

JUSTICE



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



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Introduction

“It’s a pity that people like me are suffering in many job places and the employers are getting the advantages by using us and there is no inspection. They are not afraid of any fine ...”

(Portugal, male interviewee from Bangladesh, grocery shop)

This report takes an in-depth look at exploited migrant workers’ experiences with and views on workplace inspections in select EU Member States. This includes both EU nationals who moved to another EU Member State to work and third-country nationals who came to the EU. The evidence suggests that the experiences with criminal forms of labour exploitation (hereafter referred to as severe labour exploitation) described by

the 237 workers for this report are just the tip of the iceberg when it comes to the reality and extent of severe labour exploitation in the EU today.

Based on interviews and focus groups conducted with exploited workers, this report extends FRA’s evidence on severe labour exploitation and workplace inspections beyond the views of professionals who deal with labour exploitation. Such professionals include labour inspectors, representatives of victim support organisations and trade unions, police, legal professionals, recruitment agencies and employment bodies. Their views were covered in a 2015 FRA report on severe labour exploitation, which was based on interviews

Evidence base: who was interviewed?

FRA reached out to migrant workers through face-to-face interviews and focus groups in 2017 to better understand the troubling phenomenon of severe labour exploitation. Research was carried out in eight EU Member States: Belgium, France, Germany, Italy, the Netherlands, Poland, Portugal and the United Kingdom.

In total, 237 adult migrant workers gave accounts of having been severely exploited for their labour between 2013 and 2017. This report is based on their experiences.

The sample included:

- 133 men and 104 women;
- 175 third-country nationals from 40 countries worldwide (making up 72 % of the sample);
- 62 EU citizens working in Member States other than their own (28 % of the sample);
- 162 exploited workers who were individually interviewed by FRA (typically 20 interviews per Member State);
- 75 exploited workers who participated in a total of 16 focus groups (two in each of the eight Member States – each with three to seven participants who had typically experienced exploitation in the same economic sector);
- workers active in various sectors, such as the construction, agriculture, manufacturing (f. ex. meat/food processing, textiles and clothing), food service, tourism and transport sectors, as well as in domestic work, car-washes, laundromats, beauty studios, cleaning services and newspaper distribution;
- seasonal workers, posted workers, applicants for international protection, EU workers exercising their right to freedom of movement, and third-country nationals (including some in an irregular situation of residence).

The interviews and focus groups were conducted in the language of choice of the workers interviewed, often with the assistance of interpreters. Some data are available only for interviewees, as they answered more in-depth questions than focus-group participants did concerning their individual experiences of labour exploitation.

FRA also conducted some desk research – for example, concerning risk assessments of economic sectors in which workers are at higher risk of severe labour exploitation.

National-level civil society organisations primarily involved in victim or migrant/refugee support – and, to a more limited extent, trade unions, lawyers or labour inspectorates – identified the exploited workers FRA interviewed for this report. Some workers had actively sought support following experiences with labour exploitation; others were referred to support services by authorities following workplace inspections, for example.

As a result, the majority of the interviewed workers had at some stage come into contact with support services of some sort or a third party who helped them in the aftermath of exploitation. This approach is justified given the difficulty in reaching exploited workers, who often remain isolated and invisible. However, it may lead to a certain research bias, as it cannot be assumed that the overall population of migrant workers who experience labour exploitation come into contact with support services.

Therefore, it is important to keep in mind that the data presented do fill an important research gap concerning the everyday realities of exploited workers in the EU. However, the evidence presented cannot be seen as representative of the overall situation of severe labour exploitation and the specific issue of workplace inspections and monitoring to detect labour exploitation in the EU as experienced by migrant workers.

with 616 professionals across 21 EU Member States from 2013-2014 concerning workplace inspections and monitoring to detect severe labour exploitation. While this report focuses on the reality of workplace inspections as experienced by exploited workers, it also frequently refers to the views of these professionals.

This report ties in with current EU policies aiming to level the playing field in terms of standards of decent work across the Union. For example, reinforcing respect for the rights of posted workers, aimed for by the proposed revision of the Posted Workers Directive (96/71/EC), may in practice also require closer cross-border cooperation among national-level organisations carrying out workplace inspections. In 2017, the European Commission called for the establishment of a European Labour Authority, which could perform the function of facilitating and coordinating concerted and joint inspections in Member States.

This report provides public authorities with practical information on carrying out workplace inspections, which can feed into policy developments and application of the law. Such inspections should not just be reactive in nature – for example, conducted in

response to complaints. Instead, they should be risk orientated. They also need to take adequate account of the fundamental rights of all workers under EU law. These include the rights to fair and just working conditions and to an effective remedy, provided for in Articles 31 and 47 of the Charter of Fundamental Rights of the EU (the Charter), respectively.

The report could also be kept in mind with respect to those Member States looking to implement Sustainable Development Goal (SDG) 8 concerning decent work and economic growth and its targets. This includes its targets to take effective measures to eradicate forced labour; end modern slavery and human trafficking; and protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

Finally, growing attention is being paid to the issue of corruption in the context of severe labour exploitation. While this report touches on this as an issue that emerged – often indirectly – in some interviewees' accounts of their experiences of labour inspections, it could benefit from further attention and research.

SEVERE LABOUR EXPLOITATION: FRA RESEARCH ON PROFESSIONALS' AND EXPLOITED WORKERS' VIEWS AND EXPERIENCES

This is the second of three publications to look at different aspects of severe labour exploitation based on exploited migrant workers' testimonies:

- **Out of sight: migrant women exploited in domestic work (2018)**: this [paper](#) looked at the situation of migrant women exploited as domestic workers in the EU.
- **Protecting migrant workers from exploitation in the EU: boosting workplace inspections (2018)**: this report focuses on strengthening worker protection by improving inspections.
- **Protecting migrant workers from exploitation in the EU: workers' perspectives (2019)[tentative title]**: this report will present the main comparative overview of severe labour exploitation as experienced by 237 migrant workers in eight EU Member States.

These reports should also be read alongside FRA's reports on:

- *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States (2011)*: this report looked at the experiences of migrants in an irregular situation employed in domestic work in 10 EU Member States.
- *Severe labour exploitation: workers moving within or into the European Union – States' obligations and victims' rights (2015)*: this report took a comprehensive look at various criminal forms of severe labour exploitation of workers who move from one EU Member State to another or from a third country. It identified risk factors contributing to such exploitation and proposed means of improving the situation.

Key findings and FRA opinions

The FRA opinions outlined below build on the following key findings:

- Of the 237 exploited workers who spoke to FRA, just over half had neither experienced nor witnessed an inspection being carried out at their workplace, nor had they heard of any taking place. This suggests that monitoring and inspections – at least of certain economic sectors in which workers are at high risk of severe labour exploitation – are insufficient.
- Employers have developed quite extensive strategies to deal with inspections and to cover up severe violations of labour laws on working conditions. This is made easier when employers know about inspections in advance.
- Employers' strategies to evade fines and prosecution can negatively influence how workers perceive the role of inspection/monitoring authorities and on whether they trust that these authorities are capable of protecting their rights.
- Exploited workers indicate that increasing the number of inspections alone is not the solution, as – from the perspective of workers and their rights – inspections can be beneficial or detrimental. Evidence shows that, when monitoring bodies take the time and effort to inform workers about the aim of inspections, to inform and reassure them about their rights and about the next steps in potential investigations, and to refer them to support services, exploited workers feel supported and empowered to participate in proceedings against exploitative employers.
- The testimonies of both professionals and exploited workers suggest that introducing investigative units in labour inspectorates specialised in combating labour exploitation and/or trafficking in human beings, as well as joint inspections carried out by the police and labour inspectorates, can be particularly effective in ensuring good treatment of exploited workers and enabling them to access justice.

Empowering exploited workers to report

The testimonies of both professionals and workers suggest that introducing investigative units in labour inspectorates specialised in combating labour exploitation and/or trafficking in human beings, as well as

joint inspections carried out by the police and labour inspectorates, can be particularly effective in ensuring good treatment of exploited workers and enabling them to access justice. Such specialised units can be found in the Netherlands and Belgium, for example.

Where monitoring staff are trained to spot the signs of severe labour exploitation, this is more likely to result in a positive outcome for victims of labour exploitation. For example, exploited workers who experienced inspections by the Dutch labour inspectorate's special section for investigating labour exploitation and the police indicated that this is the case. In addition, this results in a better chance of effective investigation and prosecution of exploitative employers.

Employers' strategies aimed at evading fines and prosecution can negatively influence how workers perceive the role of inspection/monitoring authorities and on whether they trust that these authorities are capable of protecting their rights. Some workers associate inspections with threats, longer working hours, extra efforts and loss of income (when not allowed to show up for work). Inspections resulting in adverse outcomes for workers reinforce their perception that they are the ones actually under inspection and that it is them who get punished when employers do not comply with their duties. For workers, it is important that labour inspections do not result in them losing their only source of income without having a chance to get a new job or receive financial support, or in their being arrested or deported; such results undermine the functioning of the system. Being kept in the dark about their rights or the next steps in the investigation procedure or possible outcomes also caused fear and distrust among exploited workers. Finally, interviewees rarely recalled adverse consequences of inspections for their employers.

FRA evidence shows that when labour authorities prioritise checking workers' immigration status, this diverts attention from working conditions. Professionals – such as labour inspectors and victim support service representatives interviewed by FRA for its 2015 report on severe labour exploitation – and exploited workers interviewed in 2017, particularly those in an irregular situation, recounted such incidents. Professionals testified that, even when third-country national workers in an irregular situation have been severely exploited, the fact of their irregular residence can obscure their status and rights as victims of crime.

Exploited workers indicate that increasing the number of inspections alone is not the solution, as – from the perspective of workers and their rights – inspections

can be beneficial or detrimental. It is crucial that inspections are carried out with a clear focus on workers' rights. Evidence shows that exploited workers feel supported and empowered to participate in proceedings against exploitative employers when monitoring bodies take the time and effort to inform workers about the aim of inspections, to inform and reassure them about their rights and about the next steps in potential investigations, and to refer them to support services. Promoting positive outcomes of inspections as well as showing workers that the intervention of inspectors has negative consequences for exploiters should help encourage workers to speak out during inspections.

FRA opinion 1

It is essential that EU Member States create safe conditions during workplace inspections that enable and empower workers to report their experiences of labour exploitation. For this to happen, labour inspectors need to give workers the opportunity to speak to them and be heard without their employers being present. Inspectors should also provide workers with clear information about their rights. This will serve to underpin existing legislation, including legislation addressing trafficking in human beings and particularly exploitative working conditions under the Employers' Sanctions Directive (2009/52/EC), and ensure that it is enforced in practice. Suggestions put forward by workers in this research could be combined with suggestions by professionals to create a 'checklist' on how to improve inspections and empower workers to leave exploitative situations.

FRA opinion 2

To end the impunity of exploitative employers, workers need to be able to report situations of severe labour exploitation and be offered sufficient protection and have the right to an effective remedy in line with Article 47 of the Charter, without having to fear consequences such as losing their only source of money, a place to live, or being deported. When it comes to potential punishments and sanctions of exploitative employers, Member States could consider as aggravating factors strategies that have been utilised by employers to deceive monitoring bodies during inspections, and make it known that such behaviour will carry consequences.

FRA opinion 3

EU Member States should ensure that immigration law enforcement is conducted in full compliance with human rights standards and does not prevent access to justice for exploited workers and foster impunity for exploitative employers, as stressed in the agency's 2015 report on severe labour exploitation. Authorities working in the area of severe labour exploitation should prioritise the fundamental rights of victims of crimes of such exploitation over questions of immigration management. Member States should issue clear guidance to this effect to all authorities that deal with third-country national workers, ensuring that irregular residence or work does not obstruct the obligation of public authorities to acknowledge a severely exploited worker as a victim of crime – even when in an irregular situation of residence. Clear standards and procedures should be established to inform victims of their rights and to enable safe access to victim support and all justice mechanisms.

Detecting particularly exploitative working conditions

Detecting, putting a stop to and preventing severe labour exploitation requires effective monitoring and implementation of EU and international law. Article 31 of the Charter affords every worker the right to "fair and just" working conditions. The International Labour Organization (ILO) has continuously highlighted the importance of maintaining an effective and comprehensive system of workplace inspections as a means of asserting standards of decent work. It has also made a priority the promotion of the ratification of the two labour inspection conventions – ILO Convention No. 81 as the generic instrument and Convention No. 129 specifically for labour inspections in agriculture. The Employer Sanctions Directive (2009/52/EC) criminalises the employment of third-country nationals in an irregular situation who are subjected to "particularly exploitative working conditions". It also requires Member States to carry out workplace inspections to prevent employers from illegally employing irregular third-country nationals.

FRA evidence shows that a crucial starting point is strengthening the evidence base behind EU Member States' monitoring operations by focusing workplace inspections where they may be most needed – especially where resources of monitoring bodies are limited. Recognising that this evidence base was weak in many Member States, in its 2015 report on severe labour exploitation, FRA identified key risk factors and categories of risk factors that lead to exploitation (such as legal, institutional, personal and relating to certain sectors). These are reflected in the experiences of

exploited workers interviewed in 2017. These risk factors could help Member States design a 'risk analysis' or risk assessment to more effectively monitor and detect labour exploitation through interventions by monitoring bodies (such as workplace inspections, prevention strategies and protection measures for exploited workers). Some of the eight Member States covered by the agency's latest research on severe labour exploitation have begun to introduce systematic risk assessments to guide monitoring operations with a view to detecting severe labour exploitation. However, risk assessments and resulting inspections still do not always have the detection of exploitative working conditions as a main aim.

FRA opinion 4

EU Member States should clearly define in law what constitutes exploitative labour conditions and make detecting criminal forms of labour exploitation a key aim of workplace inspections, in line with their obligations under EU and international law.

To apply the law, Member States should train staff engaged in monitoring workplaces to understand and assess risk factors for criminal forms of labour exploitation in practice – including how to question workers and inform them about their rights where they suspect such exploitation. Monitoring bodies should organise their work in line with these factors, allocating resources according to the level of risk identified in their risk assessment/analysis. Member States which do not currently conduct such risk analysis could consider looking at the practices of other Member States, such as Belgium and the Netherlands.

Developing measures to address labour exploitation

It is encouraging that a significant number of exploited workers (85) across the eight Member States had experienced or witnessed an inspection of some kind at their workplace during the period in which they were exploited. This shows that inspections – although not all focused on monitoring working conditions or detecting labour exploitation – do happen. However, they could be more effectively utilised to identify possible severe labour exploitation, as evidence from exploited workers shows that monitoring authorities do not always talk to workers or ask them questions about their working conditions.

In addition, over half of exploited workers taking part in the interviews and focus groups had neither experienced, witnessed nor heard of an inspection being carried out at their workplace. That percentage rose to over 70 % in some Member States – for example,

Germany, Poland and the United Kingdom. This suggests that monitoring and inspections – at least of certain economic sectors in which workers are at high risk of severe labour exploitation – are insufficient. Most of all, this concerns domestic work, where inspections are virtually non-existent; and which particularly affects women, who dominate this area of work.

Evidence – from both workers and professionals FRA interviewed – shows that third parties (other than monitoring bodies, such as hospitals) can also play a role in bringing situations of labour exploitation to the attention of authorities and enabling exploited workers to leave such situations and access support.

FRA opinion 5

Inspections at the workplace should always aim to protect workers' rights. They should also recognise that current evidence points to violations of fundamental rights to fair and just working conditions being quite widespread in certain economic sectors. Member States could consider establishing a joined-up response to tackling labour exploitation, allocating sufficient resources to involve competent bodies – such as labour inspectorates, health and safety or tax authorities and various branches of the police. These could incorporate a unified set of evidence-based risk factors to help them identify severe labour exploitation while carrying out workplace inspections.

FRA opinion 6

The 22 EU Member States which have not – as of 1 June 2018 – ratified the 2011 ILO Convention concerning decent work for domestic workers should do so, and should revise regulations that have the effect of exempting domestic workplaces entirely from inspections. In accordance with Article 17 of the ILO Convention, and as highlighted in the 2016 European Parliament resolution on women domestic workers and carers in the EU, EU Member States, together with the social partners, should develop measures to provide for labour inspections in the domestic work sector.

FRA opinion 7

Monitoring bodies in Member States should consider increasing their oversight of the construction and food services sectors with a view to detecting severe labour exploitation and protecting workers, in light of the fact that the majority of research participants exploited in these sectors had not witnessed or heard of any inspections.

FRA opinion 8

EU Member States should complement effective monitoring with raising awareness among relevant bodies – such as businesses, trade unions, hospitals and the general public – about the existence, nature and features of severe labour exploitation. They should also encourage them to report instances of such exploitation.

Combating exploitative employers' strategies to cover up violations

FRA data indicate that employers have developed quite extensive strategies to deal with inspections and to cover up infringements of rules on working conditions. This is made easier when employers know about inspections in advance, as this enables exploitative employers to employ a broad range of strategies to deceive inspection and monitoring authorities. There can be valid reasons for announcing inspections in advance – for example, to guarantee that employers are present at a construction site on a certain day. However, this gives unscrupulous employers the opportunity to temporarily rectify situations not in compliance with relevant legal provisions and to instruct employees on how to behave and what to say during inspections. Some workers also referred to the potential for corruption to play a role in employers knowing when inspections are scheduled.

In line with the views of professionals FRA interviewed for its 2015 report on severe labour exploitation, experiences of workers interviewed in 2017 suggest that

poor knowledge of the local language can contribute to the risk of labour exploitation of foreign workers and impede the effectiveness of labour inspections. Not knowing the language prevents some foreign workers from talking about working conditions. In addition, staff of inspection bodies appear to – at least in some cases – assume that foreign workers do not speak the language of the Member State and thus do not always try to interact with them.

FRA opinion 9

Given the severity of exploitation that evidence shows can occur in the workplace, EU Member States should ensure that, where possible, employers – particularly in sectors where evidence demonstrates that workers are at higher risk of labour exploitation – are not informed about inspections in advance.

FRA opinion 10

EU Member States should consider practical measures to overcome language barriers during workplace inspections, allowing monitoring bodies to reach and inform workers. This could include issuing materials concerning labour rights in multiple languages. At the same time, monitoring bodies should not assume that workers cannot understand or communicate in the national language, and should attempt to communicate with them. Member States should cooperate where possible with specialised bodies and civil society organisations, such as services providing support to asylum seekers, as they may be able to provide inspectors with language and translation services.



1

Basing workplace inspections on risk factors for labour exploitation



1.1. EU and international law and policy on workplace inspections

Member States have duties – stemming from EU law, the European Social Charter¹ and various ILO Conventions² – to carry out inspections aimed at identifying cases of labour exploitation, to protect victims, to establish redress mechanisms and to avoid impunity of exploiters. The 2014 ILO protocol³ and recommendation⁴ to supplement the Forced Labour Convention of 1930 in particular emphasise the necessity of strengthening labour inspection services to prevent severe forms of labour exploitation, such as forced or compulsory labour,⁵ as well as ensuring that victims have access to appropriate and effective remedies.⁶

Article 31 of the Charter stipulates that every worker – regardless of his or her status as an EU citizen or a third-country national and of whether the worker is in a regular or an irregular situation of residence – has the right to ‘fair and just’ working conditions. Article 47 entitles victims of a rights violation to an effective remedy and a fair trial.

Several directives in various areas of EU law – covering both EU and third-country nationals to various extents – mention the need for workplace inspections:

- The **Employer Sanctions Directive**⁷ looks at the need for inspections from the angle of preventing employers from illegally employing irregular third-country nationals and sanctioning those who do. However, the directive also includes certain employment rights and protective measures against exploitation, and criminalises the employment of third-country nationals in an irregular situation who are subjected to “particularly exploitative working conditions”.⁸ It obliges Member States to ensure

that effective and adequate inspections are carried out on their territory. Member States should regularly identify – on the basis of a risk assessment – the sectors of activity in which the employment of irregular third-country nationals is concentrated.

The European Commission’s 2014 communication on the application of the directive found that some Member States had yet to implement its protective elements in a satisfactory way, and needed to improve the inspections and their prioritisation efforts through systematic identification of sectors at risk.⁹ A 2017 study carried out by the European Migration Network (EMN) highlights the crossover between EU migration, labour, criminal and fundamental rights law in recognising that “illegal employment of third-country nationals [...] is a source of concern in the EU for economic, migration-related and social and fundamental rights reasons. It is also linked to trafficking in human beings for labour exploitation.”¹⁰ It also found that Member States need to **step up action concerning protective measures and risk assessments to improve identification of third-country nationals in an irregular situation of residence who may experience particularly exploitative working conditions.**

The **Anti-Trafficking Directive** also stresses the link between trafficking in human beings and labour exploitation, and highlights the need for various professionals – such as labour inspectors – to receive adequate training to be able to identify and deal with victims of trafficking in human beings.¹¹

- Other directives – such as the **Enforcement of the Posted Workers’ Directive**¹² and the **Seasonal Workers’ Directive**¹³ – contain provisions concerning Member States’ obligations to carry out risk assessments that should, among other things, take into account the vulnerability of certain groups of workers

and inform decisions concerning in which economic sectors inspections should be concentrated.

- In the area of occupational safety and health (OSH), a 2017 evaluation of the EU OSH acquis notes that challenges relating to the protection of migrant workers include differing levels of protection across Member States for some categories of perceived vulnerable workers.¹⁴ The Senior Labour Inspectors Committee described the challenges of enforcing law, noting as problematic the exclusion of certain categories of perceived vulnerable workers (such as domestic workers) from the responsibilities of Labour Inspectorates and the precarious nature of some employment relationships (such as work carried out by migrant and posted workers).¹⁵

On 13 March 2018, the European Commission proposed a regulation to set up a new EU agency – the European Labour Authority¹⁶ – as well as an initiative to ensure access to social protection for all workers and the self-employed. These initiatives are accompanied by a Communication on the monitoring of the implementation of the European Pillar of Social Rights, which will be closely linked to the European Semester of policy coordination.¹⁷ The European Labour Authority will complement and facilitate the implementation of ongoing initiatives to ensure fair mobility, including the reform of the Posted Workers’ Directive. One of its proposed objectives is to strengthen operational cooperation between authorities in the cross-border enforcement of relevant Union law, including facilitating joint inspections, as well as to improve access to information by individuals and employers about their rights and obligations in the areas of labour mobility and social security coordination, as well as access to relevant services.

1.2. Monitoring based on risk assessments?

Need for more effective monitoring of labour exploitation in EU Member States

As noted in FRA’s 2015 report on severe labour exploitation, a wide variety of monitoring bodies have workplace inspection roles in EU Member States. Such bodies include: labour inspectorates, health and safety officers, customs officers, social affairs officers and employment officers. They have varying mandates and priorities across the different national systems that ensure compliance with rules on working conditions, working hours, the minimum wage, social security, and health and safety.

Based on interviews with 616 professionals across 21 Member States in 2015 (including 102 representatives

from monitoring bodies such as labour inspectorates), the agency found:

- More than half of the 616 interviewed professionals highlighted the need for more effective monitoring of the working conditions of foreign workers in the EU.
- Professionals in Bulgaria, Greece, the Netherlands, Slovakia and Spain stressed that deficiencies in comprehensive and effective monitoring of working conditions are ultimately reflected in the attitudes of exploitative employers, who – as one interviewee expressed it – believe that “nothing can happen to them”.¹⁸

Weak evidence base for detection of labour exploitation in EU Member States

Linked to a general need for more effective monitoring to detect labour exploitation, FRA’s 2015 report revealed a weak evidence base behind EU Member States’ monitoring operations with a view to detecting the severe labour exploitation of foreign workers.

The agency identified the need to strengthen this evidence base by focusing workplace inspections where they may be most needed to detect, put a stop to and prevent occurrences of severe labour exploitation – especially where resources of monitoring bodies are limited.

As shown in Figure 1, the 2015 report sets out a number of categories of risk factors that should be taken into account in interventions by monitoring bodies. These include workplace inspections, prevention strategies, and protection measures to help exploited workers leave situations of severe labour exploitation. These risk factors were categorised into four groups:

- **the legal and institutional framework** (key risk factors professionals identified were a lack of sufficient monitoring; a lack of investigations or ineffective investigations; and the low risk of prosecution for offenders);
- **the worker’s personal situation** (one risk factor included difficulties in communication when a worker from another country does not know the language of the place of work);
- **specific workplaces/economic sectors** (for example, working in a sector that is particularly prone to labour exploitation, such as agriculture, construction or domestic work, was identified as a significant risk factor);

- **employers' behaviour** (risk factors included: workers not being given a written contract, not being informed of their rights, or not being remunerated in a transparent and traceable manner).

Findings from the agency's 2017 research point to promising developments in some EU Member States with regard to strengthening the evidence base behind operations to monitor and detect labour exploitation, and to improve the analysis of sectors in which workers are at an increased risk of experiencing severe labour exploitation.

For example, in the **Netherlands**, the Labour Inspectorate conducts risk analysis and researches crime trends to help inspectors signal the potential for exploitation. The labour inspectorate is working on improving cooperation between those who monitor workplaces and those who investigate labour exploitation (i.e. between monitoring and enforcement) even though they are both units within the labour inspectorate. Clearer risk analysis frameworks have been drafted for inspectors to see which combination of signals should immediately be reported to the enforcement section of the inspectorate. This can be viewed as a promising practice.

In **Belgium**, specialised police units identify possible risk factors for labour exploitation. These units regularly investigate new sectors and conduct monthly inspections of high-risk sectors.

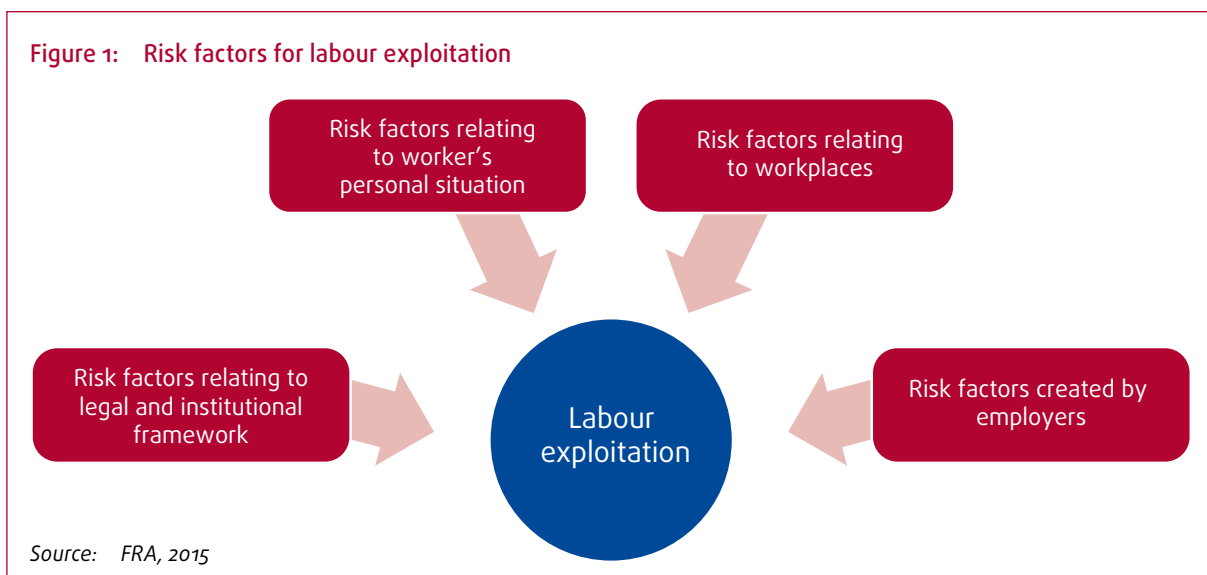
Risk management systems often depend on collaboration among various actors. For example, in **Italy**, the 'Action Plan against Trafficking and Severe Labour Exploitation' has created a 'Direction Cabinet' composed of representatives from central, regional and municipal authorities to coordinate prevention activities such as awareness campaigns and training. Similarly, in the

Netherlands, the Expertise Centre on Smuggling and Trafficking conducts research to detect trends in smuggling, trafficking and labour exploitation and uses this information to advise the government and other actors on their policies. In the **United Kingdom**, the Director of Labour Market Enforcement announced the possible establishment of an intelligence hub in 2018. It will receive, process, and produce information relating to non-compliance within the labour market, which could be used as a risk-management tool by the Gangmasters and Labour Abuse Authority, HM Revenue and the Customs and the Employment Agency Standards Inspectorate. (These currently each have their own internal risk-management procedures.)

However, in some Member States, risk assessments and resulting inspections do not always have the detection of exploitative working conditions as a main aim. Instead, various actors with powers of inspection – such as health and safety bodies, the financial police, immigration control and labour inspectorates – pursue different aims during their inspections depending on their mandates.

In FRA opinion 4, the agency emphasises the need for EU Member States to base their monitoring of workplaces on a risk analysis that takes account of risk factors for severe labour exploitation.

Annex 1 and Annex 2 to this report (available on FRA's [website](#)) look in more detail at the institutional set-up for combating labour exploitation at national level in the eight Member States examined in the agency's most recent research into severe labour exploitation in the EU. This includes the different approaches of Member States with regard to risk management systems in place to guide monitoring operations/inspections with a view to detecting severe labour exploitation.



2

Exploited workers' perceptions and experiences of workplace inspections



2.1. Number of inspections experienced, witnessed or heard of by exploited workers

The institutional set-up for conducting inspections and monitoring work conditions in each of the eight Member States is the framework for what exploited workers participating in the research experienced and witnessed (for more information, see Annex 1, available on FRA's [website](#)).

FRA asked interviewees whether they had ever witnessed or heard of any inspections or controls at their workplace. Those who had were invited to describe the situation – including who had come to carry out the inspection. Focus-group participants were asked what could help stop situations of labour exploitation and whether they thought that workplace inspections could help do so. When focus-group participants mentioned any kind of inspections/controls, they were asked whether they had ever witnessed or heard others speak of authorities – such as police or labour inspectorates – coming to inspect the workplace, and, if so, what had happened in the context of an inspection.

As a caveat to this section: the data presented concerning numbers of inspections and the authorities which conducted them cannot be considered representative given the relatively small size of the sample of workers FRA spoke to. Nonetheless, they shed light on the fact that workplace inspections do happen;

that they are noticed by exploited workers; and hence that they could be more effectively utilised to identify severe labour exploitation.

Research participants perceived a broad range of interventions at the workplace as inspections. These included interventions by the labour or social inspectorate, by health and safety services, different kinds of police bodies (regular, border, financial or a special unit dealing with, for example, trafficking in human beings). It was not always easy for the research participants to label the interventions/inspections that had taken place at the workplace. They also mentioned inspections relating to hygiene and on rating hotels.

Eighty-five out of 237 research participants had witnessed or experienced at least one inspection, among them 63 interviewees and 22 focus-group participants. A further fourteen research participants had heard of inspections.

However, as noted above, not all of the inspections exploited workers witnessed, experienced or heard of were connected with inspections of working conditions, as exemplified by the experience of an interviewee in the Netherlands:

“The only type of inspections I had were police controls, but they just checked whether we respected the driving times and rest hours. The police did not have a clue [about the poor labour conditions].”

(The Netherlands, male interviewee from the Philippines, transport sector)

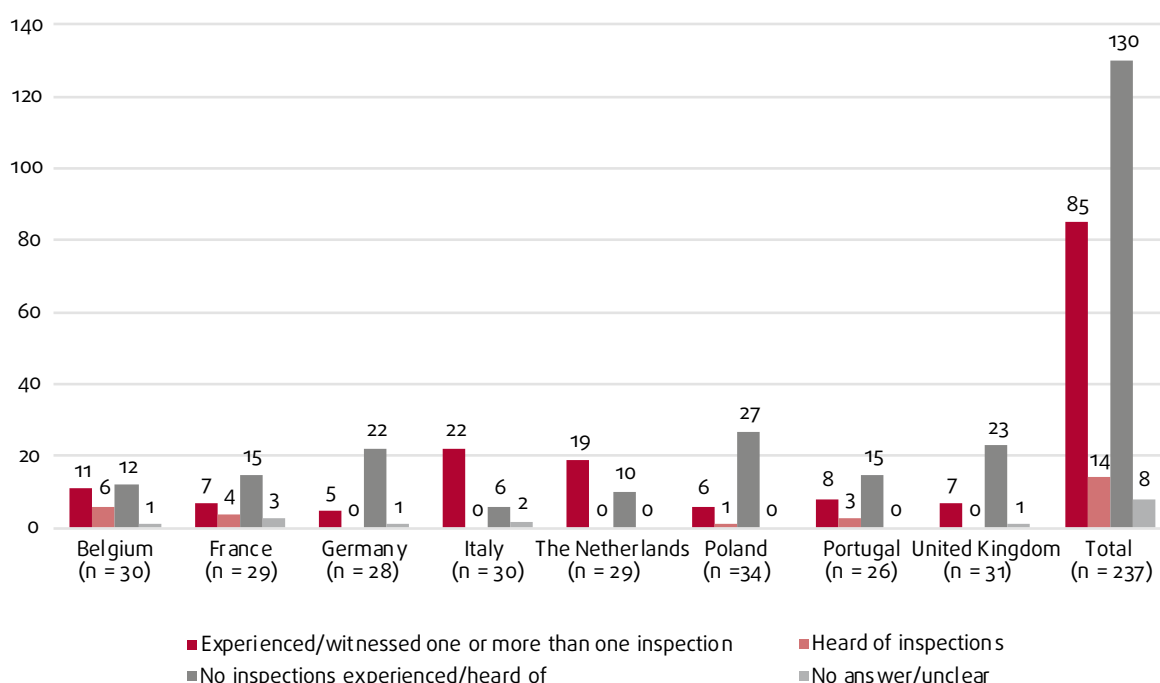
Table 1: Experience of workplace inspections by research participants (absolute numbers)

| | Interviewees | Focus-group participants | Total |
|---|--------------|--------------------------|------------|
| Experienced/witnessed one or more than one inspection | 63 | 22 | 85 |
| Heard of inspections | 7 | 7 | 14 |
| No inspections experienced/witnessed/heard of | 89 | 43 | 132 |
| No answer/unclear | 3 | 3 | 6 |
| Total number of research participants | 162 | 75 | 237 |

Note: *n* = 237.

Source: FRA, 2018

Figure 2: Workplace inspections experienced by interviewees and focus-group participants by country (absolute numbers)



Notes: *n* = 237. Vertical axis shows only 140 instead of 237 to ensure that numbers are visible.

Source: FRA, 2018

Sixty-three interviewees (39 % of interviewees) experienced or witnessed at least one workplace inspection. The majority (60 % / 38) of these interviewees named one authority as having conducted inspections, while about a third (18) mentioned that at least two different authorities were involved. Overall, the labour inspectorate was involved in 24 of the 56 inspections where interviewees could identify the body or bodies involved.

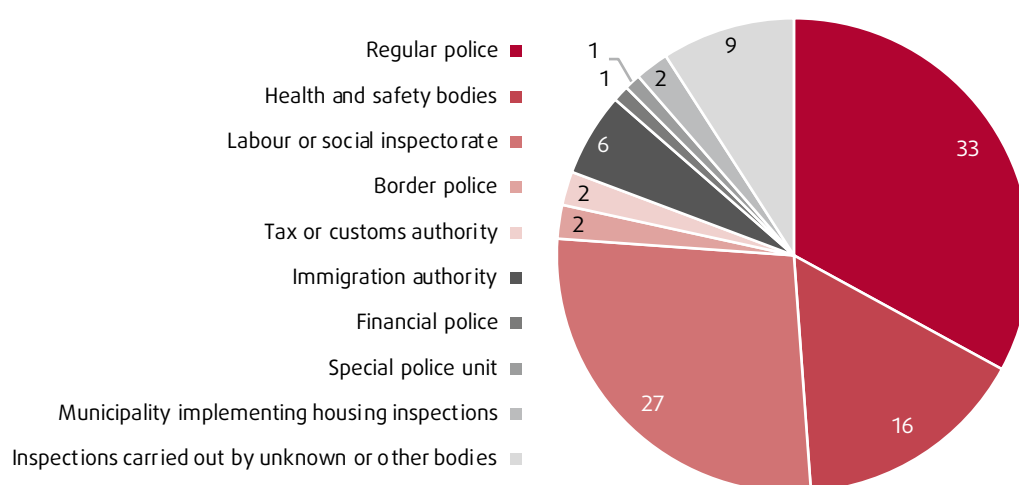
The labour or social inspectorate and the police seem to most often conduct inspections together (14/18). Most of the inspections involving one authority were carried out by the regular police (14), health and safety services (12) and the labour or social inspectorate (7). Less often involved were the border police (2), the tax or customs authority (1), the financial police (1) or a special police unit (1).

Table 2: Authorities perceived to have carried out the inspections experienced or witnessed by interviewees (absolute numbers)

| Authorities conducting inspections | Absolute number |
|---|-----------------|
| Inspections by one body | |
| Regular police | 14 |
| Health and safety bodies | 12 |
| Labour or social inspectorate | 7 |
| Border police | 2 |
| Tax or customs authority | 1 |
| Financial police | 1 |
| Special police unit | 1 |
| Sub-total of one inspection body conducting inspections | 38 |
| Inspections by two bodies | |
| Labour or social inspectorate and regular police | 8 |
| Labour or social inspectorate and immigration authority | 2 |
| Health and safety services and regular police | 1 |
| Sub-total of two inspection bodies conducting inspections at the same time | 11 |
| Inspections by three bodies | |
| Labour or social inspectorate, regular police and municipality implementing housing inspections | 2 |
| Labour or social inspectorate, regular police and immigration authority | 2 |
| Labour or social inspectorate, health and safety services and immigration authority | 1 |
| Labour or social inspectorate, regular police and tax or customs authority | 1 |
| Labour or social inspectorate, regular police and flower inspection | 1 |
| Sub-total of three inspection bodies conducting inspections at the same time | 7 |
| Inspection carried out by unknown or other bodies | 7 |
| Total of authorities conducting inspections | 63 |

Source: FRA, 2018

Figure 3: Share of authorities conducting inspections (%)



Notes: $n = 63$. Total does not amount to 100 % due to rounding.

Source: FRA, 2018

No inspections in the domestic work sector

Just over half of workers participating in the research had neither themselves experienced or witnessed, nor heard of, inspections at the workplace (56 % / 132), while the data for the remaining six research participants was unclear.

Findings point to workplace inspections being virtually non-existent in the domestic work sector. Only two of the 51 domestic workers participating in the research experienced, witnessed or heard of an inspection in the private households in which they were employed. All 51 domestic

workers in the sample were women, indicating that women are particularly vulnerable to experiencing labour and fundamental rights abuses in domestic settings.

Research participants working in agriculture (65 % / 20), manufacturing (including meat/food processing, textiles and clothing) (50 % / 6) or in other sectors/jobs such as a carwash (5 – inspections mentioned by interviewees in four Member States), laundromat, beauty studio and newspaper distribution (60 % / 29) most often reported having experienced or witnessed inspections. Inspections appeared to be rarer in the construction and food services sectors, with the majority of workers not having experienced or witnessed any inspections (61 % / 22) and (59 % / 17), respectively.

Table 3: Inspections identified by research participants, by economic sector (absolute numbers)

| Economic sector | Inspections ... | | | | Total |
|---|-----------------------------------|-----------|------------------------------------|----------------|------------|
| | One or more experienced/witnessed | Heard of | Not experienced/witnessed/heard of | Answer unclear | |
| Domestic work | 1 | 1 | 48 | 1 | 51 |
| Construction | 10 | 4 | 22 | 0 | 36 |
| Agriculture | 20 | 0 | 11 | 0 | 31 |
| Food services | 10 | 2 | 17 | 0 | 29 |
| Cleaning | 4 | 2 | 6 | 3 | 15 |
| Manufacture | 6 | 0 | 5 | 1 | 12 |
| Hotel/tourism | 4 | 1 | 4 | 0 | 9 |
| Domestic and hotel work (combination of both) | 0 | 0 | 3 | 0 | 3 |
| Transport | 1 | 0 | 2 | 0 | 3 |
| Other sectors | 29 | 4 | 14 | 1 | 48 |
| Total | 85 | 14 | 132 | 6 | 237 |

Note: $n = 237$.

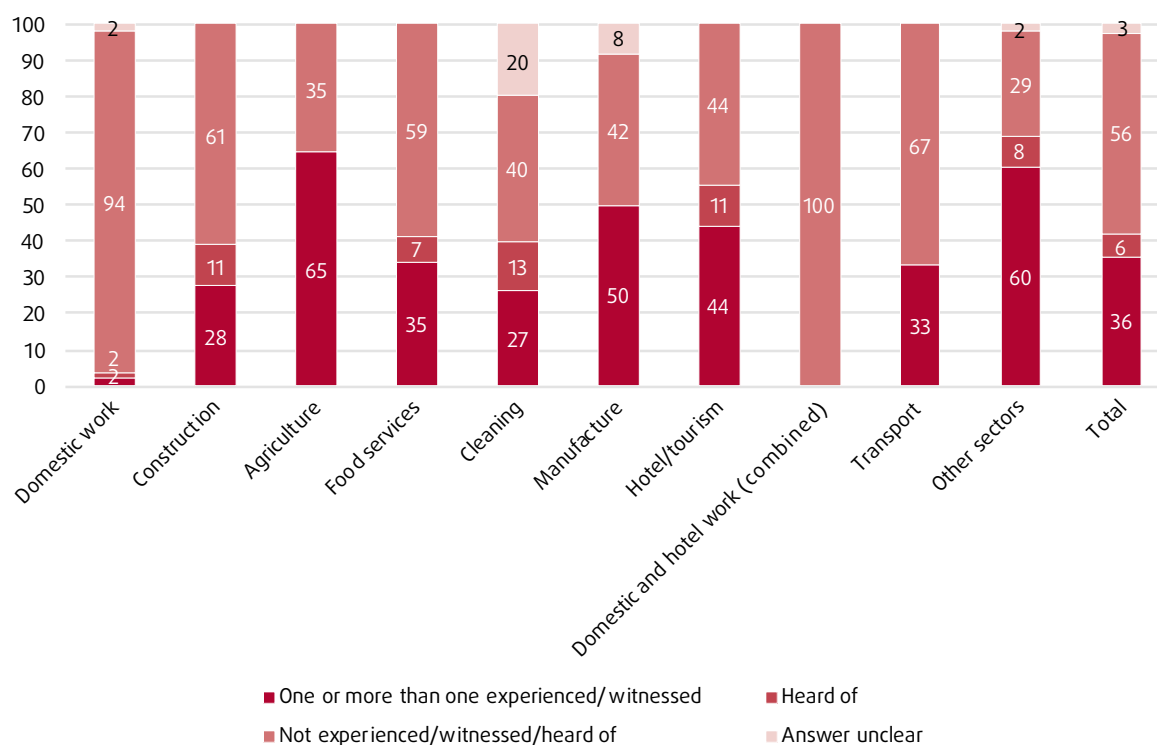
Source: FRA, 2018

Male research participants more often reported experiencing or witnessing (75 % compared with 25 %) or hearing about (71 % compared with 29 %) inspections than female research participants. This can partially be explained with the fact that all 51 domestic workers were women; that domestic workers make up more than half the total sample of women; and that the domestic work sector is not monitored.

Compared to their overall representation among research participants (28 %), EU nationals seem to have witnessed/experienced inspections slightly more often (41 %) than third-country nationals (30 %). This might be due to the fact that employers very often tell workers with irregular status either not to show up on the day when inspections take place or make these workers leave prior to inspections (see [Section 2.2](#)).



Figure 4: Share of inspections identified by research participants, by economic sector (%)



Notes: $n = 237$. Totals do not always amount to 100 % due to rounding.

Source: FRA, 2018

What or who triggered inspections?

Eight of the 85 exploited workers who reported experiencing or witnessing inspections indicated the inspections were triggered either by the interviewees or by third parties. The remaining 77 inspections appeared to be random inspections.

Three interviewees (with regular status, irregular status, and residence permit tied to employer) triggered inspections by reporting their situation (mostly) to the police and, in one case, to the labour inspectorate. In five cases (3 with regular status, 2 irregular status), third parties triggered inspections – including the brother of an exploited worker (food services), a former agricultural co-worker who the employer had dismissed, a trade union (construction sector), an organisation representing the rights of undocumented workers (cleaning business), and a hospital that had treated an agricultural worker after a work accident. Ordinary citizens also played a role in helping workers access help and support.

“After the accident, I slept for three days in the street. Then ... I knew a person that sometimes bought things at the pastry shop. He said to me: ‘[XXX], what are you doing here?’ I was sad, and dirty ... I told him about my problem and he asked me: ‘Do you have papers, a contract?’ After, this person [...] took me to the work inspectorate.”
(France, male interviewee from Morocco, bakery)

The experience of two interviewees shows that it is important that authorities cooperate by reporting cases and triggering inspections. One seasonal worker (agriculture) in Portugal felt taken seriously by the authorities he reported to, as they conducted an inspection of the workplace afterwards. Another agricultural worker in Portugal knew about an inspection following a report by the hospital, which treated him after a work accident. Another three interviewees reported about triggering inspections: an interviewee (in an irregular situation) in Belgium (cleaning) reported her situation to an organisation supporting undocumented migrants, which called the labour inspectorate. The brother of an interviewee working in a butcher’s shop in France called the labour inspectorate, which conducted an investigation and referred the interviewee to a victim support

organisation. A manufacturing worker in Italy was part of a group of workers who were approached by a local association offering them support in fighting for their rights, which called the labour inspectorate. In all three cases, exploited workers saw the support organisations as helpful in empowering them to report to the police.

FRA opinion 5 suggests steps that the relevant actors can take to ensure that workplace inspections ensure the protection of workers' fundamental rights. FRA opinions 6-7 highlight that certain economic sectors, regarding which respective data point to a high risk of labour exploitation, could benefit from increased inspections. FRA opinion 8 suggests how third parties (other than monitoring bodies) could complement the activities of monitoring bodies with respect to identifying situations of severe labour exploitation.

2.2. Exploited workers' accounts of employers' strategies to undermine inspections

Research participants described the different ways in which employers dealt with the prospect of inspections of their workplaces. This included issuing workers – especially those with irregular status – with specific instructions about what to do in case of inspections.

One strategy – mentioned by exploited workers in Belgium, France, Italy, the Netherlands, Poland and the United Kingdom – seemed to be to ensure that no workers with irregular status were present during inspections. Employers instructed workers to run away or leave the premises. One asylum seeker who worked in a restaurant in France explained that only legal workers were allowed to stay during inspections.

In another strategy – mentioned by 16 exploited workers – employers demanded that workers lie in case of inspections. Participants in one focus group in the United Kingdom reported that workers were told to smile and say that they were happy, while one interviewee in the United Kingdom said that his employer told him not to tell inspectors about his actual accommodation. Employers made two workers in the Netherlands learn by heart and rehearse answers to questions known prior to inspections – answers that did not reflect the actual situation.

Employers told five interviewees in Belgium, France and the Netherlands to lie about their identity and about the kind of relationship they had to the employer – for example, to lie and say they were volunteers, customers or passers-by. A recruitment agency in Portugal advised workers to say – if asked during an

inspection – that they were happy with the wage, the work and living conditions.

Making workers hide was another common strategy. Thirteen exploited workers (in Belgium, France, Italy, Poland and Portugal) reported that they had to hide during actual inspections – in the street, a toilet, a storage room, the garden and a basement. One worker (Portugal, irregular status) was forced to hide in a cold room for three hours and later needed medical attention. Another (Italy) was locked up in a warehouse by the employer. In a separate case in France, an interviewee's co-worker tried to lock him in the cold room, but the labour inspector saw what was happening and he managed to escape.

According to the research sample, employers instructed third-country nationals to hide or lie slightly more often than EU nationals – possibly due to the fact that EU nationals had regular status and employers seem to be especially keen on not having any workers with irregular status present during possible inspections.

In a strategy of making working conditions appear legal, one employer in Belgium (cleaning) made workers sign a fake contract to show inspectors, which he tore up immediately after they left. Two seasonal workers in Germany reported that their employers made them keep two different time sheets – one showing the actual working hours, the other one showing eight working hours per day.

"We had two forms in which we officially only worked for 8 hours and in the one other one we worked for 14 hours. In case [an] inspection came, we were to show the (first) list." (Germany, male interviewee from Poland, agriculture)

Another employer (Portugal, construction) temporarily provided toilet paper for the workers, removing it after the inspection; the workers had to go back to using newspaper sheets. Two exploited workers in Poland reported receiving protective clothing prior to an inspection, which was taken away from them afterwards. A construction worker in France mentioned a similar practice:

"If there are safety people [employment inspectorate] who pass by, he gives us masks but after that it's over. [...] I have a safety helmet but I bought it myself." (France, male interviewee from Mali, construction)

Several exploited workers (Italy, Portugal, the Netherlands and the United Kingdom) said that their employers reinforced their requests with threats in case of non-compliance. In one case, the employer threatened to fire a worker; in another, threatened that the person would get in trouble and be deported; and in another, an employer threatened to have a worker's child taken away from her.



"If you tell the truth you are going to be in trouble and you have to leave this country."

(Portugal, male interviewee from Nepal, agriculture)

Advance knowledge of inspections

Many exploited workers (reported in all eight countries) mentioned that employers or managers knew in advance when workplace inspections were going to take place. For example, an asylum seeker working as a hairdresser in France said that her employer seemed to be aware anytime an inspection was about to happen:

"I don't know how it worked, maybe from shop to shop they called each other to say 'They are here today'. I don't know, but they would make us leave the shop saying 'Go out and come back, there are checks.' [...] Or they would tell us 'If they come and you're working you can tell them that you're not a hairdresser, you're a client.'"

(France, female interviewee from Guinea Conakry, hairdresser)

Focus-group participants in Belgium explained that workers with an irregular status do not show up for work on the day of announced inspections. One interviewee, working in a food processing factory, pointed out that her employer adapted the work schedule according to the announced inspections. Focus-group participants in the United Kingdom said they had been told to go home when an inspection was due, or were moved outside or to another department to avoid encountering inspectors. One participant stressed why inspections should not be announced beforehand:

"[I]t is best to send somebody like a secret inspector, not saying before 'I am coming on this day'; no, just go there and check. Because you never find these mistakes, never find out what these people are doing, because it's hidden. [If the inspector] says 'I'm coming', he (the manager) speaks with people and says 'if you don't speak nicely, or say everything is fine, I will kick you out.'"

(United Kingdom, female interviewee from Slovakia, hotel/office cleaner)

While FRA cannot verify the information as correct, one interviewee in Poland (seasonal worker, meat processing) and one focus-group participant in Portugal (construction) alleged that bribery involving employers and labour inspectors could be a reason for employers knowing when inspections are scheduled.

Language

Some employers made use of workers not being able to speak the language of the country they were working in. According to focus-group participants in Italy

(construction, agriculture and restaurants), this can stop inspectors/police officers from talking to anyone other than the employer. It also makes it impossible for the workers to share information on their situation with the authorities and to develop trust. Migrant workers in southern Italy mentioned that they could not understand what inspectors and employers discussed because they used the local dialect.

Another issue – reported by focus-group participants in Italy with specific reference to police inspections – is that during inspections, inspectors did not ask the migrants directly about their working conditions. Nearly half of focus-group participants and one quarter of interviewees claimed that this was due to two main reasons in addition to migrants themselves not being able to speak the language: discriminatory attitudes towards migrants and the lack of foreign language skills of police officers.

Another interviewee in Italy (livestock sector) recounted that his employer forced workers to pretend that they were not capable of speaking the national language to avoid inspectors' questioning.

Participants in both focus groups in Germany also mentioned an inability to speak German as a major hurdle in reaching out to authorities, including possibly reporting a situation to police or other authorities.

"We don't speak the language. Even if I would go there (public authorities) what should I say – just scream 'help'?"
(Germany, female focus-group participant from Bulgaria, cleaning services)

Some research participants (France, butcher's shop and Poland, restaurant) also reported practices of employers of the same nationality (outside the country of work) issuing instructions to them in languages that police or labour inspectors could not understand.

FRA opinions 9-10 suggest ways of combating exploitative employers' strategies to cover up violations of workers' rights and working conditions and of reaching out to inform workers about their rights.

2.3. Exploited workers' perceptions of inspections and their outcomes

Exploited workers' experiences show that how inspections are actually carried out is an important factor in whether or not workers see inspections as beneficial.

Not wanting to come forward during inspections and reporting cases after inspections appeared to be often

caused by fear of personal consequences, as well as distrust in the capabilities and capacities of inspection and monitoring authorities. Interviewees with an irregular status in particular (for example, in Belgium) feared that inspections would focus on them and their status and worried about the consequences. One male focus-group participant working in tourism in the Netherlands viewed the labour inspectorate as wearing two hats: that they check work conditions and illegal employment at the same time. A female interviewee working in cleaning in Portugal claimed that labour inspections were only dangerous for the workers but not the abusive employers. She believed that the labour inspectorate only got active when forced and would not attempt to solve the issues at stake.

The professionals FRA interviewed in 2015 indicated that authorities cannot rely on victims of severe labour exploitation to report to the police, monitoring bodies or other authorities. They stressed that exploited workers are very often not in a position to come forward and report due to, for example, fear of losing their job, and, depending on their residence or migratory status, having to leave the country.

Several workers participating in the research who had witnessed or experienced inspections described inspections as rather bureaucratic and not focusing on the workers and their work situation. Nine research participants (France, Italy and the United Kingdom) said that the inspectors or police officers either did not talk to them at all or did not ask any questions related to the working conditions.

Victims noted that labour inspectors and police do not always create conditions conducive to workers developing trust and feeling secure enough to share information about their situation. For example, three interviewees in Italy and the Netherlands (carwash and construction) indicated that they perceived inspectors and police officers as friends of the employers. An interviewee in the Netherlands (carwash) witnessed labour inspectors talking to workers in front of the employer, which she considered as highly problematic if they thought that the workers would talk about their situation with the employer present. She suggested how inspectors could seek to speak to workers in private:

“It would have been wiser if they had taken us apart or waited for us at the corner so that they could speak to us in all quietness, in a neutral area; not in the middle of the heat of the kettle.”

(The Netherlands, female interviewee from Hungary, carwash)

Two interviewees in the Netherlands who worked at a flower farm expressed a lack of trust in inspectors as a result of witnessing the same inspector allegedly come every six months who asked the same questions,

received the same answers and seemingly accepted the situation. Another interviewee (Poland, agriculture) stated that she did not want to talk to border guard officers as she did not feel comfortable due to a lack of privacy. A focus-group participant in France (cleaning sector) lacked trust because she said that the employment inspectorate was rude to her when questioning her about her situation (at the premises of the inspectorate).

Being kept in the dark about their rights or the next steps in the investigation procedure or possible outcomes also caused fear and distrust among research participants. A female domestic worker in the United Kingdom who reported her case to the national referral mechanism (NRM), which triggered an investigation by the police, complained that the police did not inform her about her rights and did not take any follow-up actions after the investigation at her workplace. One interviewee in an irregular situation working in food services in Belgium was anxious both during and after being interviewed by the police – which resulted in an inspection of his workplace – as he did not know what was going to happen.

Several research participants in the Netherlands gave accounts of inspectors not themselves selecting which workers to interview, but leaving this to the employers. They recalled that the workers who were best at repeating the prepared answers were pushed to the front. A focus-group participant (agriculture) stated that employers tended to select workers who had only recently started working for them and were afraid of the consequences of speaking out. One interviewee (carwash) claimed that labour inspectors received the same answers from employees without seeming to question that this may be strange.

“They (the labour inspectorate) announced they would be coming, discussed it with the employer, when they would come and which questions they would ask. Those exact questions they ask[ed] and they were satisfied with the answers despite the fact that all the employees gave precisely the same answers. [...] I find it strange that such a work method on automatic pilot is accepted by people higher up. That was completely different when I spoke with the people of the labour inspectorate [the special section for investigating labour exploitation] who did wonder about certain things.”

(The Netherlands, male interviewee from Hungary, carwash)

Research participants also shared insights on what seemed to encourage workers to share information on their situation. One male interviewee (Portugal, agriculture) reported that his colleagues had lied to the officers of the Immigration and Border Service during a first inspection, but when the officers sent the owner of the company away, the workers felt at ease and talked about their situation.



Accounts of inspection authorities directly interacting with workers were rather rare, but four interviewees reported that the inspectors/officers directly interacted with them and other workers – either asking for personal details or whether they were working at the place under inspection. One of these interviewees – a man working in agriculture in Portugal – said that they were asked about their work and living situation. He described the officers of the Immigration and Border Service as sympathetic towards the problems of the workers.

“The [Immigration and Border Service] came and they wanted to check our conditions, everything. That day they asked us about it and they said: ‘This is not right. The people don’t give you any rights’.”

(Portugal, male interviewee from Nepal, agriculture)

Interviewees in the Netherlands (who ended up in the National Referral Mechanism for victims of trafficking in human beings) recognised the efforts of the police and labour inspectorate (the special section for investigating labour exploitation) to encourage them to report their cases. They also appreciated inspecting bodies informing them about their rights and about the next steps that need to be taken in investigations. One of these interviewees (laundromat) was at first shocked about the police/labour ‘raid’ at her workplace, but was surprised when authorities made it clear that the inspection was about the employer and his malpractice and not about the workers. Another interviewee (carwash) said that the police officer and the officer investigating labour exploitation made him feel safe and believe that they would protect his rights. An interviewee seeking international protection (laundromat) said that the labour inspectorate took him to the police to report his case and kept him informed about further proceedings until he was assigned a lawyer.

Reports of actual changes in work conditions after inspections were extremely rare. One focus-group participant (France, cleaning sector) reported on a work inspection that went well and enabled changes of work conditions (the labour inspectorate identified that not enough workers were deployed to the site and this changed).

Positive outcomes of inspections

Positive outcomes not only related to whether workers were taken out of the exploitative situation, but also to how the authorities approached and treated

them. Sixteen interviewees (out of 63 who had witnessed or experienced inspections) reported positive consequences of inspections. Ten interviewees (eight in the Netherlands and two in Portugal) were taken out of the exploitative situation, and six were recognised as victims of trafficking (in Belgium (1), the Netherlands (3) and Poland (2)). Among the interviewees taken out of the exploitative situation who experienced positive consequences in the wake of inspections, six were EU nationals and ten of third-country origin. Twelve were male, and four were female. Agriculture and other economic sectors (car wash, laundromat, supermarket chain, distributing newspapers) were most often mentioned in the context of positive outcomes of inspections.

Two interviewees (Portugal, agriculture) who were taken out of exploitative situations in the wake of inspections were satisfied with how monitoring authorities treated them. One of those workers (with irregular status) described the immigration authorities who took his statement as very concerned and supportive and said that the social security services treated him well. The other agricultural worker was happy that the immigration authority and the labour inspectorate referred him to a support organisation, which provided him with accommodation and food, and helped him find another job and get valid papers. He also recalled that there was a joint inspection from the Portuguese labour inspectorate and immigration and border service, which was “a very well planned inspection”. According to the interviewee, the inspectors asked the owner to leave and they could talk freely with the workers.

In Poland, two interviewees reported on interventions by the border guard, which is responsible for checking the legality of employment of foreign workers. One man working in food services in an irregular situation was detained after the border guard arrested him. Upon his release, a lawyer advised him to get in touch with an organisation supporting victims of trafficking in human beings. The interviewee then perceived a change in the attitude of the officer of the border guard when he was willing to testify against his employer – they no longer treated him as a criminal, but as a victim, and he was quite grateful to the border guard for putting an end to his unbearable situation. Another interviewee (female, agriculture) in Poland, however, was not content with the treatment by the border guard. She had the feeling that the officer did not believe her statement.

Promising practice

Specialised inspecting authorities focus on building trust and providing information

Almost all the workers interviewed in the **Netherlands** who had experienced or witnessed inspections felt well treated by the police or labour inspectorate during inspections that involved the special section for investigating labour exploitation.

Six interviewees mentioned that these authorities instilled trust during inspections:

- by leaving phone numbers or cards;
- by sensing that the workers were not comfortable talking in front of the employer and their colleagues;
- by encouraging them to report later on and by explaining that the police/labour inspectorate was focusing on the employers and not on the workers.

Three interviewees perceived it as positive that the police/labour inspectorate took them to shelters and made sure that they could pick up their belongings from the workplace. One interviewee mentioned that the labour inspectorate referred him to a support organisation. Interviewees especially appreciated that the police/labour inspectorate informed them about the aim of the inspections and about the next steps that would be taken, and reassured them in reporting their cases.

The importance of authorities gaining the trust of exploited workers is exemplified in one worker's positive experience with supportive attitudes from a police officer and labour inspectorate:

"The deaf and blind system [...] that was disrupted by the policeman who truly wanted to help us after the physical abuse, who gave the feeling that we could count on him, that he would offer the protection that a public servant can offer, and also the first man of the labour inspectorate. [T]hose two people really gave me trust, and then you want to participate and help, then you want it to be sorted out. [B]ut then it is also possible, because all the right ingredients are in place." (The Netherlands, male interviewee from Hungary, carwash)

The special section for investigating labour exploitation in the labour inspectorate and the police in the Netherlands picked up the signals when confronted with situations of exploitation. By contrast, interviewees in the Netherlands who came into contact with the regular police, monitoring authorities of the municipality (focusing on illegal housing) or the monitoring section (labour conditions/hygiene) of the labour inspectorate (i.e. not the special section for investigating labour exploitation) indicated that these services did not detect the signs of labour exploitation.

This reinforces the need to establish more joined up approaches by various national authorities that carry out workplace inspections to detect severe labour exploitation (see opinion 5).

Negative or adverse consequences of inspections for workers

Eight exploited workers reported adverse consequences of inspections for themselves or their co-workers. Inspections sometimes resulted in workers having to work even harder and doing overtime. For example, a female hotel worker in Germany had to work more hours following a cleaning inspection to improve the result of another upcoming inspection.

One focus-group participant in Poland (domestic worker) said that interventions would make the situation of workers worse – they would lose their jobs or be deported. Two interviewees in Belgium (snack bar, newspaper distribution) received an order to leave the country following inspections. Another interviewee in Belgium in an irregular situation lost his job after the bakery and the snack bar he worked at were closed down following a food inspection focussing on health

issues. An interviewee in the Netherlands (carwash) recalled that her Romanian colleague was dismissed a day after telling the truth about her work situation to the labour inspectorate. An interviewee in France who was formerly in an irregular situation explained:

"I have to respect European law. I know that for example if there is an inspection, if I'm not declared it's not only the employer who will be penalised, it would cost me a lot as well."

(France, male interviewee from Mali, construction)

Participants of one focus group in Portugal agreed that although employers might get fined when a situation of exploitation is identified, there are often no further measures taken against the employer – and workers can suffer the consequences. For example, an interviewee with irregular status (Portugal, male, manufacture) recounted that the labour inspectorate had ordered his employer to regularise the workers with irregular status. His employer did not comply with the order – instead, he charged each worker € 300 to

allegedly hire a lawyer who would take care of their regularisation. He did not hire a lawyer, but saved the money to pay possible fines. Two focus-group participants in the Netherlands reported something similar: the employer underpaid them and saved part of their salary so that he could pay fines for employing workers with an irregular status.

Drawing on her experience at a housecleaning company, one interviewee in Portugal remarked that the option of reporting the situation to the authorities, while it would be fair to punish the employer's behaviour, entails risks for workers. These include jeopardising their job and their stay in Portugal if they are migrants in an irregular situation. Her own experience of a workplace inspection led her to believe that reporting the case to an official body would not stop the employer from abusive practices. As she put it:

"A complaint does not solve what he [the employer] does, but it can worsen the situation of the people working there [...] I was in this situation. I was lucky that [the authorities] didn't catch me...[b]ecause it's not only the issue of losing your job. Of course that's bad. But what if they send me away from the country?"

(Portugal, female interviewee from Ukraine, cleaning)

Focus-group participants in Poland strongly emphasised that any official intervention in the situation of exploitation should focus more on helping workers and letting them find another job than on making them obliged to leave the country if they work without a contract.

Negative or adverse consequences of inspections for exploitative employers

Interviewees rarely recalled adverse consequences of inspections for their employers. One interviewee (Italy, manufacture) said that his employer was fined for irregular employment. Two focus-group participants (the Netherlands, tourism) gave accounts of their employers being fined three times for illegally employing foreign workers. Five interviewees (Italy, the Netherlands and Poland) mentioned that their employers were arrested during the inspection based on a suspicion of labour exploitation and/or involvement in trafficking in human beings. Three interviewees (Italy and the Netherlands) reported that the police/labour inspectorate closed down the premises in the wake of inspections.

In one situation (Portugal, cleaning sector), labour inspectors identified two foreign workers in an irregular situation. They ordered the employer to sign a work

contract with those two workers so that they could obtain a residence/work permit. The employer complied with the order. However:

"[a] week later, he forced them to sign a termination of the contract, as if they were leaving the job. No, they kept working there; it was only a paper saying there was no contract anymore."

(Portugal, female interviewee from Ukraine, cleaning company)

Another focus-group participant (Belgium) with an irregular status concluded that labour inspections are not helpful for workers in an irregular situation.

"Even when the labour inspection comes with the police, the undocumented immigrant will go to a closed centre and the boss will remain fraudulent, nothing will happen to the employer. That is the system, it only goes after the undocumented immigrants..."

(Belgium, male focus-group participant from Morocco, cleaning and construction)

Two recognised victims of trafficking voiced their disappointment about the lack of consequences for employers involved in exploitation or trafficking. One man working in food services and one woman working in agriculture in Poland could not understand why the companies of their former employers were still operating and employing workers with an irregular status. One focus-group participant in Poland spoke of a friend who had reported a case of labour exploitation to the labour inspectorate. He stated that one year on, the employer was still operating and employing workers with an irregular status.

Court proceedings

Some research participants (mainly in the Netherlands) gave accounts of inspections (those involving the special section for investigating labour exploitation) leading to criminal proceedings. In most of these cases, investigations or (primarily criminal) court proceedings were ongoing at the time of the research. Most of the criminal court proceedings concerned employers being tried on charges of trafficking in human beings. One interviewee in Portugal with an irregular status (agriculture) who was party to criminal proceedings positively assessed how the police officers treated him and informed him about the rights of victims of trafficking in human beings. He was satisfied that the different authorities (police and immigration authority) cooperated well and passed on the statements he had made.

Prevention and measures of improvement suggested by exploited workers

When asked about measures for stopping or preventing exploitation, research participants most often suggested:

1. increasing the frequency of inspections (Belgium, France, Italy, the Netherlands, Poland and the United Kingdom);
2. improving the efficiency and/or thoroughness of inspections (Italy, Poland and the United Kingdom);
3. sanctioning and punishing employers when breaches of relevant laws are identified (Belgium, Poland, Portugal and the United Kingdom).

Many research participants expressed a firm wish for more frequent and thorough inspections even though workers were sometimes quite sceptical towards the capacities and abilities of inspection and monitoring bodies to protect their rights and support them in ending exploitative labour situations. Interviewees in Germany, who had to a large extent not experienced any inspections, had a particularly strong wish for controls, hoping that they would recognise and end their situation of exploitation. Interviewees in Germany who were EU nationals, who had valid papers and who worked in agriculture, cleaning, construction, logistics and other services mainly expressed this wish. Focus-group participants in Poland (construction) were divided about increasing the frequency of inspections, as some were concerned about the negative consequences for workers.

“I wish there was a number of an agency for people, so they could give a signal to that agency and then a control would take place the next day. [...] Such organisations do not exist, if they did I would have called.”
(Germany, male interviewee from Bulgaria, logistics)

Research participants’ suggestions on how to improve inspections included:

- unannounced inspections;
- regularly changing the inspectors who visit sites;
- having inspectors, not the employer, choose the workers to question;
- not questioning workers in the presence of employers and co-workers;
- asking different questions during consecutive inspections;
- building trust towards workers of irregular status in particular;
- ensuring that labour inspectors are well trained to identify the signals of abuse and cross-check evidence, and that they are prepared to defend the rights of workers;
- more extensive controls that would embrace specific subsectors of the economy which are allegedly not – or insufficiently – inspected, such as: meat processing companies, kebab restaurants and hotels providing spa services (mentioned by research participants in Poland);
- inspectors should not limit themselves to checking documents; they should also check working conditions and speak with the workers.

“[Y]ou have to [...] get the people together and let them talk without the boss around.”
(Poland, female interviewee from Ukraine, meat processing)

Interviewees and focus-group participants also had **ideas for measures that could empower and support workers to come forward with their stories**:

- The labour inspectorate should share information on workers’ rights when they go to workplaces.
- Consequences for exploitative employers should be made visible (through fines, sanctions etc.).
- Member States could establish helplines for reporting labour exploitation. Reporting could be done anonymously so that workers do not have to be afraid of employers retaliating. The inspections would then not be triggered by the workers themselves but by the helpline.

“The only way is if somebody actually goes to all the big hotels, who are full of Romanian workers, very young workers – and tell them specifically what their rights are. And to take into account what is written in the contract. [...] More inspections, more fines for the hotel. If they got a big fine I don’t think they would be willing to do the same thing again as easily.”
(United Kingdom, female interviewee from Romania, hotel cleaner)

“[I]f there are visits organised more regularly and they find people without papers in the shop, who aren’t declared...if the bosses get fines all the time for that, I think it won’t continue.”
(France, female interviewee from Guinea Conakry, hairdresser)

The necessity of a proactive role of third parties was especially stressed in the Netherlands, where most of the interviewees were taken out of the exploitative situation after inspection bodies had raided the workplaces. The interviewees claimed that they themselves would not have actively asked for help; they did not consider self-reporting to be a realistic course of action since they were trapped in the situation and dependent on the employer:

"We knew that we were exploited, but we did not know that it would end this way [taken out of the situation by the labour inspectorate]. [...] I have never reached out for help. I was planning after I would have received my salary to take my stuff and find another job elsewhere."

(The Netherlands, female interviewee from Poland, laundromat)

"We were completely dependent on him, in all aspects: we lived there, we got money from him – otherwise we could not buy food, the circle was closed. So even when the inspection came, we told the lies as we were instructed to do."

(The Netherlands, female interviewee from Hungary, carwash)

Some research participants in the Netherlands also referred to the importance of ordinary civilians to signal and report situations of exploitation. Interviewees saw this as a significant addition to action taken by law enforcement, since the labour inspectorate and police have limited capacities to be proactive and therefore also depend on others to report.

FRA opinions 1-3 point to ways in which EU Member States can empower exploited workers to report situations of severe labour exploitation during workplace inspections.

Endnotes

- 1 Council of Europe (1996), *European Social Charter (revised)*, CETS 163, part III, Article A.4.
- 2 ILO Forced Labour Convention, 1930 (No. 29), Article 24 and Protocol of 2014 to the Forced Labour, Convention, 1930, Article 2, see [overview](#); also Labour Inspection Convention, 1947 (No. 81) and Labour Inspection (agriculture) Convention, 1969 (No. 129).
- 3 PO29, Protocol of 2014 to the Forced Labour Convention, 1930, adopted in Geneva on 11 June 2014 at the 103rd ILC session.
- 4 R203, Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted in Geneva on 11 June 2014 at the 103rd ILC session.
- 5 PO29, Protocol of 2014 to the Forced Labour Convention, 1930, adopted in Geneva on 11 June 2014 at the 103rd ILC session, Article 2(ii).
- 6 *Ibid*, Article 4(1).
- 7 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, OJ L 168.
- 8 *Ibid*, Article 9(c).
- 9 European Commission (2014), *Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally-staying thirdcountry nationals*, COM(2014) 286 final, 22 May 2014.
- 10 European Migration Network (2017), *Synthesis Report: Illegal employment of third-country nationals in the European Union*, p. 5 and p. 44.
- 11 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, OJ L 101/1, Recital 25.
- 12 Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System ('IMI Regulation'), OJ L 159, Article 10(1).
- 13 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, see in particular Recital 49.
- 14 European Commission (2017), *Ex-post evaluation of the European Union occupational safety and health Directives (REFIT evaluation)*, SWD (2017)10 final, Brussels, 10 January 2017, p. 6.
- 15 *Ibid*, p. 85.
- 16 European Commission (2018), *Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority*, COM(2018) 131 final, Strasbourg, 13 March 2018.
- 17 European Commission (2018), *Commission adopts proposals for a European Labour Authority and for access to social protection*, Press release, IP/18/1624, 13 March 2018.
- 18 FRA (European Union Agency for Fundamental Rights) (2015), *Severe labour exploitation: workers moving within and into the European Union: States' obligations and victims' rights*, Luxembourg, Publications Office of the European Union, p. 63.



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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Severe labour exploitation is widespread across the European Union. While workplace inspections can help counter this phenomenon, they need to be strengthened to do so effectively. Based on interviews and focus group discussions with almost 240 exploited workers active in diverse economic sectors, this report provides important evidence on how unscrupulous employers manipulate and undermine inspections, and on what can be done to counteract such efforts. In combination with other FRA research focusing on the perspectives of professionals who deal with labour exploitation, it can serve as a powerful resource for policymakers seeking to bolster workers' protection across the Union.

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