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

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# Introduction

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

# Policy context

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

# Key findings

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

The research shows that there was a rapid escalation in the number of labour market intermediaries towards the end of the twentieth century after many EU countries lifted restrictions and began to regulate temporary agency work. In some sectors and geographical areas, intermediaries have become strongly associated with migration and cost-reduction as well as flexibility. While the majority of labour market intermediaries are formally registered enterprises, some operate informally without being registered.

The relevant European and international regulations include the Temporary Agency Work Directive (2008/104/EC) and ILO Conventions No. 96 and No.181 which govern employment agencies, as well as different national measures to regulate and monitor LMIs. The most common forms of regulating labour market intermediaries in the EU include licensing, registration or certification schemes.

The sectors identified as having problems with trafficking for labour exploitation in most countries are agriculture, construction, domestic work and hotels and restaurants. Other sectors include retail in Belgium and Sweden, beauty and hair salons in Finland, transport in Romania and waste and recycling in Denmark.

In terms of their role in preventing and combating trafficking related to labour market intermediaries, social partners provide a great deal of information and experience regarding fraudulent recruitment and labour exploitation. Mutual support and effective cooperation are key to preventing and eradicating trafficking for labour exploitation. At international level, the social partners for the temporary agency sector (Uni Global and CIETT) concluded a Memorandum of Understanding on temporary agency work in 2008 in which both sides pledge their support for a regulatory framework to prohibit agency work from undercutting other workers’ rights and conditions. The research finds that national social partners are increasingly recognising their responsibility in this area, and voicing their concern about the fraudulent recruitment and exploitative labour practices often used by labour market intermediaries. Despite this, however, trafficking for labour exploitation is still not a priority at national level.

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

The report reveals that social partner involvement in this area is often challenging. As employer associations do not cover all LMIs, enforcement, especially in the case of small or medium sized LMIs, can be problematic. Trade unions are not always in a position to reach all workers, particularly those in ‘hidden’ or isolated employment, those working in undeclared work or undocumented migrant workers.

# Policy pointers

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

The report recommends that public authorities take into consideration the following guidelines when preparing a best practice guide on monitoring labour market intermediaries:

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