revised), R86, 1 July 1949, R86.

[222] Jokinen & Ollus 2013, op. cit., 26.

[223] EU, Directive 2010/0210(COD), op. cit., Art. 5A, Art. 20. See also Vogiazides & Hedberg 2013, op. cit., 227.

nationals.[224] Indeed, this in line with the international human rights obligations of States to ensure equality and non-discrimination in respect to employment, including the right of everyone to the enjoyment of just and favourable conditions of work, including safety and remuneration. This requires establishing minimum standards for working conditions to ensure fair treatment of all workers, including migrant women and men.

4.3 Establish a network of labour attachés in main destination countries

→ States in countries of origin should consider appointing labour attachés to work in consular offices in the main countries of destination to ensure the protection and welfare of their own citizens working abroad.[225] Labour attachés should work closely with consular offices and advise and assist migrant workers in matters related to their employment rights, including legal assistance to recover unpaid wages or other dues, or to put forward complaints in case of abuse and exploitation etc.

Rationale and context

The posting of labour attachés in consular offices abroad to advise and support migrant workers abroad is an established practice of main labour-sending countries, especially in Asia, and has more recently become a practice also in some European countries (e.g. Romania, Bulgaria).

Labour attachés are public officials who provide advice and support to migrant workers. They are particularly useful in countries where there is a large number of citizens who work there. It would be important to ensure that these services reach out to men and women employed in low-skilled occupations, and/or in isolated settings who are often more exposed to risk of abuse. One of the most important services that labour attachés may provide is legal advice and assistance to workers who experienced exploitation to support them in seeking redress while they are resident abroad. Labour attachés can also contribute their knowledge of the labour market and employment law in the country of destination to inform potential job seekers prior to departure, for example regarding regulation, practice and reputation of PrEAs.[226] Furthermore, labour attachés can facilitate cooperation between labour inspectors in the country of destination with their counterparts in the country of origin. This may prove very useful for example when conducting checks on PrEAs operating in the country of destination and registered in the country of origin.

[224] EU, Directive 2010/0210(Cod), op. cit., Art.23

[225] OSCE, ILO & IOM 2006, op. cit.

[226] For a more extensive description of the competence and mandate of labour attachés, see ibid., 58–60.

4.4 Protect and promote the right to freedom of association and to collective bargaining of migrant workers

→ States should ensure that migrant workers enjoy the right to freedom of association (right to join and form a trade union) and to collective bargaining without any hindrance and without discrimination, including regardless of their status, and regardless of whether they are agency workers or directly hired employees. Furthermore, legislation should clearly allow irregular migrant workers to exercise their right to join a trade union.

→ States should establish mechanisms to ensure that workers who engage in trade unions and/or who file complaints against their employer are protected from retaliation, including protection from being blacklisted and not hired again.

→ States, trade unions and businesses should also cooperate to clarify and agree on rules of representation in case of a triangular or multiple employment relationship, including in case one of the actors is abroad, ensuring respect of the principle of non-discrimination and equal treatment. In this regard, workers employed by a PrEA and supplied to a labour user should enjoy equal treatment with directly hired workers, including the right to join the same union as directly hired workers and be part of the same collective bargaining agreement.[227]

4.4.1 Support self-organisations of migrant workers in order to monitor labour standards

→ States should support and promote the role of migrant workers' self-organisations in monitoring minimum wages/collective agreements and labour standards in sectors such as agriculture, cleaning and ethnic restaurants. Cooperation among migrant centres, trade unions, migrant's rights and anti-trafficking NGOs should also be encouraged and supported.

4.4.2 Extend trade union protection to migrant workers in an irregular situation

→ Trade unions should discuss and agree on the main criteria to extend union protection to migrant workers in irregular situation who are not their members. In this regard, they should consider applying the principle of solidarity and extend protection to any workers, i.e. regardless of his/her status and trade union membership, who was subject to abusive recruitment practices, or who was exploited or trafficked.

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[227] IndustriALL Global Union (2012): The triangular trap. Unions take action against agency labour; EU, Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, Art. 5.

4.4.3 Develop and/or strengthen outreach activities through multi-stakeholder partnerships

→ States should encourage and support outreach efforts to prevent exploitation and trafficking, and protect the rights of workers through partnership among government agencies, workers' organizations, employers' associations, faith groups and NGOs.

4.4.4 Ensure that civil society assisting irregular migrants is not penalised

→ States should establish legal provisions to explicitly prohibit the punishment of individuals, community organizations, NGOs, or trade unions that support or assist a migrant in an irregular situation (e.g. through the provision of shelter, legal advice etc.).[228]

Rationale and context

The rights to organize and to collective bargaining are fundamental to promote and realise decent conditions at work, and they are strictly interconnected with the right to freedom of association. States should ensure that migrant workers fully enjoy these rights without any discrimination, and should enact policies and laws that foster a conducive and enabling environment to migrants' enjoyment of these rights.[229]

The current features of the labour market and the significant proportion of migrant workers employed in many sectors of the economy, make it compelling to ensure the protection and representation of their rights as workers. A 2010 study by the European Foundation for the Improvement of Living and Working Conditions shows lower union density levels for migrants in almost every European country.[230] Trade unions should therefore adjust their organisation and services to make them more inclusive of the concerns and needs of migrant workers. At national level, also in the Baltic Sea region, some trade unions have already started addressing barriers to migrant membership, have invested in cultural mediation and language services, and have also developed specific services targeting migrant workers in an irregular situation (see Box 18). In some instances, unions actively promote migrant workers participation

[228] See OSCE, Ministerial Council Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation, MC.DEC/8/07 para 9. Ensure that civil society organizations, which legally provide assistance to victims of trafficking for labour exploitation, are not penalized or criminalized for providing such assistance. See also EU FRA (2014): Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with them. FRA.

[229] ILO, Declaration on Fundamental Principles and Rights at Work and its Follow-up, 18 June 1998 (Annex revised 15 June 2010); ILO, Freedom of Association and Protection of the Right to Organise Convention, 1948, N. 87; ILO, Right to Organise and Collective Bargaining Convention, 1949, N. 98. Freedom of association is also affirmed in the Universal Declaration of Human Rights - UDHR art.20; EU Charter of Fundamental Rights, art.12.

[230] European Foundation for the Improvement of Living and Working Conditions (2010): Trade Union Strategies to Recruit New Groups of Workers.

and representation within trade union structures, including at the decision-making levels of the union.[231]

A main challenge for trade unions is increasing their capacity to reach out to migrant workers. This is a demanding task because migrant workers are often employed in non-unionised and dispersed sectors of the economy, or are employed under atypical contracts, or with temporary agency contracts in the private services sector or under informal arrangements. In this regard, there are several promising practices founded on the strategic partnership between trade unions, migrant rights groups and grassroots community organisations, and in a few occasions also in cooperation with employers' associations.[232]

Outreach activities are particularly necessary to respond to the needs of most vulnerable groups who may lack access to written or online information for a variety of reason, including illiteracy and isolation, and would need to be approached in person. Information should be disseminated through ethnic communities or through informal channels (including information spread by word-of-mouth), which allows to overcome also language barriers.[233] NGOs and migrant rights groups often arrange outreach activities in places where migrant workers usually gather such as parks, internet cafes and telephone shops, money-transfer centres etc., and at times outside of usual working hours (e.g. on evenings and weekends etc.).[234] It takes time and regular presence by cultural mediators and social workers to establish contact with migrants, provide them with information on their rights and on social, health, trade union and other services they might need, and where possible to accompany them to such services. Outreach should embrace a gender perspective and develop specific information targeting women migrant workers, especially those in an irregular situation.

An essential corollary measure to enable outreach and support activities is to ensure that people and organisations that engage in this work and assist migrants in an irregular situation are not penalised or punished for this. A recent report by the EU Fundamental Rights Agency discussing the criminalisation of irregular migrants reveals that more than one quarter of EU Member States do not have explicit provisions to exempt from punishment humanitarian assistance or other non-profit support. The report inter alia recommends issuing practical guidance to States to ensure that they implement the EU Facilitation Directive[235] in a human rights compliant manner and "explicitly exclude punishment for humanitarian assistance at

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[231] ADSTRINGO expert consultation meetings in Stockholm 11–12 December 2013 and Vilnius 12–13 March 2014.

[232] See for example Box 8 about Stronger Together; see also Staff Wanted Initiative by Anti-Slavery and the IHRB www.staff-wanted.org.

[233] Ollus & Jokinen 2013, op. cit., 125–126.

[234] PICUM (2012): Strategies to End Double Violence Against Undocumented Women Protecting Rights and Ensuring Justice.

[235] Council Directive 2002/90/EC of 28 November 2002 on defining the facilitation of unauthorised entry, transit and residence, OJ 2002 L 328/17,

entry […] as well as the provision of non-profit humanitarian assistance (e.g. food, shelter, medical care, legal advice) to migrants in an irregular situation."[236]

Box 17. Nordic trade union initiatives tackling labour exploitation

The Norwegian United Federation of Trade Unions (Fellesforbundet)[237] is active in the efforts to prevent labour exploitation in Norway. They produced a booklet called Useriøse aktører: et veiledningshefte for tillitsvalgte i Fellesforbundet (Uncommitted actors: A guide for representatives in the United Federation of Trade Unions), which outlines strategies for detecting and tackling labour exploitation.[238] Fellesforbundet also engages in outreach work and organises Norwegian language classes for migrant workers.

In Finland and Denmark some trade unions regularly publish the names of companies on which they have declared a boycott e.g. due to non-payment and/or underpayment of wages. The Finnish Construction Union regularly publishes the names of suspect companies, which remain on their list until they have paid back the due wages.[239] In Denmark, the trade union 3F has imposed boycotts within the building and construction sector against various Danish and foreign companies after they refused to enter into a collective agreement with 3F. Under certain circumstances the boycott can be expanded so that all other unions under the Danish Confederation of Trade Unions (LO) do not provide the company with materials or services.[240]

Box 18. Trade union centres for undocumented migrant workers, Sweden, Norway and Germany

In Sweden, the Swedish Trade Union Confederation (LO) in collaboration with the Swedish Confederation for Professional Employees (TCO) and the Swedish Confederation of Professional Associations (SACO) manages a Centre for undocumented migrants in Stockholm. The Centre provides undocumented migrants and asylum-seekers information about their rights in the labour market, including collective agreements, working hours and health care. Furthermore, the Centre assists migrant workers when their rights have been violated. All services are free of charge and may be accessed on an anonymous basis.[241] Similarly in Norway, the Norwegian Confederation of Trade Unions (LO) plans to establish a service centre for undocumented migrants and asylum seekers in cooperation with the NGO Norwegians People´s Aid. The establishment of the Centre has been included in LOs action plan for the period of 2013–2017.[242]

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[236] The report points out that the EU facilitation Directive allows but does not explicitly require that Member States refrain from punishing facilitation of irregular stay, if this is not done intentionally and/ or for financial gain. See EU FRA 2014, op. cit., 16, and Directive 2002/90/EC art 1.

[237] http://www.fellesforbundet.no/ (accessed on 28 April 2014)

[238] Fellesforbundet (2009): Useriøse aktører: et veiledningshefte for tillitsvalgte i Fellesforbundet.

[239] http://rakennusliitto.fi/palkat-ja-tes/liiton-julistamat-saarrot/ (accessed on 23 April 2014)

[240] 3F Fagligt Fælles Fordund. 3Fs holdning til udenlandsk arbejdskraft. At: http://forsiden.3f.dk/article/20110307/UDENLANDSK_ARBEJDSKRAFT/110309890&profile=2380&template=sectionpage&dynamikpath=3fdk-loenforside-grupperne-illegal-forside&profile=2380 (accessed on 23 April 2014).

[241] http://www.fcfp.se (accessed on 28 April 2014)

[242] Landsorganisasjonen i Norge (2013): LOs handlingsprogram 2013–2017.

In Germany, the Confederation of Trade Unions DGB[243] has established six centres throughout the country to inform migrant workers in various languages about their rights and provide assistance in case of labour exploitation.[244] Services are free and accessible to all migrant workers regardless of any affiliation with trade unions. There are multiple other organizations in Germany that assist migrant workers and provide information such as human rights NGOs, church organisations and women's organisations.[245] For example, MigrAr is a legal aid initiative by the trade union Ver.di,[246] which assists migrants, including undocumented migrants, in cases of labour exploitation.[247]

4.5 Protect and promote the right to remedy

→ In line with their duty to protect, States should ensure that migrant workers whose rights and freedoms were violated enjoy equal access to justice and remedy for harms committed against them through civil, administrative, judicial or other legal action, regardless of their status.[248]

4.5.1 Establish mechanisms for confidential reporting of abuse and for lodging confidential complaints

→ States should support mechanisms managed by trade unions or NGOs for confidential or anonymous reporting of suspicious situations in the workplace to alert labour inspectorates and induce them to conduct an inspection of the suspicious working place.

→ States should establish mechanisms allowing migrant workers who are victims or witnesses of abuse and/or crime to lodge complaints confidentially, preferably to an independent body (e.g. an ombudsperson), and without fear of retaliation, i.e. loss of work or additional precariousness, or fear of referral to immigration authority, arrest and expulsion.

→ States should also consider "offering victims and witnesses of serious crimes the possibility to turn to the police via third parties (such as a migrants

[243] http://en.dgb.de/ (accessed on 28 April 2014)

[244] DGB. Beratungsstellen. At: http://www.faire-mobilitaet.de/beratungsstellen (accessed on 1 April 2014).

[245] DGB. Beratungsstellen, op. cit.

[246] Ver.di is a multi-service trade union with an estimated 2,2 million members. The trade union supports people from about 1000 different occupations. See: http://international.verdi.de/ver.di_fremdsprachig/was_ist_ver.di_-_eine_einfuehrung_auf_englisch (accessed on 28 April 2014).

[247] http://migrar-ffm.de/ (accessed on 1 April 2014)

[248] ICRMW, Art. 83; UN TOC, Art.25(2); UN Trafficking Protocol, Article 6(6), etc ECHR Art13, CETS 197 Art. 15; EU, Directive 2011/36/EU art. 17.E See also HRC 2011, op. cit., Principle 17 and Guideline 9.

ombudsman, specially designated officials; or entities providing humanitarian and legal assistance)."[249]

4.5.2 Provide legal aid and support services to access remedies, especially compensation

→ States should ensure that exploited and trafficked migrant workers are provided free legal counselling and assistance in a language that they understand during administrative and legal proceedings for seeking remedies for abuse and exploitation. [250]

→ States should provide financial resources to NGOs and trade unions to establish support services for exploited and trafficked migrant workers so that they can effectively seek justice. Furthermore, States should introduce regulation allowing an accredited NGO or a trade union to represent migrant workers and assist them in legal or administrative proceedings.

4.5.3 Provide for the possibility of changing employer in case of abuse

→ States should review their labour migration regulations to introduce criteria and mechanisms allowing migrant workers to change employers in case of abuse or violations of the terms provided in the legally binding job offer or employment contract. Migrant workers should be afforded sufficient time to time to find another job, and allowed in-country status to change employers and/or sector without losing their work and/or residence permit.

4.5.4 Residence permits for migrant workers who are victims of exploitation and trafficking, including in-country status to pursue compensation claims

→ States should suspend removal of exploited and trafficked migrant workers to allow them to lawfully stay in the country to pursue compensation claims before civil, labour or criminal courts. Furthermore, States should also establish procedures and mechanisms to allow foreign citizens who have been victims of crime to continue pursuing claims even after they have left the country.[251]

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[249] EU FRA (2013): Apprehension of migrants in an irregular situation − fundamental rights considerations, para 9.

[250] UN Trafficking Protocol Art 6; Council of Europe Trafficking Convention CETS N.197 Art. 12, 15; UN ECOSOC (2002): Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 6.5, 9.3; EU, Trafficking Directive 2011/36/EU art. 11.5, 12.2; EU, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, art. 7, 8, 9, 13.

[251] Provisions related to a permit to stay to access justice are included in the UN Trafficking Protocol Art 6.2.b and Art. 8.2; UN TOC Art 25(3); Council of Europe Trafficking Convention

→ States should introduce the possibility of regularising the status of migrant workers in cases when they report exploitation and trafficking. Residence permits should be granted both when it is necessary owing to the personal situation of the victim, and when they cooperate with the competent authorities. When permits are granted for the purpose of cooperation, victims shall not necessarily be requested to press charges, or testify in court, and permits shall not depend on the criminal qualification of the indictment as trafficking. Such residence permits should be convertible into regular work permits and include the eventual possibility of applying for permanent residency.

4.5.5 Ensure implementation of specific protection measures for workers who are victims of exploitation and trafficking in human beings

→ In line with international and regional standards, States should ensure that migrant workers who are victims of exploitation and trafficking are afforded specific protection in accordance with their entitlements as victims of crime, and/or of trafficking. In particular they should ensure that trafficked persons are promptly referred to national referral mechanisms and provided unconditional access to adequate social, psychological, medical, legal assistance, translation/interpreting, as well as accommodation and material assistance. [252]

→ States should ensure that victim-friendly procedures are in place to protect victims of exploitation and trafficking against repeat victimisation at the hands of offenders and protection from secondary victimisation during legal proceedings.[253]

Rationale and context

Migrant workers who are victims of abuse and exploitation are entitled to an effective remedy for the violation of their labour rights, through administrative, labour, judicial proceedings and/or through other operational grievance mechanisms at the level of business enterprises. However, the effective enjoyment of the right to remedy is often

CETS N.197 Art 16.2 (see also CETS N. 197 Explanatory Report, para. 192 and 202); UN ECOSOC 2002, op. cit., Principles 9 and 17; UN OHCHR Special Rapporteur on trafficking in persons, especially women and children (2013): The Right to Effective Remedies for Trafficked Persons, Draft basic principles on the right to an effective remedy for trafficked persons.

[252] UN Trafficking Protocol, art.6; Council of Europe Trafficking Convention CETS N.197 art. 10, 11, 12; EU, Trafficking Directive 2011/36/EU art. 11, 12, 17; UN ECOSOC 2002, op. cit., guideline 2, 6 and 9; EU, Directive 2012/29/EU, Art 7,8, 9, 22, 23.

[253] EU, Trafficking Directive 2011/36/EU art. 12; EU, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, art.12,18, 22–24.

precluded to migrant workers for a variety of reasons starting from lack of knowledge about their rights and about the possibilities to lodge a complaint with administrative or judicial authorities. Migrants are often in a precarious situation, are not members of trade unions and very often they are precluded from access to grievance mechanisms in the company (if and where they exist). Furthermore, their residence and/or work permit is in many cases tied to the employer and they are afraid of losing their job if they complain. Additionally, migrant workers – especially those in an irregular situation – claiming compensation for back-pay often face challenges in demonstrating the existence of an employment relationship and/or of a work contract or how much time they worked. Critical barriers also relate to the fear of return, of detention, or of losing the prospect or source of income (even if very minimum), as well as to cultural factors, gender, language, and education.

This is why States should establish mechanisms and incentives to encourage migrant workers to report exploitation and trafficking, including anonymous reporting, confidential complaint procedures, lodging complaints either directly or through designated third parties (e.g. trade unions and NGOs). For example, complainants will not come forward unless migrant workers have trust in the NGOs or in the ombudsperson and are confident the issues they report will be taken seriously and they will be protected from potential reprisal. Other important incentives relate to providing safe pathways for workers to leave an abusive employer and find another job, and/or to regularise their situation. In the Baltic Sea region, some countries (e.g. Finland) already provide for the possibility of leaving an abusive employer without risking losing their work or residency permit, however workers are not always adequately informed about this and may need some support in finding new safe employment so to avoid unscrupulous middlemen profiting from their vulnerability.[254]

In addition to addressing structural barriers that hinder migrant workers' access to remedies, the provision of support services is essential to enable exploited and trafficked migrant workers to claim their rights, including the right to compensation for harm suffered. Victims of exploitation and trafficking may often qualify for additional protection because of the trauma caused by the crime, including on their emotional and mental health, and the vulnerability that stems from the controlling relationship between the victim and the offender. Indeed, international and European law on trafficking foresee a number of ancillary rights that relate to providing victims assistance, protection and enabling them to effectively access remedies and to protect them from secondary victimisation. Thus, support services, such as medical and psychological care, accommodation, legal counselling and representation, the provision of basic means of subsistence, the regularisation of status, interpretation and translation, are all to be considered as ancillary rights to enabling access to compensation. It is therefore very important to ensure that trafficked and exploited workers are promptly referred to the national referral mechanism for assistance and protection of their rights. Research in the Baltic Sea region confirms these challenges and indicates a general dearth of services for migrant workers. The shortage of services has significant implications for the prevention of exploitation and also impacts on the capacity to detect labour trafficking, assist victims and provide them with redress, as well as punish perpetrators.

Overall, to enhance access to justice it is important to make multiple channels of protection available and accessible. This means making use of a variety of channels to

[254] Ollus et al. 2013, op. cit., Ollus & Jokinen 2013, op. cit.

enable exploited and trafficked migrant workers to receive redress, including those related to labour standards, trafficking, victims' rights[255] and employers' sanctions.[256] For example, the EU 2012 Directive on Victims' Rights[257] has established minimum standards for protecting victims' rights and requires States to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. The Directive applies in a non-discriminatory manner, including in relation to a victim's residence status. Thus it is a very relevant standard also for the protection of exploited or trafficked migrant workers. One more channel of protection is provided by the EU 2009 Directive on Employers Sanctions, which introduces a specific mechanism for workers to receive compensation of back wages. It foresees that where it is hard to prove the amount of remuneration owed to the worker, employers are automatically presumed to have employed the migrant worker for three months and the relevant minimum wage or collective agreement standard applies for calculation of the compensation owed.[258]

Finally, given the length and complexities of judicial proceedings, some experts recommend the establishment of an additional and more accessible administrative complaint procedure. The following Box 19 summarises in three main stages a complaint mechanism for migrant workers in case of abuse and deception in recruitment.[259]

Box 19. A three-tiered complaint mechanism for temporary migrant workers

"Tier 1 Private Employment Agencies

In the event of abusive employment conditions abroad, the migrant should first contact the PEA [Private Employment Agency] that hired him or her. The PEA should then attempt to settle the dispute between employee and employer amicably and by voluntary agreement.

Tier 2 Responsible State Authority

If tier 1 fails, then the appropriate institutions should provide impartial and effective third-party assistance through conciliation, arbitration, and mediation. Institutions should get in touch with their counterparts in the country of employment. Should the complaint be proven, the responsible authority should revoke or suspend the licences or satisfy claims for refunding.

Tier 3 Adjudication

Though prolonged and costly, this is the best way to deal with serious abuses of human rights in the recruitment process, including human trafficking. Complaints involving acts that are criminal in nature and require the imposition of penalties such as fines and imprisonment come within the jurisdiction of the courts." [260]

[255] EU, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

[256] EU, Directive on Employers Sanctions 2009/52/EC.

[257] EU, Directive 2012/29/EU, op. cit.

[258] EU, Directive on Employers Sanctions 2009/52/EC, Art. 6.

[259] OSCE, ILO, IOM 2006, op. cit., 49.

[260] Ibid.

4.6 Ensure right to non-punishment of trafficked workers for offences committed by them whilst being trafficked, or as a consequence of having been trafficked

→ States should consider adopting legislation to ensure that migrant workers who are victims of trafficking and/or forced labour are protected from detention, prosecution and punishment for offences relating to their having been trafficked, or as a consequence of having been trafficked. Such legislation should include an open-ended list of offences typically related to trafficking in human beings and/or forced labour, with regard to the commission of which victims of trafficking will not be prosecuted, punished or penalised, in accordance with the duty of non-punishment. Such list should include but not be limited to:

- violation of immigration law,
- employment without work or residence permit,
- giving of false information to obtain travel documents, work permits and residence permits,
- illegal crossing of state frontiers and overstaying beyond the visa period etc.[261]

→ In line with the duty of non-punishment States should ensure that victims of trafficking who have been suspected or convicted of trafficking-related offences are not restricted in their access to residence rights nor, where appropriate, to labour rights, to which they may be entitled as victims.[262]

Rationale and context

International and regional standards on trafficking include a specific legally or politically binding provision to ensure the non-punishment of victims of trafficking for offences committed whilst or because of their being trafficked.[263] The rationale behind this provision is that trafficked persons are compelled to commit offences because of their trafficking; they act without autonomy as they are controlled by their traffickers

[261] OSCE (2013): Policy and Legislative Recommendations Towards the Effective Implementation of the Non-Punishment Provision with Regard to Victims of Trafficking, 32.

[262] Ibid., 33.

[263] CETS N. 197, art 26; EU, Directive 2011/36/EU, art. 8; UN ECOSOC (2002): Recommended Principles and Guidelines on Human Rights and Human Trafficking. Guideline 4.5; UN, Resolution Global Plan of Action to Combat Trafficking in Persons: resolution / adopted by the General Assembly, A/RES/64/293 (12 August 2010); OSCE Permanent Council, Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings, PC.Dec/557/Rev.1, Chapter IV, para. 5.2.; OSCE Ministerial Council, Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings, MC(8).DEC/1, para. 9; OSCE Ministerial Council, Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1.

through deceptive, abusive and coercive means. Therefore, they are not responsible for committing the offence and should not be held accountable. The punishment of victims for offences related to their being trafficked is unjust and constitutes a violation of their dignity. It also plays into the hands of traffickers who can exercise even more control over victims, threatening them with denunciation to the authorities, thus continuing to operate with impunity. [264]

4.7 Other measures to protect migrant rights

4.7.1 Promote tolerance and non-discrimination

→ States should cooperate with civil society, trade unions and businesses to foster a culture and an environment that understands and appreciates the positive social and economic contribution of migrant workers to the society of their host country. States should also mobilise efforts and public attitudes to combat discriminatory and xenophobic attitudes.

4.7.2 Engage National Rapporteurs or equivalent mechanisms in the prevention of trafficking for labour exploitation

→ National Rapporteurs on trafficking in persons or equivalent mechanisms or national human rights institutions should consider developing a specific thematic focus on understanding the systemic patterns of exploitation and trafficking of migrant workers, as well as on documenting the structural factors that foster an environment conducive to this exploitation.

4.7.3 Ensure policy coherence reviewing labour migration policy to prevent trafficking

→ In line with their duty to act with due diligence States should review their policies, laws and regulations especially in the field of migration, labour and business practices to foster coherence of action, avoid the risk of compromising the protection of human rights and ensure that they do not unintentionally contribute to exploitation and trafficking of migrant workers. More specifically, given the evidence of abuse and exploitation connected with certain labour migration schemes, such as the posting of workers and bogus self-employment, and with visa policies linking the residence permit to a single employer, these schemes should be thoroughly examined to ensure that they are coherent with the objective of preventing and combating exploitation and trafficking.

[264] For detailed discussion and guidance on the non-punishment provision see: OSCE 2013, op. cit.

Rationale and context

Negative public attitudes towards migrants, weak enforcement of laws against xenophobia, as well as discriminatory and/or poor legal protection of the human rights of migrants are among the factors contributing to patterns of exploitation of migrant workers, and that hinder their effective access to justice. Measures promoting migrant integration into society, recognising their positive contribution to economic and societal development, and preventing discrimination contribute to fostering positive attitudes towards migrants, to building social cohesion and to accruing positive benefits of labour migration.

Ensuring policy coherence and effective action against trafficking and exploitation of migrant workers requires systematic efforts to review policy, law and regulation in a number of connected policy areas (e.g. migration, labour law and regulation, business anti-corruption practices, women's empowerment etc.) to avoid exacerbating vulnerability. The UN Guiding Principles on Business and Human Rights also recognise the need to ensure policy coherence and to achievw an appropriate balance between human rights obligations and business related policy objectives.[265]

A case in point is the policy of criminalisation of migration, which not only reinforces negative stereotypes against migrants who are considered criminals and detained merely because of their irregular situation but it is also counterproductive against preventing trafficking.[266] It plays into the hands of exploiters who can exercise even more control on their victims because of their fear of arrest and expulsion. Furthermore, it makes an even more challenging operating arena for law enforcement agencies to detect exploitation. Another example of incoherence is related to labour migration policies that tie the worker residence and work permit to a single employer. These policies increase the dependency of the worker on that employer and his/her vulnerability to abuse.

[265] HRC 2011, op. cit., 11–12 on ensuring policy coherence, Principles 8, 9 and 10.

[266] There is growing recognition of the need to review this policy. See for example EU FRA 2014 op. cit.; See also Judgment of the European Court of Justice in the case El Dridi (C-66/11), Judgment of 28 April 2011.

Chapter 5. Multidisciplinary cooperation and coordination at the international level

The Baltic Sea region includes countries of origin, destination and transit for trafficking in human beings. Within the region, trafficked migrant workers originate both from European countries, as well as from more distant countries such as Thailand and Vietnam.[267] Research on labour exploitation and trafficking of migrant workers in the region highlights the complexity of the phenomenon and the multiplicity of actors involved ranging from police, prosecutors, judges, immigration, social services, labour inspectorates, licensing/registration authorities for Private Employment Agencies (PrEAs), tax and custom authorities, governmental agencies dealing with trade and businesses, municipality offices, to trade unions, employers' associations, and their sector specific representatives etc. Consulting and mobilising all these actors in the design and implementation of policies to prevent trafficking is essential and challenging. It is not enough to establish and ensure regular exchanges and cooperation among all these stakeholders at the national level, but addressing trafficking requires developing effective mechanisms and practices for bilateral and international cooperation between and among all stakeholders.

This chapter puts forward guidance and a few strategic recommendations to further develop bilateral and regional and international cooperation in the prevention of trafficking for labour exploitation. The measures proposed attempt to respond to the issues identified at the national level by the local experts and stakeholders consulted in the framework of the ADSTRINGO project. Key to the success of multidisciplinary international cooperation is to establish regular dialogue among the various actors so as to firstly develop confidence and a shared understanding of the phenomenon and its challenges, and then progress to a joint identification of the possible pathways and solutions to address common issues.

5.1 Establish or strengthen national coordination mechanisms promoting public-private partnership

→ States should ensure that existing multidisciplinary coordination mechanisms for trafficking in persons include representatives of labour inspectorates, trade unions, and migrant rights groups, as well as representatives of Private Employment Agencies and employers' associations, and their representatives operating in sectors prone to exploitation such as agriculture, cleaning and restaurants.

[267] For an overview of the human trafficking situation in the Baltic Sea region, see: Council of Baltic Sea States (2013): Human Trafficking 2013 – Baltic Sea Region Round-up, CBSS.

5.2 Develop or strengthen bilateral labour protection agreements for middle-low skilled migrant workers

→ States in the Baltic Sea region should develop bilateral or multilateral labour protection agreements for middle-low skilled workers migrating for work from one country to the other in the region, as well as specifically with main destination countries outside the region.[268] Such bilateral agreements should include provisions introducing a requirement for a legally binding job offer, and standardise employment contracts especially for the agriculture, cleaning and restaurant sectors.

5.3 Strengthen trade union and NGOs cross-border cooperation

→ Trade unions in the Baltic Sea region should strengthen cross-border cooperation between origin and destination countries especially in sectors employing low-skilled migrant workers. Such cooperation should aim at improving exchange of information about safe legal migration opportunities and the rights of migrant workers, as well as at establishing mechanisms for the provision of legal assistance and other support to exploited migrant workers.

→ Trade Unions, NGOs and migrant rights organisations in the Baltic Sea region should also seek to strengthen their cooperation, especially between origin and destination countries with a view to sharing information and developing joint strategies to enhance prevention of exploitation and trafficking of migrant workers, as well as to improve protection of migrant rights and enhance the quality of assistance provided to them.

5.4 Strengthen regional cross-border cooperation among employers' associations, private employment agencies and businesses

→ Employers' associations, PrEAs and businesses should strengthen regional cooperation to exchange and disseminate information on promising self-regulatory practices and other initiatives to prevent exploitation and trafficking of migrant workers. More specifically they could develop a multi-stakeholder initiative to document business policies and practices respecting the principles of no-recruitment fee for job-seekers or employer-pay policy.[269]

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[268] ILO C181 Art. 8.2 "Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment".

[269] See IOE (2013): Expert Meeting on Forced Labour. Preparatory document for employers, 19.

5.5 Establish multidisciplinary cooperation mechanisms between sending and receiving countries

→ States in countries of origin and destination should develop bilateral agreements to promote and ensure multi-agency cross-border cooperation among labour inspectorates, licensing authorities, police, prosecutors and judiciary to more effectively tackle abuse and exploitation of migrant workers.

5.6 Establish cooperation mechanisms for the exchange of information and for notification of employers' sanctions

→ States in countries of origin and destination should strengthen cross-border cooperation among labour inspectors and other law enforcement to support exchange of information, strengthen enforcement of administrative and judicial decisions and sanctions and mutually recognise or take into account penalties stemming from infringements of labour law by businesses residing in one country and operating in another.

→ States should ensure cooperation and information exchange between competent authorities in countries of origin and destination so that information about a revocation or a ban applied to a certain PrEA in one country is communicated to the competent authorities in other countries where the business may be operating. Moreover, intelligence on fraud schemes to detect and recognise fraudulent schemes of labour exploitation could be shared.

Rationale and context

These measures are designed to respond to challenges in effective cross-border cooperation to prevent abuse of workers' rights. Research findings in the Baltic Sea region and consultation with experts emphasised for example the lack of means for labour inspection services to effectively monitor and enforce labour law legislation in a cross-border situation; counterparts in the other country may have no obligation to cooperate or provide information, and mechanisms to ensure enforcement of sanctions in the state where the middleman or PrEA or other business operates are usually lacking. Multidisciplinary cross-border cooperation involving law enforcement prosecutors and NGOs between countries of origin and destination is also limited. All too often, much is left to the good will of the actors involved.[270] Similarly also in terms of civil society cooperation, research findings and experts consultation pointed to the need to further develop cooperation especially between NGOs and trade unions in countries of origin with those at destination with a view to strengthen or initiate more targeted prevention measures and to deliver better protection of exploited and trafficked workers. [271] For example, once workers return home it is actually quite

[270] Jorens et al. 2012, op. cit., 155–156.

[271] In this regard the ILO has developed a Model Trade Union Agreement on Migrant Workers' Rights. See: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_115036.pdf (accessed on 23 April 2014).

difficult for them to claim redress for abuse, for back wages or other violations of their rights and they would benefit from legal assistance and support provided to them immediately while they are still in the country where they were exploited.

Regular cooperation between authorities in countries of origin and destination can lead to the development of a more qualitative exchange of information (e.g. to locate and sanction mala fide operators operating in their territory), as well as to the development of bilateral or regional labour migration agreements. Cooperation and consultation with representatives of trade unions and employers' associations can prove very useful both in the development and implementation of labour migration agreements, and in ensuring better accountability of all parties involved. Bilateral labour migration agreements can prove very useful to ensure a more adequate response to labour market needs as well as to practically improve the protection of rights of migrant workers (e.g. addressing issues related to the exchange of information, organisation of recruitment, and working conditions, employment contracts, equality of treatment, social security, family reunification, return). A gender perspective and analysis is needed to avoid exacerbating gender inequality and to take into account the different needs of women and men migrating for work.

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