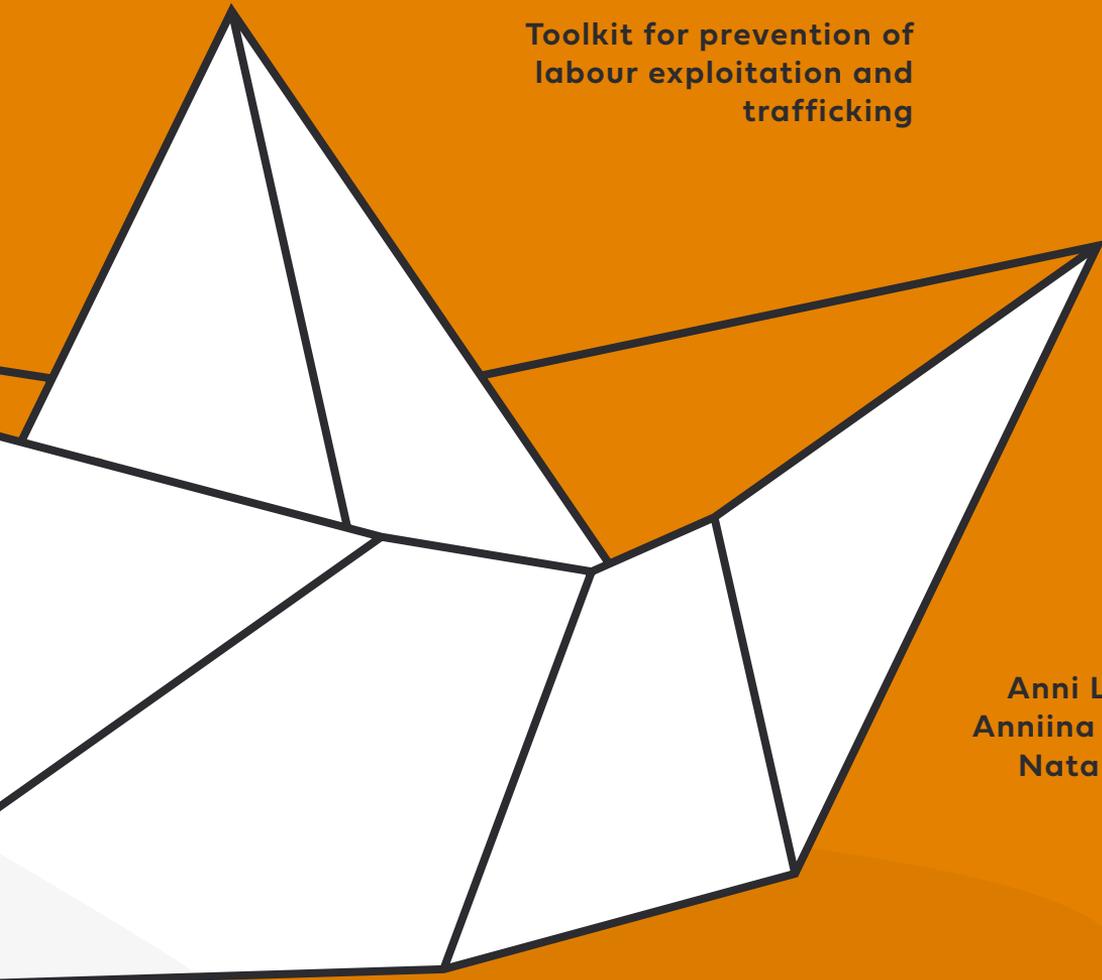


Navigating through your supply chain

Toolkit for prevention of
labour exploitation and
trafficking

Anni Lietonen
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**2020
Helsinki**

Authors:

Anni Lietonen, Anniina Jokinen and
Natalia Ollus

Country research:

Estonia: Anna Markina and
Simone Eelmaa

Bulgaria: Anton Kojouharov

Latvia: Lasma Stabina and
Agnese Alksne

Finland: Anni Lietonen and
Anna-Greta Pekkarinen

Legal consults:

Beata Faracik and
Claire Methven O'Brien

Editorial design and illustrations:

Lea-Maija Laitinen
www.leamaija.works

FLOW publications logo and layout
style elements developed by Simone
Gaglione <https://www.simonegi.it/>

All partner countries organised two
round table meetings for business
representatives from relevant
sectors to make sure this publication
is as practical and relevant and
possible. We wish to extend our
thanks to all who commented
on the contents of the toolkit.
Printed in Helsinki by the European
Institute for Crime Prevention and
Control, affiliated with the United
Nations (HEUNI) in 2020.



This publication was
funded by the European
Union's Internal Security
Fund – Police.

The content of the publication
represents the views of the author
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contains.

HEUNI Publication Series No. 93a

ISBN 978-952-7249-21-5 (paperback)

ISBN 978-952-7249-22-2 (PDF)

ISSN 1799-5590

ISSN-L 1237-4741



Ministry of the Interior
Republic of Latvia



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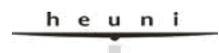


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Introduction

In recent years, the issue of labour trafficking and exploitation in global supply chains has gained more and more attention. Businesses are under increasing scrutiny from consumers, media, civil society, investors and governments to behave in an ethical manner. However, there has been less focus on local and national structures. It is a common practice for businesses to rely on subcontractors/suppliers, or to use contractual partners who use subcontractors for specialised, project-related or short-term work. In recent years, cases of labour exploitation in supply/subcontracting chains have been uncovered around the world, as well as in Europe. With increased mobility of workers and increasingly complex supply chains, there is a growing need to ensure that all involved parties know their rights and obligations. This can prevent the exploitation of migrant workers and the risk of businesses becoming involved in such scenarios.

This risk management toolkit has been developed in the context of the EU-funded FLOW-project.¹ Its purpose is to give companies a brief overview of what labour exploitation and trafficking are, as well as to demonstrate the risks for businesses, and how involvement in such scenarios can be effectively avoided. These tools focus on the practical implementation of due diligence procedures, such as gathering information through worker-led monitoring and grievance mechanisms.² The aim is to provide “hands-on” measures for businesses that can be used to navigate and control complex supply chain networks, especially in a local, national and intra-European context with the focus on preventing exploitation and trafficking. The measures include conducting a risk assessment, drafting an anti-trafficking strategy, screening contractual partners, incorporating specific contractual clauses and organising workplace assessments/inspections concerning the activities of subcontractors or other contractual partners. To supplement this toolkit, a Normative Framework Guide (HEUNI Publication Series No. 94) has also been developed as part of the FLOW-project, which provides a summarised overview of existing legal frameworks outlining businesses' responsibili-

¹ *Flows of illicit funds and victims of human trafficking: uncovering the complexities.* Grant Agreement number: 814791

² *This publication is a continuation of HEUNI's previous research related to labour exploitation. We especially make use of the recently published "Guidelines for businesses and employers for risk management in subcontracting chains" (2018) available at: https://www.heuni.fi/en/index/publications/heunireports/HEUNI_report_88c.html*

ties with regard to human rights, with a focus on labour exploitation and human trafficking.

Outsourcing of work through subcontracting and the use of temporary workers in overly flexible employment relationships makes it more difficult for companies to assess the working conditions under which goods and services are produced (FRA 2015; Jokinen & Ollus 2019). The more layers in the supply chain, the more difficult it is to survey how the subcontractors carry out their business. In the worst-case scenario, legitimate business structures and lengthy supply chains may reveal serious forms of exploitation or even human trafficking.

Concern over workers' rights at all levels of the supply chain, in particular at the lower end of a subcontracting chain, should be included in responsible business policies. Committing to respecting Business and Human Rights (BHR) agreements alone cannot guarantee that a company is not unknowingly involved in labour exploitation or trafficking. Proactive businesses can mitigate such risks more efficiently by engaging in risk management, inspections and monitoring of working conditions.

Businesses should take steps to strengthen their role in regulating the labour supply and in recognising the signs of labour exploitation. Effective and proactive measures to tackle labour exploitation deters criminal enterprises from entering labour supply chains and promotes fair competition and decent work.

Who should use this tool? Managers, experts, and representatives of:

- Businesses, NGOs and/or organisations that use low-skilled migrant workers through outsourcing, subcontracting, and recruitment companies and labour intermediaries in, e.g., construction, cleaning or catering services
- Businesses working in risk sectors where labour exploitation or human trafficking have been identified
- Public procurement units working for states, municipalities and/or state enterprises
- Corporate Social Responsibility experts and networks

The following main terms are used in this toolkit:

Labour exploitation refers to a set of abusive circumstances where the worker is subjected to poor terms of employment, is working long hours with wages below the national limits (**underpayment**), in poor or unsafe conditions and has little choice or capability to change their employment situation. Depending on the national legislation, some of these circumstances may be defined as (labour) crimes or as violations of the labour code.

Forced labour refers to any work or service which people are forced to perform against their will, under threat of punishment. While some countries have criminalised forced labour as a separate crime, in most countries it is criminalised as a form of exploitation under the national human trafficking legislation.

Trafficking for forced labour or labour trafficking refers to exploitation of a person for economic gain. If the exploitation of a worker also includes restriction of their freedom, use of force, threats, debt bondage, misleading, false promises, psychological pressure or violence, it may fulfil the criteria of human trafficking. Human trafficking is criminalised in all European countries, but national definitions of labour exploitation often vary slightly.

Victims of human trafficking or trafficked persons have the right to victim-centred and unconditional assistance, which may not apply to those who are victims of (mere) labour exploitation, often referred to as **exploited migrant workers**.

Migrants or migrant workers in the context of this tool refer not only to third country nationals (including refugees and asylum seekers) but also to EU citizens who are working in a different country than their country of origin and whose lack of information of their (labour) rights is abused by **criminal and/or unscrupulous employers, businesses or brokers** who take advantage of the situation and subject them to labour exploitation to maximise their own profits, including for the generation of illicit flows of money and goods as a result of said exploitation.

Social audits refer to a means for businesses to measure, understand, report and ultimately improve an organisation's **social** and ethical performance. **Audits** in the context of this tool refer to controls and checks that are aimed to safeguard the ethics and legality of practices and actors in the supply/subcontracting chain. In this tool, we use audits, **workplace assessments** and **inspections** as synonyms.

Corporate Social Responsibility (CSR) refers to the responsibility of businesses for their impacts on society. In practice this means that applicable legislations and collective agreements are respected, and that social environmental, ethical, human rights and consumer concerns are integrated into operations and core strategy in collaboration with stakeholders. **Business and Human Rights (BHR)** refers more specifically to the commitment in human rights and preventing human rights implications of their actions.

Social dumping refers to underpayment and sub-standard working and/or living conditions concerning certain workers, often of migrant origin. Social dumping means that their conditions are poorer than those stipulated in national law or in collective agreements.

Subcontracting and supply chains refer to arrangements where specialised, project-related or short-term work is contracted out to business partners in order to produce materials or services. In this publication these terms are used as synonyms even though in other contexts it might be useful to distinguish them from each other.



Labour Exploitation and Human Trafficking Explained

Exploited migrant workers often work long hours in poor conditions, which are below national standards and they often have little choice or possibility to change the situation (Jokinen & Ollus 2019). Different features of labour exploitation are described in the picture on the next page. The vulnerability to severe exploitation and human trafficking increases significantly when a person is not able to leave the situation due to fear of punishment or other negative consequences, or when workers have to pay high recruitment fees and therefore find themselves in debt bondage (Lietonen & Ollus 2018).

The employment relationship may seem legal on paper, where the salary and working hours follow the applicable collective agreement or national stipulations, but in reality, a person's bank cards may be withheld along with their passports or residence permits so that they do not have access to their earnings. Workers may sign legitimate employment contracts, but these contracts are not respected by the employer, or there may be other bogus contracts with different terms and conditions of employment than exist in reality (Lietonen & Ollus 2018). Furthermore, victims of exploitation may be unaware of their actual situation or be reluctant to seek help since exploitation is often linked to their dependent position in relation to the employer as a result of financial difficulties, a lack of options, a lack of knowledge of appropriate working conditions, a fear of consequences and a lack of knowledge of local languages or means of seeking help (Ollus 2016).

Picture 1. Forms of labour exploitation



Working conditions may vary along a continuum from decent work where everything is in accordance with national legislation, international standards and conventions, to severe exploitation and trafficking where human and labour rights are seriously violated (Skrivankova 2010). Businesses should intervene in any form of exploitation they come across or encounter. This will effectively increase workers' safety and reduce the risk of becoming more severely exploited. Needless to say, while social audits are effective in uncovering many issues on worksites, the role of businesses is limited to taking preventative steps to reduce and manage the risk of labour exploitation and trafficking, and to reporting incidents, if necessary, to the police or other authorities (see p. 55 for more information on what to do when suspicions arise). Severe cases of labour exploitation or even trafficking may also be difficult to identify because perpetrators often go to great lengths to make sure they are not detected. The next chapter outlines the risks for businesses in more detail.





Risks for Businesses

Why should businesses address the risks of labour exploitation in subcontracting chains? Complex employment arrangements de-centralise and diffuse oversight and increase the risk of overlooking problems in the working conditions among companies that use subcontracting in European risk sectors such as forestry, cleaning, agriculture, catering and construction (e.g., FRA 2015). The lack of accountability, complex employment relationships, long-subcontracting chains and a lack of ethical channels for workers to report problems increase the risk of labour exploitation (FLEX 2017). By making sure that your company follows legal and voluntary standards on human and labour rights, you will effectively prevent negative human rights impacts related to business activities and enhance your company's profile as a responsible and proactive actor. Addressing risks will:

- Enhance a company's reputation and public image in the eyes of its employees, clients and partners
- Increase the competitive position by meeting possible partners' prerequisites for responsible business
- Prevent unfair competition which can be linked to unreasonably low salaries or neglecting occupational health and safety regulations
- Improve productivity by acting responsibly, which will lead to a more motivated workforce that can be reflected in the quality and efficiency of and safety at work
- Facilitate the recruitment of (migrant) workers in the competition for skilled labour through appearing as an attractive employer
- Facilitate growth and strengthen a company's market position in the eyes of customers, the general public and investors by taking social consideration into account

Negative publicity can seriously affect the company's **reputation**, which in turn can lead to the loss of customers or profit. The subcontractors who exploit workers may also jeopardise the workers' safety by neglecting the occupational health and **safety** rules. Being linked to exploitation and accused of complicity could even lead to **operational difficulties** including lengthy investigations or even sanctions. In the worst case, your company may become involved in **police investigations** with subsequent lawsuits and convictions.

The costs of being associated with exploitation can be high.

Your business may be affected by labour exploitation in multiple ways:

The use of labour leasing, temporary work agencies, employment agencies, posted workers or subcontractors are a common way to acquire staff and to solve labour shortages. However, their use may diminish the transparency of supply chains and increase the risk that your company could unknowingly facilitate the exploitation of workers. The associated risks include that the work may be carried out by a completely different person from what was agreed or expected and that the working conditions violate human or labour rights.

Migrant workers and/or **posted workers** are often paid lower wages than other workers in the destination country, they work long hours without statutory extras, and they have to endure poor terms of employment or unsafe working conditions. They also may have to pay illegal recruitment fees and/or inflated costs for transportation and travel or accommodation, which increases their vulnerability to serious labour exploitation and trafficking. **Temporary agency staff** often face short-term contracts, irregular working hours, and experience short notice shift cancellations, which are linked with low pay and insecurity about making ends meet. Loss of a shift or the entire job may have serious repercussions and cause fear and dependency, making it difficult to complain about exploitative circumstances. (FLEX 2017.) Your business may also be affected by labour exploitation or human trafficking via businesses that your company may be cooperating or affiliated with, such as cleaning services or catering services procured by your company or organisation.

There are legitimate business structures that are often used in cases of labour exploitation and trafficking that include misleading, deceiving, manipulating or forcing victims to engage in various schemes which aim to cut labour costs while imposing the burden of payment of taxes and social contributions to the workers (Jokinen & Ollus 2019). These include:

- **Bogus self-employment** where workers are forced to register as self-employed persons in the destination country, while in reality they have little control over their actions but unknowingly have to bear the risks and costs of entrepreneurship. This does not only apply to migrant workers, but also to nationals of the countries where the work is done.
- **Posted worker scheme** where front companies contract workers from less prosperous countries (within and beyond the EU) and post them to work in another EU country (e.g., Ukrainian, Belarussian or Vietnamese workers posted to Estonia and Latvia via Polish or Lithuanian companies)
- **Cascade sub-contracting and letterbox companies**, which refer to the use of a series of companies aimed at disguising the real employer and evading statutory responsibilities, while engaging in economic crimes and labour exploitation





Nation

Key Standards and Legislation

International labour standards on forced labour³ maintained and developed by ILO are amongst the legally binding instruments that define the obligations to States related to working life. The Protocol of 2014 to the Forced Labour Convention seeks to prevent trafficking for labour exploitation and its preventative measures include due diligence by both the public and private sectors to prevent and respond to the risk of forced or compulsory labour. Also, the OECD Guidelines for Multinational Enterprises⁴ (1976, updated version 2011) were amongst the first guidance for member states related to corporate social responsibility.

The ILO Declaration on Fundamental Principles and Rights at Work⁵ adopted in 1998, particularly mentions groups with special needs, including the unemployed and migrant workers, and it commits Member States to respect and promote principles and rights in four categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

Migrant workers are mainly protected by the applicable laws in the country they work in. As yet most European countries do not hold companies responsible for the violations of the human rights, as such, of the workers working throughout subcontracting chains and employed by other companies. International laws do not directly mandate that companies make sure that actors in their supply chains respect labour and human rights. However, during the last decade or so, several regional laws and regulations have been passed, obliging organisations to implement elements of the human rights due diligence, or at the least report on human rights due diligence processes (e.g, Directive 2014/95/EU on non-financial reporting and Conflict Minerals Regulation 2017/821). Furthermore, in 2019, the European Union established a new role of a European Labour Authority (ELA) that is due to improve cooperation between EU countries, including introducing coordinated joint inspections, as well as, analyses and risk assessments on cross-border labour mobility issues.

³ *The ILO Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105)*

⁴ <http://mneguidelines.oecd.org/guidelines/>

⁵ <https://www.ilo.org/declaration/lang--en/index.htm>

To date, only a handful of countries have enacted specific legislation on corporate responsibility. While the nature, type and scope of national legislation varies, they are mainly characterised by either mandatory disclosure and transparency of information (e.g., California Transparency in Supply Chain Act 2010), or by mandatory due diligence (e.g., the Corporate Duty of Vigilance Law in France 2017) and obligations to report on measures that address risks in their operations and supply chains (e.g., the UK Modern Slavery Act 2015). These are often directed towards the operations of large companies that have global supply chains.

Both larger and other companies can and do go beyond binding legal norms and standards and include clauses that prevent human rights violations in their contracts with suppliers and subcontractors.

National norms and principles related to business responsibility include national actions plans, legislation related to labour law and contractor's obligations and liability when contracting out work, collective agreements that determine labour rights, the role of employers' associations in monitoring and promoting social responsibility, as well as sector-specific practices and agreements. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which are largely defined by provisions in national law and in the relevant jurisdiction (UNGP 2011).

International soft law norms and recommendations by the United Nations (UN) have been introduced to assist companies to take human rights into account. The UN Global Compact⁶ was the first UN-led initiative to focus on corporate social responsibility. It supports companies to do business responsibly through the Ten Principles⁷ on human rights, labour, environment and anti-corruption. It supports businesses in achieving the UN Sustainable Development Goals⁸ (Goal 8 on decent work and economic growth specifically) through collaboration and innovation. The adoption of the United Nations Guiding Principles for Business and Human Rights (UNGPs)⁹ in 2011 provided the first authoritative global standard for preventing and addressing the risk of human rights violations. The UNGPs apply to all States and to all business enterprises regardless of their size, sector, location, ownership and structure. Guiding Principle 19 outlines the implications of the actions of businesses and elaborates how business activities and relationships are understood to

⁶ <https://www.unglobalcompact.org/>

⁷ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

⁸ <https://www.unglobalcompact.org/sdgs/about>

⁹ https://www.ohchr.org/Documents/Publications/GuidingPrinciples-BusinessHR_EN.pdf

¹⁰ <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

include relationships with business partners, entities in its value chain, and any other entities directly linked to its operations, products or services.

The role of EU institutions and Member States when cases of (severe) labour exploitation or trafficking in human beings occurs is related to obligations of due diligence, i.e., prevention and protection from harm.

All EU Member States and their national authorities have duties to protect workers – their own or migrant workers – from business-related human rights abuses.

This means they themselves are obliged to take all reasonable measures of due diligence, through e.g. regulation, inspections, judicial and other enforcement. Member States have duties, stemming from EU law, and the European Convention on Human Rights, and all EU Member States are bound by the EU Trafficking Directive 2011/36/EU. Human trafficking is criminalised in all European countries, but national definitions often vary slightly when it comes to labour exploitation (Jokinen & Ollus 2019). Crimes related to labour exploitation or labour trafficking are not always prosecuted as crimes of trafficking for several reasons related to, e.g., lack of evidence, the victim's willingness to come forward, or lack of skills and awareness among authorities. This leads to problems with access to justice and victims' rights. Thus, it is important that businesses ensure that they have taken sufficient steps against labour exploitation within their own organisation as well as within their own supply chains. Moreover, beyond trafficking, all EU Member States have duties relating to data protection, illegal employment and posting of workers which are introduced next.

The European Union General Data Protection Regulation

Companies that implement anti-exploitation and anti-trafficking strategies in the EU, as well as social audits need to take into consideration the General Data Protection Regulation (EU) 2016/679 (GDPR)¹⁰. The GDPR itself does not address trafficking in human beings (THB) nor forced labour or any other form labour exploitation. However, it is relevant in this context because its provisions may impact on how companies implement social responsibility strategies (social audits, codes of conduct or contractual obligations) to verify compliance of business partners.

Protections established for personal data of workers under the GDPR limit the ability of companies to access and verify documents containing personal data of employees (e.g. contracts, pay slips, worktime records) provided by temporary employment agencies, workers employed by (sub)contractors or suppliers or providing work for the company on another basis (e.g. civil law contracts with temporary employment agencies or subcontractors). Within the EU, interpretations of the impact of GDPR in the context of trafficking and social auditing currently vary across data protection offices. However, in this context, it is recommended that the Contracting Party/Purchaser and its contractual partners **secure written consents** from data subjects.

This approach has several weaknesses from the standpoint of preventing trafficking and exploitation (for instance, because data subjects can withdraw consent at any time; victims of trafficking or/and forced labour can be forced not to consent; and because it is difficult to ensure that consent in an employment relationship is voluntary). Given current ambiguities, this is the only approach that reliably ensures compliance with GDPR for Contracting party (company A), while also trying to minimize risks of the trafficking and labour exploitation.

Employers' Sanctions Directive

The EU Employers' Sanctions Directive (2009/52/EC) provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The Directive addresses illegal employment linked to illegal immigration into the EU by imposing specific obligations on all employers. These include, for instance, the employer's duty to verify the legal status of workers. The Directive also provides for the imposition of sanctions against employers, e.g. exclusion from entitlement to public benefits and from participation in a public contract for up to 5 years, and even a closure of the establishments used to commit the violation. The Directive provides for the joint liability of the contractor and the subcontractor in cases where the subcontractor is in breach of the Directive. This applies unless the contractor can prove that it has fulfilled due diligence obligations as defined by national legislation, which might require e.g. informing the subcontractor about the illegality of employment of illegally staying third-country nationals and its consequences.

The Directive requires the establishment of protections for undocumented non-EU workers' rights. These include the recuperation of outstanding wages; the availability and accessibility of complaint mechanisms, information about rights, and access to residence permits. In line with the Directive, businesses must, in relation to all non-EU workers, require that the workers present a residence permit or a corresponding document that proves they are authorized to legally stay in the country before taking up employment. A copy of these documents must be kept for the duration of the employment, and the authorities must be notified when employing a non-EU national.

Businesses are recommended to:

- ensure that they undertake due diligence in relations with subcontractors and remain particularly vigilant when operating in sectors where undocumented work is known to occur,
- consider limiting the number of sub-contractors,
- distribute information of workers' rights among their non-EU migrant employees,
- ensure that non-EU nationals have equal access to the company's grievance mechanisms, as well as
- ensure that they are represented in the worker's/works councils/are offered support by the trade unions.

While some good practices exist on the impacts for undocumented migrants, the Directive's transposition by member states has had its flaws. For instance, the severity of punishments for offences differs significantly between states. Furthermore, in many EU states workers must first lodge a complaint with the Labour Inspectorate before launching a claim in court, which may entail automatic referral to immigration authorities resulting in deportation or detention. Contrarily, being identified as victim of trafficking may also lead to their residence or work status being regularised.

Posting of Workers and Enforcement Directive

Posted workers are employees sent by their employer, including temporary work agencies, to carry out a service in another EU Member State

on a temporary basis. The EU Posting of Workers and Enforcement Directive (PWS, 96/71/EC) mainly concerns posted EU nationals and clarifies the obligations of the host state, as well as, flags the costs of the service provider. The Enforcement Directive (2014/67/EU) aims to strengthen the PWD's practical application by, e.g., addressing issues related to fraud, the circumvention of rules, inspections and monitoring, and joint liability in subcontracting chains as well as the exchange of information between the Member States. The European Commission proposal on revising the rules on posting of workers has been accepted and will enter into force in July 2020.

Posted workers, unlike EU mobile workers, remain in the host EU country only temporarily and therefore are not afforded the same protection as host state nationals or other workers exercising their free movement rights. Moreover, posted workers are not entitled to equal treatment in access to employment, working conditions, and other social and tax conditions. This is because EU rules on posted workers fall under freedom of services (Article 56 TFEU) rather than freedom of movement that applies in case of the EU mobile workers.

Although the PWD was intended as a tool for posting mainly EU-nationals for short term assignments to perform services in other EU Member State, non-EU nationals currently constitute a significant percentage of this group. This is due to the employers using the PDW also for posting third-country nationals who are legally residing and working in a Member State, to another Member State under the same conditions as a Union citizen. Posted workers often receive lower wages than other workers and are forced to work in less favourable/secure and thus cheaper conditions.

So-called letter-box companies have been created to evade labour law and social security protections for workers posted through sub-contracting arrangements. Some temporary work agencies also purposefully recruit residents of more vulnerable countries and regions, and from groups with diminished access to formal labour in their home country, to have more control and be able to impose low pay and poor working conditions.

Furthermore, posted workers' low visibility allows scope for exploitation as they are often isolated due to language barriers, segregation and the location of housing facilities, the imposed mode of transport to/from work, and greater exposure to dangerous working conditions, as well as not having any sort of representation in the company for which they provide services

An Amending Directive to the PWD (2018/957) which will enter into force on 30 July 2020, addresses the challenges faced by posted workers and the unclear rules of subcontracting. With this amendment, all the mandatory elements of remuneration (until now it was only pay) as well as the rules of the receiving Member State on workers' accommodation and the reimbursement of expenses will be applied to posted workers. The duration of the posting will also be limited to 12 or 18 months, after which the EU workers will become entitled to most of the terms and conditions of employment on a free movement basis. Notably, for long-term postings the length of this qualifying period may be satisfied by cumulative hire of different posted workers for the same task, thus targeting the very core of the existing economic model and targeting the temporary work agencies' role in the recruitment and management of temporary migrant labour within global supply chains.

Businesses are recommended to:

- consider employing workers directly whenever possible,
- screen temporary work agencies and posted-workers companies before doing business with them,
- ensure that posted workers are able to voice their concerns and needs in e.g. workers' representation councils,
- enable trade union representatives' participation in audits of contractor premises, as well as, (where relevant) workers' accommodation, and
- verify that posted workers' wages are at least on the minimum wage level of the host country.

Toolkit

Navigating through your supply chain

The following tools will help your company commit to protecting migrant workers' rights, ensuring safe working environments, promoting fair and socially responsible economic growth and to safeguarding that the terms of employment for migrant workers (salaries, working hours and social security) are set equally to those of other workers. The goal of the following set of tools is to give your business practical measures that can be used to navigate and control complex supply chain networks especially in a local, national and intra-European context. Your business sector and the size of your company determines which of the following strategies are most suitable for decreasing the risk of labour exploitation in your supply and subcontracting chains.

A Toolkit for prevention of labour exploitation and trafficking

Navigating through your supply chain



Risk Assessment Tool

Take the first step of due diligence and pinpoint the areas where the risks of exploitation are the highest. Includes an easy-to-use checklist for mapping risks.



Strategy Tool

Define a clear company strategy on the prevention of exploitation and trafficking, and include it in internal guidelines and corporate policies. Includes nine recommendations for value-driven action.



Screening Tool

Get to know your partners, seek to verify that they act responsibly and are not engaged in abusive or criminal practices. Includes a list of questions for discussions with potential business partner.



Contract Tool

Include permanent clauses in the contracts with subcontractors and other partners that are intended to clarify the obligations and requirements of the contractual partners. Includes four steps for putting policies in writing.



Workplace Assessment Tool

Monitor contractors' and subcontractors' operation through conducting inspections of working conditions on jobsites. Includes guidance for planning and conducting assessment along with a list of questions for discussions with migrant workers to uncover risk factors that make workers vulnerable for exploitation and trafficking.





Risk Assessment Tool

How can the risk of labour exploitation in supply chains be identified?

The following check list will help you map out how large the risk of labour exploitation or trafficking is for your business. A risk assessment should be the first step of due diligence and it will help you pinpoint the areas where the risks are the highest. **Successful risk assessment requires knowledge about the factors that contribute to the worker's heightened risk of becoming vulnerable and an understanding about vulnerable groups or populations working for your company through subcontracting chains.** Companies that can relate to one or more of the following statements in the checklist are at risk of being involved in fraudulent activities, labour exploitation and/or even trafficking in human beings. Where higher risks have been identified use the tools available in this publication to effectively monitor contractors' and subcontractors' operations, e.g., on construction sites and retail premises.

1 Does your company use unskilled, temporary and/or seasonal labour?

Yes

2 Does your company employ many migrant workers who might be unfamiliar with your country's or business sectors' collective agreement?

Yes

3 Does your company have migrant workers/temporary staff employed under temporary contracts and hired by national or international temporary staffing agencies?

Yes



4 Does your company use subcontractors (possibly with several layers in the supply chain), temporary staffing agencies and short-term seasonal contracts? If so, does your company staff possess the skills to identify uncharacteristically low tender/contract offers?

Yes

5 Are there job functions which are outsourced and carried out by migrant workers/temporary staff who are not immediately visible or noticeable because the work is carried out at night or in remote places where there is less oversight?

Yes

6 Is there sometimes confusion about the identity of workers who are employed, for example, on job sites that have complex subcontracting arrangements?

Yes

7 Does your company lack an internal or external grievance mechanism or a system for processing complaints that would allow all workers (directly/indirectly employed, local or migrant) to bring issues to the attention of management anonymously?

Yes

8 Is your company part of a business sector which has previously been affected by undeclared labour, social dumping, labour exploitation and/or human trafficking according to, e.g., media, research, NGO reports or some other sources?

Yes

9 Is your company part of a business sector, according to, e.g., media, research, NGO reports or some other sources, which is insufficiently monitored by state actors, as illustrated by a lack of labour inspections, a lack of investigations or ineffective investigations related to labour exploitation in addition to a low risk of prosecution for offenders?

Yes



Strategy Tool

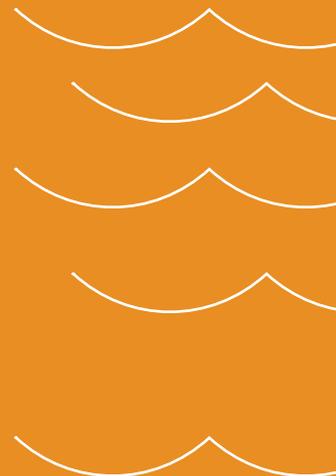
How are anti-exploitation strategies drafted?

A growing number of businesses are committed to international human rights due diligence and publish annual sustainability reports. Despite this progress, the focus on improving working conditions in local supply chains is often lacking. If a company aims to be competitive, a strategic approach to CSR is increasingly important. It can positively contribute to safeguarding the rights of migrant workers, risk management, cost savings, investor and customer relationships, human resources management and innovation capacity. This tool is meant to assist companies in defining a clear company strategy on the prevention of labour exploitation and trafficking. It outlines recommendations on how to include this theme in internal guidelines and corporate policies, and how to put the values the new strategy holds into action. The recommendations also include additional materials and guidelines that will help you carry out the strategy. The links to the materials can be found at the end of the tool.

1

Identify and articulate how your company's core values are linked to human rights due diligence and especially to the prevention of labour exploitation, both in your direct employment practices and when using subcontractors. Include them in your company's core strategy and differentiate between immediate and long-term CSR approaches. If your company's value system clashes with responsibilities in the area of human rights, a principles-based approach should be adopted, e.g., one where the prevention of labour exploitation should be considered a priority instead of emphasising cost-efficiency in competitive tendering. Line up the strategy with the regulatory framework of your country and possible codes of conduct on human rights issues applied in your business sector.

→ **Use the Ten Principles of the UN Global Compact and the Risk Assessment Tool on p. 30. Use the UNGP principles 17 to 22 to learn about human rights due diligence.**



5

Increase staff awareness (managers and supervisory staff in particular) of labour exploitation/human trafficking/forced labour and relevant legislation by: a) learning about and mapping possible vulnerable groups who are most at risk of exploitation in your business sector, b) increasing understanding of the circumstances that increase the risk of exploitation of migrant workers/temporary staff, c) engaging in dialogue and collaboration with authorities, civil society organisations, labour inspectors, employers' associations and trade unions in order to improve collaboration for identifying and reporting possible cases.

→ Use the **HEUNI Guidelines for Businesses and Employers for Risk Management in Subcontracting Chains**, and the **FLOW-project publications "Shady Business" and "Navigating through your supply chain - A Toolkit for Responsible Businesses"**

4

Share your company strategy (and guidelines or corporate policies) for preventing exploitation (ideally face-to-face) with stakeholders, contractors, subcontractors and business partners. Organise regular thematic meetings with your partners in the supply chains and notify them about the risk of labour exploitation. Get to know the people and businesses in your supply chain.

→ Use the **Screening Tool** on p. 37

2

Commit in writing to respecting ethical and professional conduct, fundamental principles and rights at work, and combating labour exploitation and trafficking in connection to both direct employment and throughout the whole supply chain. Guarantee in writing that employees are free to enter into employment and to terminate it.

→ Use the **ILO Declaration on Fundamental Principles and Rights at Work** and **The UN Guiding Principles on Business and Human Rights**.

3

Prepare company guidelines by utilising the remaining points of on this strategy tool. Prepare guidelines that specifically aim to prevent exploitation and trafficking in the supply chain and ensure that they are adhered to throughout the supply chain. Incorporate them into all your processes, especially the ones relating to the use of contractors, recruitment, subcontractors and posted workers.

→ Use the **HEUNI Guidelines for Businesses and Employers for Risk Management in Subcontracting Chains**, p. 16 section A: **General Precautions**.



6

Commit in writing to empowering and informing migrant workers about their rights at work. Increase awareness of migrant workers by providing information (e.g., leaflets) about what forced labour is and how or whom they can notify about it if they become aware that it is taking place. Notifying workers about their rights at work should be included in the official orientation materials. Information could be distributed/handed out on their first day at work when workers undergo induction, training, etc.

→ **Use the ILO Declaration on Fundamental Principles and Rights at Work and available informational leaflets, by national authorities for foreign employees, and Workplace Assessment Tool on p. 46**

7

Strengthen and harmonise the monitoring of working conditions among employees and subcontractors through, e.g., a) regular random checks, audits, or workplace assessments, b) establishing an ethical channel/complaint mechanism through which anyone could safely (including anonymously) report their suspicions or issues in working conditions in their own language or in the language they understand and ensure that the complaints are responded to effectively and timely, and c) making sure that your company provides informal opportunities for employees to discuss their working conditions.

→ **Use the Workplace Assessment Tool on p. 46**

8

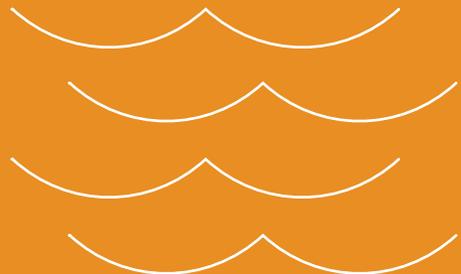
Establish clear procedures for different job levels for dealing with situations in which a) the company or authorities have detected a breach of contract, b) in the event of signs of labour exploitation and/or trafficking, c) company personnel receive a complaint or tip about labour exploitation or trafficking.

→ **Use the HEUNI Guidelines for Businesses and Employers, p. 22–25 and see p. 55 “When suspicions arise”**

9

Monitor the implementation of codes of conduct and your anti-exploitation strategy. Evaluate your company's performance in relation to the strategy and include information about it in your annual reports

→ **Use the UN Guiding Principles Reporting Framework**



The following box outlines an example where a company has included prevention of labour exploitation into their strategy, thus achieving concrete results.

An example of a radical transparency strategy by SOK Corporation

SOK Corporation provides procurement and other services to S-Group, a Finnish network of retail and service companies including supermarkets. They commissioned Oxfam Italy in 2018 to conduct a Human Rights Impact Assessment (HRIA) on their processed tomato supply chains in Italy. Tomato pickers in Italy are mainly migrants from Africa who work 10-hour days earning about 35 euro a day. Some of the workers live in shantytowns without electricity, running water, proper sanitation or even shelter from the rain. They are often recruited by illegal labour brokers and have to pay recruitment and transportation fees. (Yhteishyvä 2018; Oxfam 2019.)

The data used included e.g. interviews with ca. 50 stakeholders (incl. workers, suppliers, SOK/Coop Trading staff), a multi-stakeholder roundtable, documents, and an analysis of supply chain price trends. (Oxfam 2019.) The HRIA identified for instance forced labour, low wages, excessive working hours, unsafe and unsanitary housing, health and safety risks at work and in transport, and lack of access to justice. Recommendations included e.g. bringing SOK's buying and sustainability functions closer together; requiring Italian tomato suppliers to source from members of the Network on Quality Agricultural Labour; supporting the establishment of alternative recruitment models and workers' grievance mechanisms in the supply chains; and advocating for local, national (Finnish and Italian) and EU level changes in human rights due diligence processes and migrant workers' rights. (Oxfam 2019.)



Further reading and useful links:

ILO Declaration on Fundamental Principles and Rights at Work (1998): <https://www.ilo.org/declaration/lang--en/index.htm>

The United Nations Global Compact: <https://www.unglobalcompact.org/>

The UN Global Compact – Ten Principles: <https://www.unglobalcompact.org/what-is-gc/mission/principles>

Guide to Corporate Sustainability based on the UN Global Compact: <https://www.unglobalcompact.org/library/1151>

The United Nations Guiding Principles (UNGPs): https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

The UN Guiding Principles Reporting Framework: <https://www.ungreporting.org/>

HEUNI Guidelines for businesses and employers for risk management in subcontracting chains (2018): https://www.heuni.fi/en/index/publications/heunireports/HEUNI_report_88c.html

The FLOW-Project publication “Shady Business: Uncovering the business model of labour exploitation”: https://www.heuni.fi/en/index/researchareas/humantrafficking/flow_thb.html

Institute for Human Rights and Business (IHRB): The Employer Pays Principle – Responsible Recruitment: <https://www.ihrb.org/employerpays/the-employer-pays-principle>

Toolkit for economic sectors to combat human trafficking: https://csd.bg/fileadmin/user_upload/publications_library/files/2019_08/Toolkit_EN.pdf

Toolkits for reducing modern slavery: <https://www.stronger2gether.org/resources/>



Screening Tool

Who are your partners?

Businesses should carefully choose their subcontractors and business partners in order to effectively avoid their involvement in labour exploitation or trafficking. The aim of the screening is to verify that partners do not engage in abusive or criminal practices themselves or unknowingly through their subcontractors. In addition to safeguarding the rights of migrants, the screening of possible business partners will strengthen your image and reputation as a socially responsible company committed to promoting decent work. Competitive bidding can help buyers get the “best price” and bring costs down, but the process may also expose your company to hidden labour exploitation. It may be attractive to choose the lowest bidder, however, suppliers that are able to bring the costs down to a suspiciously low level may be using exploitative schemes, disguised in legitimate business structures, in order to maximise profits by taking advantage of people who are tricked or forced into accepting poor terms of employment.

Below you can find questions and/or discussion points that will help you in reaching a common understanding of the values that your company holds. The discussions are also designed to increase your partners’ awareness of fraudulent practices, including labour exploitation. You might also consider going through the “Risk Assessment Tool” with your business partners to help them understand risks related to their operations. This will encourage other actors in your sector to act responsibly and proactively.



Questions for companies to discuss when screening for potential business partners

- What is your company structure like?
 - Workforce structure, share of directly hired people, migrant workers, temporary workers and share of workers hired indirectly through labour agencies and subcontractors?
- If your company uses labour agencies, how are the labour agencies selected and how do you ensure that they comply with labour standards?
- How is the employment process of migrant workers organised from first contact to starting the job in the destination country?
- Does your company have any policies or strategies that aim to prevent labour exploitation or trafficking in your supply chain?
- Does your company have a worker grievance mechanism or an ethical channel for reporting problems, which is meant for both directly employed staff as well as the workers of your subcontractors working on your premises, and for workers of your contractors? If yes, specify.
- How are the travel arrangements for workers arriving from another country made and who pays for them?
- Have you committed to making sure that posted or temporary workers are not obligated to pay any recruitment fees? If so, how?
- Have all the workers been informed about the general terms and conditions of employment of the destination country before they start the job? Has it been done in a language that they can understand, have they had the possibility to use interpreters if necessary? How was it verified that they understand?
- Have the workers been informed of their rights as employees in the country they are working in, in a language they understand? E.g., the right to get paid according to the collective agreement, compensation for working overtime, the right to join a trade union.
- Do you provide housing or assistance with finding housing? If so, how is the rent determined, is it deducted directly from the salary and are there any rules regarding who is eligible for housing and who is not? How many workers live in each housing unit? Are the workers free to decline housing organised by the company and can the worker look for accommodation themselves without incurring any charges?
- How do the workers commute to work? If commute is offered by your company, do workers have to pay for it? If so, how is the cost determined?

The following boxes outline some examples of how companies can screen their business partners and use tools provided by authorities to verify their partners' adherence to tax regulations of.

Good practice example from Finland

A Finnish construction company has organised face-to-face meetings with recruitment companies that hire migrant workers, as well as with companies providing cleaning services in an effort to address risks related to labour exploitation. The discussions were based on a list of questions and topics that were inspired by the HEUNI Guidelines for Businesses and Employers for Risk Management in Subcontracting Chains.

According to their Sustainability Director, these meetings made it possible to address the more sensitive matters related to potential exploitation and provided the capability to establish a common understanding of the company values and ethical conduct. Overall, the company received positive feedback to their approach from the recruitment companies. The meetings also enabled the promotion of the company's ethical channel. Anyone can use it anonymously to report non-compliance or suspicions of activities that go against company guidelines.

Estonian good practice: E-service Tool by the Tax Authority

The Estonian Tax Authority offers a new e-service portal (available since November 2019) where they display the estimates of companies' tax behavior and give instructions on what companies should do to improve their rating.

General information (e.g. address, payment of taxes etc.) is public and visible to everyone, but the tax behavior rating is not public. It is visible only to the representative of the company itself or the person with whom the representative has shared this information. Thus, companies may choose to share their tax behavior rating with potential partners to prove that they are good partners, or to ask their sub-contractors to share their profile before signing contracts.

Contract Tool

How are solid business agreements and contracts made?

Based on research, although everything may seem to be in order on paper, in reality, legitimate business structures may be used to hide the evidence of exploitation. This tool will help your company strengthen your business agreement and contracts through which to gain more control over your supply chains. Limiting the number of layers in your supply chain, using services of only legally operating and registered employment and recruitment agencies, establishing communications channels through which to report misconduct and introducing contractual clauses that specifically address the risks related to labour exploitation are strong measures both to prevent exploitation and to demonstrate your company's values to employees and stakeholders. This tool is for proactive and value-driven businesses who wish to go the extra mile to minimise the risk of becoming involved in labour exploitation or even trafficking.

Step 1: If your company uses a supplier / contractor / agency, check whether the company operates legally (e.g., is registered in the relevant state-run registers) and require or seek assurances that the company is not involved in an ongoing criminal case through, e.g., state-operated registers or via written testimonies. Companies may also request inspection reports from labour inspectorates if such inspections have been carried out. Ongoing criminal investigations are not publicly available information.

Step 2: Define your company policy for the use of suppliers and subcontractors with the help of the Strategy Tool on p. 32. Determine the obligations and requirements of the contractual partners, e.g., whether contractors can further contract out the work to subcontractors and if so, what kind of terms and conditions should be agreed upon in writing; should they be approved by your company before doing so? Should the same terms of employment apply to all layers of subcontracting? How do you intend to monitor your contractors and their possible subcontractors?

Step 3: Makes sure that the obligations and requirements are part of a written contract. Put the company policy in writing and **consider** including permanent clauses in the contracts with subcontractors and other partners. The items listed below are topics and possible measures that your company could take to decrease the risk of labour exploitation in supply and subcontracting chains. They are intended to inspire preventive action and need to be discussed with your company's legal team. The line of business and the size of the company determine the level of detail your company should apply in drafting contracts with business partners and subcontractors.

Note: *Businesses themselves are responsible for aligning the clauses with the national regulations related to, e.g., commercial confidential information and personal data protection. See the FLOW-publication "Normative Framework Guide" for examples of contractual clauses and more information on how to interpret the GDPR rules when drafting this type of contracts. It is recommended that the Contracting Party and its contractual partners secure written consents from data subjects. In the absence of written consents, the documentation should be required to be received after prior anonymization.*



- Ensure that labour exploitation or trafficking will not be tolerated.
- Ensure that the contractor has not been found guilty of any crimes in the past.
- Insist that the contractors familiarise themselves with your company's strategy on the prevention of labour exploitation and trafficking.
- Oblige contractors to inform their and their subcontractor's foreign employees of their rights and obligations as employees in the country they work in, in a language that they understand. To make sure that that employees have been informed correctly, request that a copy of the discussed rights and obligations be sent to your company (note that these could be fabricated, and that this measure alone does not guarantee that a company would not violate labour rights).
- Insist that contractual partners ensure that workers employed by them (including their subcontractors) have all necessary permits for work and the working conditions and pay are relative to those of the labour market in the country they work in.
- Ensure that recruitment agencies/subcontractors do not charge posted or temporary workers any recruitment fees.
- Make the contractor responsible for ensuring that any subcontractors fulfil the same requirements and obligations as those applying to the contractor.
- Compel contractual partners to monitor both their and their subcontractors' operations.
- Insist that contractual partners address possible breaches of contract in their subcontracting chains immediately and guarantee that the transpired misconduct is handled in a way that does not place any extra burden on the worker and that the worker has access to any due compensation and remedies.
- Give your company access at any time to information/documentation from the contractor showing that requirements and obligations are fulfilled, e.g., proof of paid salaries and working hours.
- Give the right to contact workers on your jobsites of the contractual partner or its subcontractors without prior notice in order to get information on the working conditions.

- Give your company access to the contractor's premises and/or site of work, in order to conduct inspections/workplace assessments/audits to ensure the contractor adheres to the Supplier Code of Conduct principles. In the contract, make sure that audits can be carried out by yourself but also by an external/3rd party on your behalf. Also make sure that in the case of an audit carried out by an external/3rd party, the contracting party is prevented from pressing for an NDA (non-disclosure agreement) that makes the whole audit pointless due to the number of restrictions as to what can be disclosed in the internal post-audit report.
- Allow the contracts to be revoked or terminated immediately if serious violations are identified. In less serious cases of infringement, consider the option of giving an agreed length of time to correct the situation, and if the conduct does not improve, and the clauses are systematically and intentionally violated, the contract can be revoked or terminated immediately. Before terminating a contract, it is important to consider what possible repercussions this action can have so that possible victims of exploitation are not in further harm and that exploitation will not continue elsewhere or in other forms after the termination of the contract.

Step 4: Draft a clear strategy on how to deal with possible breaches of contract. Consider different scenarios where a breach of contract/exploitation is identified by either your staff, staff working in the supply chain or by authorities. Ensure rapid responses to breaches of contract. Depending on national legislation, breaches of labour law might not be punished under criminal law, whereas severe labour exploitation and trafficking crimes are punishable offences that might include prison sentences. The repercussions for victims of trafficking are often severe, and the victims are entitled to receive state-funded specialised support services. Thus, it is important for businesses to have a clear strategy on how to deal with different scenarios of exploitation.

Sanctions from breaches of labour law remain small, making labour exploitation a relatively risk-free and high-profit endeavour. Some businesses have introduced their own sanction models to prevent the grey economy and at the same time safeguard workers' rights. The next box outlines an example where a company uses fines when they observe violations by their sub-contracting partners.



Good practice from the construction sector on using fines:

Senate Properties is a large semi-private Finnish company that maintains and constructs the properties of the Finnish Government. They have higher-than-average requirements regarding, e.g., the chaining of contracts. Senate Properties' guidelines to prevent financial crime cover building and maintenance projects, as well as service acquisition and administration. For instance, the supplier has to hand in reports on every sub-contractor in their sub-contracting chain. They can only use sub-contractors that have been approved in writing by the main contractor. They are also committed on a contractual level to provide everyone working at their sites an introduction on e.g. working conditions in a language they understand. There are also sanctions: as an example, deficiencies or negligence in getting the approval for a subcontract results in a fine of up to EUR 10,000.

Further reading and useful links:

HEUNI Guidelines for Businesses and Employers for Risk Management in Subcontracting Chains: https://www.heuni.fi/en/index/publications/heunireports/HEUNI_report_88c.html

Handbook on Business and Human Rights for Legal Practitioners (2018): <https://rm.coe.int/business-and-human-rights-a-handbook-of-legal-practitioners/168092323f>

ILO Combating Forced Labour: A Handbook for Employers and Businesses: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf

HEUNI Guidelines to prevent abusive recruitment, exploitative employment and trafficking of migrant workers in the Baltic Sea region: <https://www.cbss.org/wp-content/uploads/2012/11/ADSTRINGO-Guidelines.pdf>

OECD Due Diligence Guidance for Responsible Business Conduct: <https://www.oecd.org/investment/duediligence-guidance-for-responsible-business-conduct.htm>

HEUNI Normative Framework Guide - Responsibility of Businesses Concerning Human Rights, Labour Exploitation and Human Trafficking (2020): <http://www.heuni.fi/en/index/publications/heunireports/reportseries94.html>



Workplace Assessment Tool

How can a company go about conducting its own inspections?

Responsible business actors can play a proactive and meaningful role in the prevention of labour exploitation. Through commitment to respecting human rights and investing in social responsibility, companies can effectively reduce the opportunities for criminal entrepreneurs to exploit workers and distort fair competition. The following tool is meant to be a part of a company's social responsibility agenda and is designed to give companies more control over their subcontracting chain through effective assessments of working conditions. This tool can also be utilised as a model for integrating social responsibility considerations into public procurement.

This tool is by no means meant to replace the work of labour inspectors or other enforcement authorities. The activities related to the workplace assessment are described here starting from the planning stage to the actual assessment, and to taking further steps and remedial actions if problems are uncovered. For those businesses that are already doing safety inspections on jobsites, e.g., in the construction sector, this tool can be used to incorporate the theme of labour exploitation into the existing inspection protocols.

“Labour inspectors have limited resources and cannot necessarily do inspections in all companies regularly. Therefore, workplace assessments performed by companies themselves are a very good tool to tackle exploitation and the grey economy.” A Finnish Labour Inspector

This tool is designed as a self-audit tool suited to a company's own staff who are well informed of the company's structures and possible risk areas. Assessments are recommended to be carried out on a regular basis, e.g., 1–3 times per year depending on the size of the business and the scale of its operations.

Workplace assessments can be done reactively as a response to complaints (through, e.g., ethical channels that businesses use for reporting suspected misconduct), but they should also be carried out on locations where everything is seemingly well. Unannounced assessments are more likely to uncover poor labour conditions than those checks that are announced in advance. Large-scale audits require resources such as time, staff and money. For some companies, it may be beneficial to consider engaging local NGOs, labour inspectors, trade unions or consultants on BHR/CSR/workers' rights, or other experts from private audit organisations to carry out the work. The following boxes outline some examples where companies have established ethical channels for reporting violations or where mobile apps may be used by workers to report problems encountered.

Latvian good practice example: anonymous reporting channel

The cement manufacturer SCHWENK Latvija pays special attention to social responsibility in their supply chain. The company regularly organises information campaigns and has established an anonymous reporting channel for its employees. Annually, about 350 employees make approximately 2000 risk reports through the channel. These reports mainly relate to safety violations, but the channel can also be used to report problems related to employment and wages. The channel has allowed the company to strengthen its reputation as a responsible business and to tackle problems flexibly.



Bulgarian good practice example: Reporting app for workers

In 2019 the Confederation of Independent Trade Unions of Bulgaria (CITUB), the General Labour Inspectorate and the National Revenue Agency (NRA) conducted an awareness-raising campaign about the harms of the grey economy. As part of the campaign they introduced a free mobile application, VOX KNSB, that allows users to report problems and irregularities in their workplace, as well as share positive practices. The app is available on Android and iPhone, and the anonymity of users is guaranteed. Photographic material may be attached, and the app automatically registers the location from which the report has been sent. In the first few months the app was downloaded by over 10,000 users. About 50 reports were submitted and 85% of these concerned violations of employment relationships.

The inspection tool introduced in this guide does not require any special skillsets or competencies. The tool is designed in such a way that middle-management or corporate responsibility/sustainability experts can follow the basic steps introduced here.

TIP: Workplace assessments can be implemented as such but could also be tailored to be part of jobsite safety inspections, audits, HR-strategies, annual evaluations and/or job satisfaction surveys.

What are the requirements for carrying out inspections?

Ideally, the person(s) conducting inspections should have **a strong understanding of labour exploitation and trafficking, and preferably some level of specialisation in sustainability and responsibility issues**. It is recommended that the persons carrying out the inspections should familiarise themselves with the following materials related to detecting the signs of labour exploitation and trafficking. It is also a good idea to map existing job-related training possibilities, workshops or seminars offered by either private entities, state actors, NGOs, trade unions or other stakeholders. Also, **good communication skills** of persons carrying out the inspections will advance the exchange of information and foster the building of trustworthy relationships with employees, subcontractors and business partners.

Good language skills are important even though the inspections should ideally be done using the mother tongue of the workers; English may be the most feasible language to use to avoid major language barriers. **However, if the English language skills of the parties are not sufficient, do not accept that a representative of the workers or the subcontractor acts as an interpreter, as the person may not be impartial.** The persons implementing inspections should carefully read through the list of signs which indicate that a person may be exploited, abused or even a victim of trafficking.

Things to keep in mind when conducting the workplace assessment

It should be acknowledged that the process of random checks or unannounced inspections can cause pressure for the people who are assessed, and cause friction between you and your business partners. To avoid any harm to workers or your business relationships, the terms of the random checks should be clearly established in contractual agreements (see the Contract Tool on p. 40). It is essential that a ‘do-no-harm’ approach is adopted, so that the inspection does not place vulnerable workers at greater risk. For workers, it is important that the workplace assessments do not lead to them losing their source of income or their work permits, which could result in them being deported from the country of destination. Instead such workers should receive guidance in securing their unpaid wages from the company and relevant authorities, as well as get support in finding a new job. Therefore, **a strong focus on workers’ rights is crucial** when carrying out assessments. Furthermore, workers may be unwilling to report concerns to a stranger or someone in a position of power. Certain steps can, however, be taken to facilitate an atmosphere where people will feel more comfortable to speak out and disclose information.



1 Map the ability to communicate: Identify the different languages used at the work sites in advance and disseminate information materials on the principles of working as a foreign employee. Many workers may be able to communicate sufficiently in English or in a local language. If not, you should consider offering the services of an impartial interpreter (either face-to-face or through a telephone). Using acquaintances or friends from the same group as interpreters is not advised since they may be linked to the exploiters.

2 Create confidence: Take time and make an effort to clearly express the motives of the assessment and think carefully how to present them when approaching the supervisors and workers, e.g., handing out information leaflets in different languages that include your company policy on labour exploitation and possible ethical channels used by your company. Consider including contact details for, e.g., unions, employers' associations, occupational health administration, and organisation or helplines that offer assistance on matters related to workers' rights. Remember to also introduce yourself when approaching the workers. Depending on the company and country, it might be useful to engage with workers' representatives during the assessment. Ask for consent to take notes and explain why you are doing so.

3 Create a safe space, ask questions and listen: Try to establish an understanding between you, the supervisors, and the workers in order to clearly communicate that the aim of the workplace assessment is to facilitate a two-way line of communication and consider what the best moment/space is to approach the supervisors and workers. Talk to the supervisors and manager first and then compare what they say with what the workers are saying. You are more likely to get direct answers from workers when there are no managers, supervisors or colleagues nearby. Ensure that there are no other persons overhearing the discussions if workers share sensitive and personal information. Make sure to give the impression that you are not in a hurry, and make sure that you listen carefully to each person and ask if the person you are talking to has anything further to add or discuss. If sensitive information arises in the course of the inspection, write down all the information and acknowledge the experiences of each person.

4 Inform, educate and support: Individuals may lack trust of authorities and therefore it is important to give them information on their rights and possibilities. Explain that contacting authorities is essential if they wish to access their legal rights and entitlements. If





individuals do not want to contact the authorities, take time to explain which authorities, organisations, help lines/hotlines or other services offer advice and support for persons in their situation and how to give anonymous tips to authorities (see p. 55 “where suspicions arise”). Assure individuals that they can also contact you later (remember to leave your contact details) and inform them about your company’s possible ethical channels (preferably anonymous) of disclosing information.

5 Look beyond the paperwork: Employers/actors/businesses in the supply chain may have developed strategies to cover up infringements of statutory working conditions. There is, for example, a possibility that the supervisors or the workers are given specific instructions by employers about what they should say. These might include false testimonies about their working conditions, wages and living circumstances. Workers may have even been given false identities or signed fake contracts with falsified working hours and been instructed to flee or hide in case an inspection occurs (FRA 2018). Particular attention must be paid if workers are found on site outside the stated working hours. This may be a sign that employees are actually working longer than officially designated. Note that depending on the legal regulations in each country, self-employed or temporary workers may not have a legally set maximum number of working hours. However, your company should consider adopting standards that limit the overtime so as not to exceed a certain number of hours per week.

6 Report and communicate: Write down the main points of discussions and draft a corrective plan about the next steps. Inform the workers about the next steps. When certain action points are delegated to other parties or persons, make sure that you do not disclose sensitive materials to individuals that do not have competencies to handle them. In order to address the problems identified during the inspection, it is important to involve the contractors and subcontractors responsible for the employees, however, it must be carefully considered what to include in the report. The shortcomings should be listed on a more general level and the anonymity of the interviewed employees needs to be safeguarded, unless you have permission in writing from the person whose identity you would like to disclose (if a crime is suspected, see p. 55 “where suspicions arise”). Draft a report on the shortcomings to the subcontractor and organise a meeting where the responsibility criteria are discussed thoroughly, and your company is provided with proof of how the shortcomings will be/have been fixed. Include information about improvements to your annual reporting.



What to look for and what topics to cover when conducting a workplace assessment? The following lists of questions are not comprehensive but are meant to serve as a starting point and an overview of topics which could be covered when conversing with possible business partners and workers in the supply chain. When necessary, ask for evidence to back up their responses. Before the inspection, determine the overarching themes related to your company’s CSR and BHR agenda that the assessment aims to focus on, e.g., health and safety, equality, diversity and discrimination issues. From the labour exploitation point of view, the key is to uncover any problems in working conditions and to establish whether the workers are working freely or under some form of threat.

Before the inspection, read and learn about the signs of labour exploitation and trafficking in recruitment and employment, at the workplace, and in housing. Persons may be unwilling to talk with you for several reasons, e.g., timetable issues, communication challenges or, as a sign of exploitation; he/she may have been told or threatened by her employer not to talk with other employees on jobsites. In cases like this, further action should be considered, e.g., depending on the context, contacting the employer or authorities, and, at a minimum, leave informational leaflets on where to get information on their rights as foreign employees and whom to turn to in case of difficulties. The questions below are designed to uncover risk factors that make workers vulnerable for exploitation and trafficking.

Identifying the risks of labour exploitation or trafficking – direct discussions with workers:

- How did you find out about the job?
- Before starting this job, did someone explain to you your rights as an employee in the country that you are working in?
- Before starting this job, did someone explain to you the general terms and conditions of employment (working hours, pay rate, etc.) and who to turn to in case of difficulties?
- Have you been given adequate orientation and work guidance?
- Are the terms of employment part of a written contract in a language that you understand? Have you signed another contract with the same employer and for the same job but with different terms of employment?

- Where do you live? Shared housing? Who is the landlord? Is the accommodation dependent on working for the employer? Can you resign from the accommodation provided by your employer without incurring extra charges and without the deductions for that purpose continuing?
- Do you have a safe space for your important documents such as travel documents and passport? If you have voluntarily given them to someone for safekeeping, do you have access to them whenever you want them?
- How do you commute to work? If the transport is provided by a private entity, do you have to pay for it/is the amount deducted from your salary?
- Have you been charged a fee to secure the job? Have you had to either wilfully or unwilfully pay a third party in order to be employed? (Workers who pay fees to secure their employment are more vulnerable to debt bondage)
- Did you have to borrow money or take out any loans in order to pay for the expenses incurred in the work permit application process, or in connection with travel arrangements to the destination country?
- Have you had any problems receiving your pay and/or official payslips?
- Do you know how much money per hour/month you should be earning according to the law?
- Do you know what are legitimate deductions made from your salary and in contrast, which may be illegitimate?
- Have you ever had to work while you were ill? Are you paid sick leave in case you fall ill? Do you know what to do or where to turn to in case of illness?
- How often do you have a day off? Do you ever have two or more consecutive days off?
- Have you had any paid holiday?
- Are you informed of your working hours in a timely manner? Are the working hours listed in a shift schedule that is up-to-date, accessible and comprehensible?
- Do you get compensation for working overtime? In other words: do you get extra money if you work in the evenings or during the weekends? What about if you work for more than 8 hours per day or 40 hours per week – do you get any extra money then?



- Do you consider the working environment to be safe and do you have adequate protective gear/equipment/garments to perform your job without any risk to your health? In other words: has the employer given you, or provided funds to buy yourself, any protective clothing or did you have to pay for them yourself?
- Have you been pressured into doing tasks or a job you did not want to consent to do/are not covered by your contract/for which you do not have qualifications?
- Do you know where to report problems you may face at work?
- Do you have anything to add or comments related to your working conditions or work in general?
- Do you have any other questions or comments?

When suspicions arise...

If you notice that your subcontractor is breaking the law, the police or occupational health and safety authorities must be contacted.

When violence or threats are involved, the national authorities must be contacted immediately.

If you are unsure whether terms and conditions of employment are respected, labour inspectorates, tax authorities, immigration services and employers' organisations can be contacted for consultation and further information.

If you suspect that the terms and conditions of employment are not respected but the worker is unwilling to disclose any information, you can provide a list of organisations that the workers can contact in case they want to discuss their situation more anonymously.

If you suspect someone may be a victim of human trafficking, the national assistance system for victims of trafficking should be contacted.

National authorities may have hotlines or electronic forms through which you can leave tips or information (often anonymously) related to your suspicion of, e.g., tax non-compliance, misconduct or crimes.





Further reading and useful links:

An exhaustive list of indicators to identify victims of human trafficking: http://www.ihmiskauppa.fi/en/information_on_helping_victims/identifying_victims_of_human_trafficking

An exhaustive list of signs labour exploitation and trafficking in recruitment and employment, at workplace and in housing (p.22-23): https://www.heuni.fi/material/attachments/heuni/reports/aUBaR9OYb/HEUNI_report_88c_Guide_for_businesses_and_employers_1405.pdf

Ethical Trading Initiative: Managing Risks Associated with Modern Slavery – A Good Practice Note for the Private Sector (E.g. Tool 2 provides a detailed list of fees that must be covered by the employer): <https://assets.cdcgroup.com/wp-content/uploads/2018/12/03105819/Managing-Risks-Associated-with-Modern-Slavery.pdf>

FRA (2018): Protecting migrant workers from exploitation in the EU: boosting workplace inspections https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-protecting-migrant-workers-boosting-inspections_en.pdf

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