

The Role of Labour Inspection in Addressing Demand in the Context of Trafficking in Human Beings for Labour Exploitation

Almut Bachinger (principal author) with

Sarah Kyambi
Lucie Majerová
Petra Kutálková
Markéta Hronková
Jimmy Perumadan
Mădălina Rogoz
Marie Winkler
Lieselotte de Langen

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About the project

Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in trafficking as well as protecting the human rights of victims. However, European countries are increasingly exploring ways to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves. **DemandAT** aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights from related areas on regulating demand.

DemandAT takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking as well as demand-side policies of selected countries are examined, to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- Phase 1: Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.
- Phase 2: Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, and imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

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Abbreviations

ACM	Amsterdams Coördinatiepunt Mensenhandel
AUVA	Allgemeine Unfallversicherungsanstalt (Austrian Workers' Compensation Board)
B-L AG	Bund-Länder-Arbeitsgruppe Bekämpfung des Menschenhandels zum Zweck der Arbeitsausbeutung
BMASK	Bundesministerium für Arbeit, Soziales und Konsumentenschutz (Federal Ministry of Labour, Social Affairs and Consumer Protection)
BMEIA	Bundesministerium für Europa, Integration und Äußeres (Federal Ministry for European and International Affairs)
BUAK	Bauarbeiterurlaubs-und Abfertigungskassa (Construction Workers' Holiday and Severance Pay Fund)
CC	Criminal Code
CoMensha	Coördinatiecentrum Mensenhandel (Anti-Trafficking Co-ordination Centre)
CSR	Corporate Social Responsibility
DCC	Dutch Criminal Code
EC	European Commission
EEA	European Economic Area
EMM	Expertise Centre on Human Trafficking and People Smuggling
EU	European Union
FKS	Finanzkontrolle Schwarzarbeit (Financial Monitoring Unit to Combat Illicit Employment)
FPG	Fremdenpolizeigesetz (Alien's Police Act)
GLA	Gangmaster Licensing Authority
GOV	Governmental organisation
GRETA	Group of Experts on Action against Trafficking in Human Beings
HMRC	Her Majesty's Revenue and Customs
ICG	Interdepartmental Co-ordination Group for Combatting Trafficking in Human Beings
ICSP	Institute of Criminology and Social Prevention
IDMG	Inter-Departmental Ministerial Group
ILO	ILO International Labour Organization
IMI	International Market Information System
Inspectie SZW	Inspectie Sociale Zaken en Werkgelegenheid
JUD	Judicative
LE	Labour exploitation
LI	Labour inspectorate, labour inspection authority
MEYS	Ministry of Education, Youth and Sports
MFA	Ministry of Foreign Affairs
MJ	Ministry of Justice
MLSA	Ministry of Labour and Social Affairs
MSA	Modern Slavery Act
OCID	Organised Crime Investigation Department
OECD	Organisation for Economic Co-operation and Development
OSH	Occupational safety and health
POL	Police
RLI	Regional Labour Inspectorate
SCIP	Service of the Criminal Investigation Police
SLIC	Senior Labours Inspectors' Committee
SLIO	The State Labour Inspection Office
SPO	Supreme Prosecutor's Office
StGB	Strafgesetzbuch (Criminal Code)
TU	Trade union
UK	United Kingdom
UKHTC	UK Human Trafficking Centre
UN	United Nations
USA	United States of America
WGKK	Wiener Gebietskrankenkasse (Vienna Regional Health Insurance Fund)

Abstract

The present working paper examines law enforcement in labour markets with regards to reducing demand in the context of trafficking in human beings for labour exploitation in five EU member-states. Four case studies in Austria, the Czech Republic, the Netherlands and the UK and a less-intensive case study in Germany were conducted between June 2015 and May 2016.

In all the countries we investigated bodies tasked to monitor labour conditions and compliance with labour standards and to enforce the relevant labour, social security and other laws, labour inspection services – in principle – have an important role in addressing trafficking for labour exploitation. Although labour inspectorates do not operate explicitly according to a concept of demand, there is consensus among the actors involved that the authorities tasked with the monitoring of labour standards and conditions influence employers' behaviour with regards to trafficking for labour exploitation and thus address employer demand. Stakeholders view labour inspectors' as an effective measure through which to tackle trafficking for labour exploitation. At the same time, monitoring of labour conditions and of breaches of labour standards as well as trafficking is constrained due to limited resources and, simultaneously, an increase in the tasks which labour inspectorates have to fulfil and the growing complexity of labour relations and conditions.

1 Introduction

The purpose of this working paper is to examine the role of law enforcement in labour markets with regards to addressing trafficking in human beings for labour exploitation in five EU member-states. Four case studies in Austria, the Czech Republic, the Netherlands and the UK and a less-intensive case study in Germany were conducted between June 2015 and May 2016, with the aim of providing more detailed information on and improve understanding of how the relevant actors perceive their efforts in tackling trafficking for labour exploitation.

The paper is divided into seven main sections. The first will set out the theoretical framework of the study before the second presents the methodology. The third section sets out the political and legal background. The fourth presents a mapping study of labour inspectorates in the EU and Switzerland. In the fifth section the individual case studies are presented, which each include the following sub-sections: the legislative and political (regulatory) frame within which labour inspectorates in the investigated countries operate and the institutional set-up within the national anti-trafficking framework, on the one hand, and the labour inspection landscape on the other. In the sixth section, the approaches and measures which labour inspectorates apply, and the ways in which they influence trafficking will be discussed before the cases are compared. In the seventh and final section, conclusions from the research will be drawn.

2 Theoretical Framework

2.1 From Command and Control to the Better Regulation Agenda

The last three decades have seen developments which are described by various theorists in terms of globalisation, the internationalisation of the global production structure, the emergence of a global labour market, the (neo)liberalisation of public policies and the demise of the Fordist or Keynesian welfare state. A number of scholars (Strange 1996; Weiss 2012) have diagnosed that the shrinking power and hollowing out of the state, particularly of the welfare state – which can be traced back to the emergence of transnational actors, the financial liberalisation and the rise of market dominations – has increasingly imperilled the power of the state to tax and control its economic domain since the 1980s (Jarvis 2015: 62).

However theorised, these analyses reflect a shift from government to governance. Diverse authors have considered the underlying forces and institutional forms. For example, Jessop (2002) and Harvey (1990, 2005) interpret the transitions in the organisation of the state and its fiscal and managerial practices as a functional outcome in the accommodation of capital. Hood (2004), Majone (1994, 1997), Lodge (2008) and Levi-Faur (2005, 2011, 2013) relate the demise of the Keynesian state to concerns about governmental efficiency and changing ideational attitudes about the expanse of the state relative to markets. Finally, Sandel (2012) observes that new approaches to public management incorporate market practices and that the instrumental use of market forces in more and more economic, political and social

domains has transformed societies into market societies. Common to all these approaches is that they situate governance within the regulatory state (Levi-Faur 2013).

According to Mabbett (2010: 2) the regulatory state is focused on the operation of markets, whereas the welfare state is concerned with the redistribution of market output. The regulatory state's central norms are economic efficiency and procedural fairness the welfare states' maxim is social equality. For the regulatory state, rules are the central instruments of policy; for the welfare state the government budget (taxing and spending) serves as the focus of policy-making and the measure of activity.

These assumptions imply that state power is predominately located within fiscal power, and are often linked to a narrow understanding of state power (Jarvis 2015: 63). However, the sources of state power are more diffuse and spread across several functional domains: Majone (1997) differentiates between a redistributive function in which the state is transferring resources to correct social inequalities financed through taxation or other compelling contributions, or by borrowing and spending money; a stabilising function in which the state manages employment, inflation and interest rates through industrial and labour policy as well as fiscal and monetary policy; and a regulatory function in which the state sets rules that define the allocative and settlement mechanisms of markets and the requirements for market participation. Also, the assumption that the neoliberal would be less regulated proved not to be true – on the contrary, state and non-state regulation has grown immensely since the 1980s. This is particularly the case in the UK and the USA, where the privatisation of markets proliferated even with the expansion of regulation (Boswell and Kyambi 2016; see also Howe and Owens 2016). Indeed, states have not hollowed out but continue to regulate; nor has the welfare state atrophied (Braithwaite 2011; Levi-Faur 2005).

The essence of the regulatory state idea is that power is deployed 'through a regulatory framework, rather than through the monopolization of violence or the provision of welfare' (Walby 1999: 123). New regulations and compliance regimes aim at steering rather than at controlling the different domains and the behaviour of individuals. Majone (1994) characterises the rise of the regulatory state as 'an overall shift towards the use of legal authority or regulation over the other tools of stabilisation and redistribution', in contrast to the interventionist (welfare) state (provider state), criticised as intending to 'control' more and more spheres of social life yet, at the same time, lacking the capacity to do so efficiently. As a result, the past 30 years have seen a paradox of regulatory dynamics in terms of a rhetorical concern with 'the evils of regulation' and an incremental and layered growth of regulation in fields like market practices (e.g. licencing), occupational health or social and environmental concerns (Baldwin *et al.* 2012: 7). One means of bridging the paradoxical gap between the rhetoric of lessening regulation and a reduction of the bureaucratic burden, on the one hand, and the 'rise of the regulatory state' on the other, is the 'better regulation' agenda, proposing more coherent and consistent regulation and better performance. This agenda is fuelled by rational(ist) planning ideas, embodied, for example, in regulatory impact assessments and cost-benefit analysis (Baldwin *et al.* 2012: 8; van Gossum *et al.* 2010: 247).

2.2 Better Regulation

In contrast to merely punitive or ‘command and control’ approaches¹, accused of being costly and inefficient, scholars of the smart regulation approach propose regulatory alternatives (of social control) which promise to be less cost-intensive by being more targeted and therefore more successful in achieving the desired outcome. Some regulatory approaches are centred on risk, which is used to constitute and shape regulation and to structure regulatory mandates, processes and accountability. Risk, and its apportionment, is used to justify regulation. However, risk also proves to be an unstable basis for regulation as it needs to be perceived, selected, anticipated and assessed (Black 2010). Smart regulation combines market and non-market and public and private instruments and actors (van Gossum *et al.* 2010: 247). As a result of the use these instruments, regulatory authority is becoming increasingly fragmented, since regulatory regimes tend to be multi-sourced and regulation itself becomes increasingly multi-layered. The next step in smart regulation would be the control exercised not by regulating but by auditing control regimes (meta-regulation, steering), though it remains open whether this meta-regulation or steering should be situated in the regulatees (e.g., firms) themselves (self-regulation), in governmental or in supranational state or non-state bodies (Baldwin *et al.* 2012: 9).

Smart regulation instruments are meant to be less restrictive and to involve positive incentives to comply with regulations or more subtle means to steer compliance (Baldwin *et al.* 2012; Boswell and Kyambi 2016; Gunningham and Sinclair 1999). Smart approaches range from

- economic instruments such as incentives, taxes, charges, funding, property rights and market-based mechanisms using forms of rivalry or competition to incentivise the desired behaviour;
- information-based strategies, community-based mechanisms or co-operative instruments involving forms of persuasion or peer pressure; and
- attempts to influence behaviour through design (Boswell and Kyambi 2016; Gunningham and Grabosky 1998; Scott 2002; Sinclair 1997; Smith and Vos 1997).

Market-based instruments are the most widespread. They provide cost incentives for individuals, companies or organisations to adopt a desired behaviour – for example through privatisation (to create ownership) and the creation of (pseudo-)markets, auctions, pricing and fiscal incentives such as taxes and subsidies (Boswell and Kyambi 2016; Veljanovski 2012: 30). Peer pressure (moral suasion) occurs in various contexts and is systematically and deliberately used either in a positive sense with regards to all instruments that involve the voluntary conduct of a certain behaviour which is motivated by the desire for a social affirmation, or in a negative sense by the concern to avoid reputational loss. Such instruments can involve forms of peer review or benchmarking which ‘name and shame’ or

¹ So called ‘command and control’ approaches are based on the use of compulsion and deterrence. The state command those being regulated to comply with certain stipulations. Compliance is then controlled through the threat of sanctions (Boswell and Kyambi 2016).

‘name and fame’ organisations (Boswell and Kyambi 2016: 5). These forms of regulation often occur in combined forms with other instruments, e.g. media attention. Design approaches steer people subtly or inadvertently to behave in the desired way. One variant is so-called ‘nudging’. The aim of nudging is to influence behaviour without making use of explicit coercion but rather by prompting people to make (more enlightened) decisions.

Combined approaches involve a combination of different approaches which gradually escalate. Ayres and Braithwaite (1995), for instance, suggest a graduated system called ‘the pyramid of mechanisms for steering company behaviour’, which involves persuasion, warning letter, civil penalty, criminal penalty, licence suspension and finally revocation. Gunningham and Grabosky (1998) developed a so-called regulatory pluralism approach, which entails various instruments, often employed by different state and non-state actors, including the regulated entities themselves (e.g. companies, firms, employers). Modes of Regulation in the Regulatory State

Although command and control regulation and smart regulation are regarded as fundamentally distinct policy groupings (Sinclair 1997: 530), dichotomous views of cumbersome, resource-intensive top-down command and control approaches, on the one hand, and tailored-to-particular-circumstances and flexible smart-regulation instruments, on the other, are presenting a black and white picture of competing modes of regulation that does not reflect the reality (Sinclair 1997). At the same time, smart approaches themselves do not constitute discrete categories but mix and combine with each other. The smart-regulation theory proposes a number of principles to design smart instruments; among others they suggest using policy mixes incorporating a broad range of instruments and institutions; sequencing instruments and the use of informative and motivational instruments; and less-interventionist measures as long as these are still capable of delivering the identified policy outcome, maximising opportunities for win–win outcomes (Gunningham and Grabosky 1998; Gunningham and Sinclair 1999; Gunningham and Young 1997; Howlett and Rayner 2004; van Gossum *et al.* 2010).

Sinclair points out that neither policy instrument fits in such compartmentalisation nor can policy-makers simply choose between distinct policy approaches (1997: 530). The assumption that regulation can be improved by a rational appraisal and the choice of different policy options is based on criteria of efficiency, coherence, etc. – which is held by the rationalist theory of policy-making (instrument choice theory) – is criticised as reductionist (Boswell and Kyambi 2016: 10f). ‘More and more scholars now recognize that instrument choice theories like smart regulation over-simplify actual political practices’ (Baldwin and Black 2008; Böcher and Töller 2003; van Gossum *et al.* 2010: 246). Even if organisations or authorities adhere to such rationalistic models in their rhetoric and formal structures, their practices and informal structures might follow a different logic, known as ‘institutional decoupling’ within the institutional logics approach (see, for example, Boxenbaum and Jonsson 2008). Therefore, it is important to examine how far such shifts have resulted in substantive changes in informal structures and practice (Boswell and Kyambi 2016: 13).

In practice, the institutional context constitutes and limits the regulators' competence and/or power (formal authority) to choose certain regulatory options (Baldwin and Black 2008; Böcher and Töller 2003; van Gossum *et al.* 2010). Regulatory scope is further restricted by the prevailing national regulatory style which, in turn, is shaped by cultures and values in national political systems (Richardson *et al.* 1982 cited in van Gossum *et al.* 2010) and by the degree of insulation of subsystems of state, market and civil society (van Gossum *et al.* 2010; van Tatenhove and Leroy 2003). The national regulation style can be described as the 'standard operating procedure' of a country. It is shaped by dominant governance discourse (e.g. on regulation), the interpretation of the policy problem (Sinclair 1997) and the actor's expected gains (van Gossum *et al.* 2010: 248). In terms of labour relations, different political cultures might be decisive and might shape the practices of regulators – for example, corporatist, hierarchical, centralised, top-down and statist in the interventionist state vs pluralist diffuse, administrative, technical, specialist, domain-specific, market-oriented cultures (Jarvis 2015).

In reality, policy-making does not involve a linear process, a causal and temporal sequencing of policy problems and solutions (Boswell and Kyambi 2016: 11). These latter therefore suggest conducting 'a combining analysis of regulatory options with an acknowledgement of the non-linear nature of policymaking, as well as awareness of distinct national and sectoral patterns of construction and framing of social issues' (2016: 16).

2.3 Labour Market and Anti-trafficking Regulation

Labour inspection takes place within a context of labour-market regulations and deregulations, both driven increasingly by economic interests over the last three or four decades in Europe. Migrant labour – particularly *temporary* migrant labour – is regulated by a wider range of regulatory mechanisms, often described as tending to privilege the interests of capital (Howe and Owens 2016: 4). As a result, scholars can observe the deregulation of labour relations and employment and the neglect of the social aspects of labour relations and social reproduction, particularly in less-privileged groups of low-skilled and/or low paid migrant workers (Samers 2010). At the same time, the most extreme breaches of labour-law regulations and severe crime gain increasing attention and are addressed by criminal law-enforcement actors, as is the case with anti-trafficking regulation.

Apart from that, a steadily growing corpus of soft law and private regulation can be observed in many countries in the domain of labour relations. Self-regulating and auditing systems like voluntary codes, certifications and corporate social responsibility (CSR) are becoming more and more widespread, particularly in countries where firms and investors are promised a certain flexibility of labour regulations and a reduction in regulatory rulings in order to attract them. Talking about the financial sector, Crouch (2009: 397) observes that 'actual regulation will be exchanged for lightly monitored guarantees of good behaviour by the large financial firms'. These instruments are less employed in countries with more insulated subsystems and a clear distinction between state, market and civil society. They will have a predominantly state-oriented rationale (van Gossum *et al.* 2010: 248).

Soft law and private regulations and instruments aim – often alongside other aspects such as environmental and human rights – both to guarantee that a product or service is based on fair labour conditions and to prevent or eradicate circumstances which put a worker at risk of exploitation. The employment of these instruments has entailed the involvement of a number of additional state and non-state actors, including the regulated firms themselves. Eventually, the aim of such instruments is the self-regulation of the involved entities through developing a sense of collective responsibility or ‘community of shared fate’ (Gunningham and Grabosky 1998). However, critics point out that such instruments are more probably pursued by NGOs and more likely to be supported by businesses and firms that are mainly engaged in preventing compulsory regulation (Tombs 2015). For instance, Haedicke (2013) argues that consumer-based strategies have limited potential to restructure power relations and may even contribute to market fragmentation and worker exclusion. He argues that these instruments are contradictory in their effort to use market mechanisms to resolve the exploitative conditions created by the market.

Scholars of the deterrence approach and those preferring the compliance approach in the 1990s fiercely debated whether the stricter and harsher enforcement of labour standards (or, specifically, occupational safety and health (OSH) law) would be the better option to regulate businesses or whether, on the contrary, compliance strategies – which involve a co-operative and less-restrictive style of regulation – would be the better option to achieve conformity with the law and the attainment of labour protection goals (Hawkins 1990). Over 20 years later, some believe that the compliance approach has prevailed over deterrence-based approaches: ‘The triumph of the “compliance school”, this “regulatory orthodoxy”, suggests a more selective use of the threat of prosecution as a “last resort” and in general gives support to approaches that utilise enforcement rarely and prioritise compliance-centred, accommodative, self-regulatory strategies of risk *management*’ (Almond and Colover 2012: 1000; italics in original).

Proponents of the deterrence approach criticise the fact that, because of the power imbalance between businesses/employers and employees, any such co-operation will be established on the basis of an uneven relationship. They propose stricter enforcement of the law along with regulatory strategies that introduce formal sanctions for an offence at an earlier stage. For instance, Pearce and Tombs (1997: 92) argue that, in contrast to other criminal behaviour (e.g. street criminality), corporate offences tend not to be one-off acts. The underlying assumption of the deterrence approach is that the corporation is an amoral calculator, prioritising profit maximisation (Pearce and Tombs 1997). On the contrary, compliance theorists believe that corporations are motivated to be voluntarily law-abiding and only a few are ‘bad apples’ which transgress the law (Bardach and Kagan 1982 cited in Hawkins 1990: 453).

3 Research Methodology

For the present study, we made use of the regulatory state approach to investigate, identify and systematise the different regulatory approaches of labour inspection authorities (agencies) and how they address trafficking for labour exploitation. Assuming that institutional issues constitute and limit their competence and/or power (formal authority) to choose certain regulatory options, we investigated the political, legal and institutional framework in which they operate. The regulatory frame – within which labour inspectors act – was analysed, including the question as to whether and to what extent it requires inspectorates to address trafficking (ideology), and whether and to what extent the means are provided to implement this task (practices). Debates on human trafficking should be analysed as an expression and function of an ideology that draws, firstly, on the good state as a defender of the vulnerable and an opponent of evil traffickers in order to, secondly, legitimise the institutional building of a repressive top-down enforcement of migration and social contributions law and, thirdly, as a specification of a meta-environment that veils the capitalist logics (O'Connell Davidson 2015).

In order to systematise approaches addressing the demand side (companies, employers, end-consumers) we differentiate between 'command and control' approaches, which operate on the basis of sanctioning and deterrence, and approaches that might go beyond – so-called smart or compliance approaches. Examples of these latter include the application of market forces (market-based approaches), peer pressure, 'design' and combined approaches, market-based instruments and combined approaches that are considered to have the potential to influence employers' or companies' behaviour. The aim of this study was therefore to categorise the different regulatory approaches of labour inspection authorities and to identify patterns in influencing demand in the selected authorities or organisations within their national contexts. It also investigates national regulatory styles (framing or cultures) that shape or delimit the scope that policy-makers have for adjusting existing national or sectoral approaches (Boswell and Kyambi 2016).

The five main research questions of the study are set out below:

- Are labour inspectorates expected to regulate trafficking for labour exploitation and to what extent? What means are provided to implement this task?
- If the answer is yes, do these expectations result in substantive shifts in informal structures and practices?
- Do labour inspectorates influence/regulate trafficking for labour exploitation and, if so, how?
- How can these approaches be categorised in terms of their regulatory patterns?
- Do national regulatory styles enable or limit the approaches of the labour inspection authorities regarding trafficking for labour exploitation.

As a case, we defined an organisation or actor that / who supervises or enforces labour law and other law aiming at reducing exploitative and trafficking practices in employment. The five countries of the study were selected based on comparative considerations like political structure (federal structure/unitary state) and institutional set-up for addressing trafficking in human beings and monitoring/enforcing labour and relevant criminal law as well as labour-market regulations. In the selection of cases, we used the results from case studies conducted in the Czech Republic, the Netherlands and the UK and data gathered by means of a mapping questionnaire as part of the DemandAT project as a basis. Eventually, the cases were selected purposefully according to the wealth of information in the answers to the research question and the rich and detailed data or particularly insightful information they promised to deliver. The following authorities and their fields of action, approaches, co-operation and institutional settings were investigated: the Labour Inspectorates in Austria (by ICMPD) and in the Czech Republic (by La Strada Czech), the Inspectorate for Social Affairs and Employment (Inspectie Sociale Zaken en Werkgelegenheid or SZW) in the Netherlands (by ICMPD), the Gangmaster Licensing Authority (GLA) in the UK (by Uedin) and the Labour Inspectorate (Arbeitsschutz) and the Authority Monitoring Unreported Employment (Finanzkontrolle Schwarzarbeit or FKS) in Germany (by ICMPD).

The present study comprises a basic mapping questionnaire across the EU member-states (EU28) and Switzerland (response 20 countries), a literature review of relevant research articles and reports and around 50 expert interviews with representatives of the above-mentioned and other relevant law enforcement actors as well as representatives of ministries, trade unions and NGOs. Interviews in all five countries in our study were conducted between July 2015 and May 2016. Identification of the interviewees was based on the results of prior research and the recommendations of experts in the field. The face-to-face expert interviews for the case study on the Dutch Labour Inspectorate were conducted during a four-day field trip in the Netherlands. In all countries, the interviews were undertaken either face-to-face or via Skype. Almost all were audiotaped. Except for the Dutch interviews, all were conducted in the language of the respective country and, where necessary, the terminology used was adapted to the national context.

The theoretical framework informed the guidelines for the case-study interviews as well as the analysis of the expert interviews. An analytical framework was developed which also took into account the findings of previous DemandAT research on regulatory approaches to steering demand (Boswell and Kyambi 2016). According to this typology, the approaches which the authorities investigated were classified into: command and control, economic, peer pressure or moral suasion and design-related (see above). Moreover, the political, legislative and institutional frameworks of the investigated entities' fields of action and practices were analysed in order to obtain a better understanding of current approaches and strategies in the context of anti-trafficking efforts and to identify the limitations which labour inspection authorities encounter. The interview guidelines were considered as an instrument in a qualitative sense which meant, in particular, that the open-ended questions were adjusted according to the respective interviewees and organisations/authorities as well as during the

research process if necessary. The terms were adapted to the respective national, organisational or personal contexts. Moreover, it should be noted that the interviewees used various terms in an interchangeable or indiscrete manner – terms like, for example, trafficking for labour exploitation, labour exploitation and forced labour. In addition, any information already obtained could be introduced in subsequent interviews.

The audiotapes of the Austrian, German and Dutch case-study interviews were transcribed and summarised. Deductive and inductive categories were developed in order to conduct a qualitative content analysis with the aim of extracting enough relevant information to answer the study's research questions, to capture the complexity of the interview material and to structure it in order to feed it into the in-depth analysis. Text that could not be categorised under the initial coding scheme was given a new code.

The cross-case analysis aimed at revealing similarities and differences with regards to the research questions.

4 Background

4.1 Legislative and Political Regulatory Frame

The countries investigated are all party to the relevant international conventions and treaties regarding trafficking in human beings.² Based on the UN Trafficking Protocol,³ with its extension of the definition of trafficking in human beings to include labour exploitation, the detecting of victims of trafficking for labour exploitation has become an additional task for several labour inspectorates in recent years. Labour inspectors have undergone training in order to acquire the skills, knowledge and awareness necessary for effective detection and, partly, investigation (in the Netherlands and the UK) of cases of trafficking for labour exploitation. Guidelines were developed to identify victims by means of indicators.

The incorporation of labour exploitation into the UN Trafficking Protocol as part of the crime of trafficking represented a shift towards a criminal justice approach in tackling trafficking for labour exploitation (Grundell 2015; Kempadoo 2012). Since then, trafficking has predominately been treated as an act of irregular border-crossing and a serious transnational crime involving an anti-trafficking strategy that prioritises a repressive law-enforcement approach centred on police and judicial co-operation in criminal matters (Grundell 2015: 4, 8). However, at the same time – according to Grundell (2015) – EU-anti-trafficking measures have moved, at least to some extent, from a solely criminal approach to one that also includes human rights concerns. Directive 2004/81/EC on residence permits issued to third-country nationals who are victims of trafficking in human beings or have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, obliges

² The Czech Republic signed in May 2016 but has not yet ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The UN Trafficking Protocol was ratified only in 2013. However, all member-states remain, of course, under an obligation to the Anti-Trafficking Directive.

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

member-states to give trafficked persons a Reflection Period; Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting victims adopts an integrated, holistic, human rights, victim-centred and gender-sensitive approach to trafficking.

For the first time, the topic of demand was introduced into international law by the UN Trafficking Protocol⁴ in 2000. In the European context, the Council of Europe Convention on Action against Trafficking in Human Beings similarly includes an obligation to address demand.⁵ Approaches to discourage demand are also enumerated in the various legal provisions, usually remaining at a general and vague level. According to the Working Group on Trafficking in Persons six approaches are considered to discourage demand in the context of labour exploitation:

- measures to regulate, register and license private recruitment agencies;
- raising the awareness of employers to ensure their supply chains are free of trafficking in persons;
- enforcing labour standards through labour inspections and other relevant means;
- enforcing labour regulations;
- increasing the protection of the rights of migrant workers; and/or
- adopting measures to discourage the use of the services of victims of trafficking (UN 2010, 7).

The EU Anti-Trafficking Directive (2011/36 EC) repeats the general obligation to address demand stipulated in the UN Trafficking protocol and additionally encourages states to criminalise knowingly making use of services that are the objects of exploitation.⁶ The aim of directing the focus on to demand is to shift the perspective from the perpetrators and victims of trafficking and on to those who primarily enable the trafficking business to flourish by spending money on the products and services which the victims of trafficking provide. However, states are not required to implement all measures mentioned in the trafficking

⁴ Art. 6 of the UN Trafficking Protocol: 'States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking'. (UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000).

⁵ Art. 6 of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) defines as 'Measures to Discourage the Demand':

- research on best practices, methods and strategies;
- raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- target information campaigns involving, as appropriate, *inter alia*, public authorities and policy makers;
- preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences; and
- the importance of gender equality and the dignity and integrity of every human being.

⁶ Directive 2011/36 Art. 18 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: 'Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2'.

protocol (Gallagher 2010; UNODC 2004: 297). In practice, the term ‘demand’ has remained quite vague up to now (Cyrus 2015).

For the purposes of this project, ‘demand’ is defined, according to micro-economic theory, as ‘the willingness and ability to buy a particular commodity’ but to use the term in its colloquial meaning without implying the subscription to the assumptions and methods of the discipline of ‘economics’. In the neo-classical framework, labour is also interpreted as a traded commodity, with commodity being defined as ‘anything for which a person is willing and able to pay’ (Cyrus and Vogel 2015: 1). This definition of labour implies that it is offered and traded freely by market participants. However, in the absence of other means of subsistence, the individual may, in fact, have little choice other than to sell his or her labour power in order to make a living. From this perspective, *coercion* is inherent to labour relations in general. According to Polanyi (1957), labour is not a commodity like any other commodity but is, rather, a fictitious commodity – a term he, himself, has coined.⁷ In formally regulated economies, labour relations are regulated by labour and other laws and regulations and are therefore not mere market relations. The state’s role does not stop with enforcing (labour or criminal) law aimed at ensuring the functioning of markets, but extends to the obligation to decommodify labour and to address the vulnerability to exploitation. Social rights and protection, and access to alternative means of subsistence, decrease the risk of a person being *forced* to sell his or her own labour power in adverse conditions. As Hila Shamir (2012: 107) points out, unlike the ‘human rights framework’, the ‘labour approach’ conceptualises trafficking for labour exploitation as one of a range of labour market practices which affect a worker’s bargaining position, and can be ameliorated by economic, social and legal means. Protective legislation, labour rights and welfare rights (social protection) are therefore means by which to reduce a worker’s dependency on the labour market – a means of decommodification (Esping-Andersen 1990; Polanyi 1957).

For the purpose of the Demand-AT project it was decided that demand-side measures and policies are defined as activities that seek to influence demand; however, measures that aim at the reduction of worker vulnerability or employers’ increasing compliance with labour rights should be addressed as alternatives to demand-side measures and policies (Cyrus and Vogel 2015: 1). However, approaches and strategies that strengthen workers’ rights and the role of labour-inspectorate bodies which are charged to monitor ‘rights in practice’ are argued to be more suitable for and more applicable when addressing a greater variation within a continuum of situations which extends from breaches of the labour law at the one extreme to trafficking for labour exploitation, forced labour and what is called ‘slavery’ at the other (Skrivankova 2010). The idea that this approach is the best way to tackle a group of offences that lie along a ‘continuum of exploitation’ became quite dominant (Skrivankova 2010). Combined labour, migration and criminal justice approaches are considered as the most effective (Houwerzijl and Rijken 2011: 2). Consequently, and since they have the mandate to monitor labour standards and access to workplaces, labour inspectorates and other labour-

⁷ From this perspective, the applicability of the concept of demand is questionable. However, the term demand is used within this paper in the way that Cyrus and Vogel (2015) suggest.

inspection authorities appeared as possible actors that may be included in efforts to combat trafficking. Today, labour-inspection authorities are expected to play a key role in tackling trafficking for labour exploitation (see, for example, GRETA 2016) and, in fact, in many countries, they have become increasingly involved in national anti-trafficking efforts in order to implement international obligations.

However, the approaches and strategies of labour-inspection authorities vary. Some governments or authorities prioritise the prevention of irregular – often referred to as illegal – (im)migration and the harsher punishment of facilitators. Critics point out that such approaches are accused of producing irregularity and therefore being part of the problem, not the solution. Moreover, neither the legal/illegal nor the migrant/citizen binary corresponds with the actual vulnerabilities affecting workers (O’Connell Davidson 2015: 138). Other approaches aim at strengthening labour rights. However, these are, to a certain degree, counteracted by overall policy environments that are increasingly becoming obliged to deregulate employment in order to reduce the regulatory burden on businesses and the reconstruction of social welfare systems towards a workfare state. Labour-market access for migrants from third countries – particularly for low-skilled and low-paid workers – has become more and more restricted and efforts to tackle irregular or undeclared irregular employment and/or labour have been intensified. At the same time, internal European labour market mobility is increasing – as well as the international movement of highly qualified workers (UNDP 2009). Critics point out that, by restricting some worker’s geographical and labour-market mobility and freedom, states are *de facto* creating their precarious migrant status and vulnerability to labour exploitation (Strauss 2016). Simultaneously, regular and irregular back doors on to the labour market remain, particularly for certain sectors or occupations (Samers 2010). These of all sectors are extremely prone to exploitative practices and the largest share of the precaritised workforce is referred to them (e.g. seasonal work in agriculture).

These developments are contributing to the overall fragmentation of labour markets where conditions of work and employment are increasingly diverging within a country, a region or even an organisation (Flecker 2010: 8). The labour force is affected by various forms of employment – (bogus)self-employment, temporary agency, part-time, casual, seasonal, posted work and other ‘non-standard’ forms of employment, as well as informal and under- and undocumented work – and inequalities in terms of employment, payment and conditions are growing (Flecker 2010: 9). Even companies become internally disintegrated through outsourcing and other organisational restructurings and organisational boundaries are increasingly blurred. Companies are shifting their risk of capacity utilisation onto their suppliers and service providers (Flecker 2010: 11) and global value chains or networks are functioning as insecurity-and-risk transfer chains (Frade and Darmon 2005: 116).

In view of this situation, soft law and self-regulating approaches are seen not only in an international context and in unstable or under-developed legal regimes but also, in the light of the diminishing capacities of today’s welfare states, as appropriate remedies to tackle insufficient social protection and be more efficient and tailored in order to ensure that companies respect human rights (see, for example, UN 2008). State involvement in such

measures varies. Some regulatory systems are even mandated by national, supranational or international law to carry out regulatory tasks; in others, state actors are represented. However, these instruments can be situated in transnational, non-state regulators and polycentric regulatory regimes (Black 2008: 138). At the same time, anti-trafficking efforts are functioning as legitimising elements for policies that favour criminalising efforts in order to veil the dismantling of labour-law rights or the implementation of soft-law regulations (O'Connell Davidson 2015).

4.2 Labour Inspection Systems

Historically, labour inspection is rooted in the institution of social policy in the nineteenth century, aimed at protecting workers from overburdening. 'Like industrialization itself, labour inspection started in Britain, in 1802, when Parliament passed an act on the preservation of the health and morals of apprentices in textile and other factories.' (von Richthofen 2002: 8) In the beginning compliance with this act was supervised by voluntary committees but it proved to be ineffective. In 1833, the government appointed four 'inspectors' – thus marking the birth of modern-day labour inspection (von Richthofen 2002).

In general, labour inspectorates' core mandates are to monitor compliance with labour-law standards and to impose sanctions, be they fines or penalties, in cases of non-compliance or violation. In other words, they act through a classical 'command and control' approach. In some countries, labour inspectorates are specialised in OSH standards and working conditions. Besides the prevention of occupational accidents, diseases and work-related health risks, this includes the humane design of working conditions, the supervision of working time and the protection of vulnerable groups – in this context, particularly young workers and pregnant women. Such organised labour inspectorates do not deal with issues of employment, payment and related social and tax-law issues. The latter are monitored by authorities such as the financial police. In other countries, labour inspectorates are vested with a comprehensive mandate for the monitoring and inspection not only of OSH standards, working conditions and working hours but also of employment and payment issues, including the monitoring of undeclared work, the payment of taxes and social security contributions, the equal treatment of men and women, and wages and salaries. These matters are often divided between two bodies (SYNDEX 2012: 10).

Labour inspection systems differ depending to whether they follow a sanctioning or a compliance model:

'Thus, while sanctioning models are concerned mainly with punishable contraventions or violations of rules and regulations, compliance systems secure conformity with the law (and beyond), without necessarily using formal methods of enforcement, such as prosecution or the imposition of criminal or administrative penalties or fines (although these, of course, remain available as a last resort).' (von Richthofen 2002: 37)

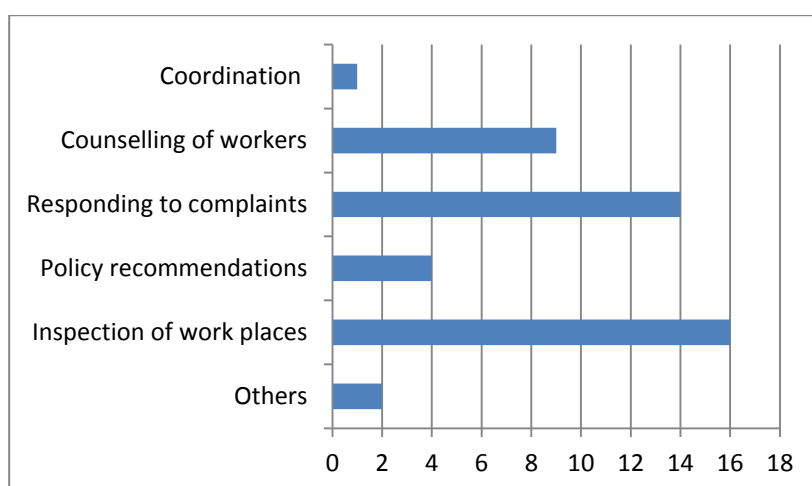
We can also see that compliance strategies are in line with the principles of labour inspectorates (e.g. set forth in ILO conventions and recommendations, particularly in Article 3 of the Labour Inspection Convention, 1947 No. 81) in emphasising dialogue and co-operation between employers and employees, preventive strategies and advice by labour inspectors. ‘Today, it is generally considered better to prevent than merely to sanction or punish.’ (von Richthofen 2002: 29).

Like other state authorities, labour inspectorates are increasingly forced to adopt market ideas and managerial approaches and have changed their principles from protecting the worker and enforcing labour law (OSH law) to guaranteeing ‘fair competition’ and enforcing labour-market regulations.

5 Labour Inspectorates in the EU and Switzerland

According to a mapping survey conducted in 2015 by ICMPD – in which the questionnaire was sent out to labour inspectorates in 29 EU member-states and Switzerland, with a response rate of 20 – the powers and mandates of labour inspectorates in the EU member-states and Switzerland vary immensely. As shown in the figure below, in terms of fields of action, the main activity in which labour inspectors are involved is obviously the inspection of workplaces. The data do not allow for differentiation between inspections in response to complaints, and inspections that are routine or arise for some other reason – in other words, reactive or proactive inspection. All the responding authorities inspect workplaces – 14 (out of 16) in response to complaints and 9 as part of the counselling of workers. One respondent stated that, in responding to complaints, information can be received from workers or other enforcement agencies that ‘drives’ the decision on which cases to prioritise.

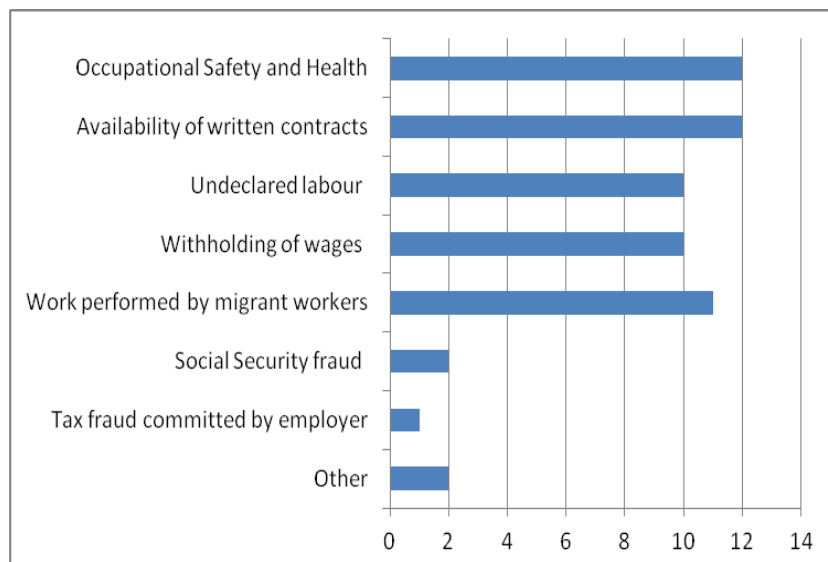
Figure 1. Mandates and institutional capacities: actions (N=16)



Others: The provision of non-directive information on employment rights issues to employers, employees and the general public.

As seen in Figure 2, out of 17 respondents 12 stated that they monitor occupational safety and health issues as well as the availability of written contracts and 11 said that the authority controls foreign employment. Tax and social-security crimes are only controlled by one or two authorities.

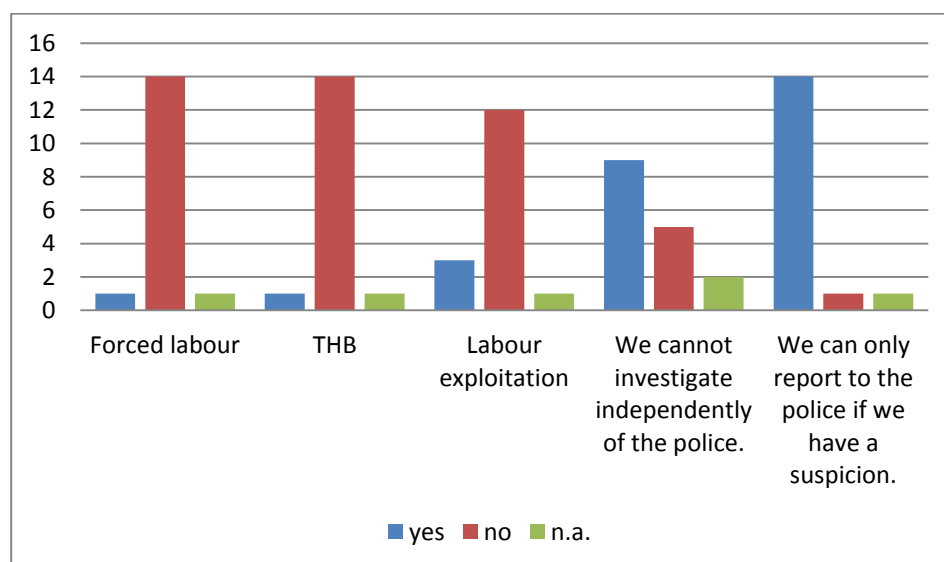
Figure 2. Mandates and institutional capacities: topics (N=17)



Others: working conditions – protection of pregnant workers, protection of young people at work, working time, monitoring and control of employment intermediaries and of Temporary Work Agencies.

Figure 3 shows the power which the authorities have to investigate forced labour, trafficking for labour exploitation and labour exploitation. Most of the authorities (14 out of 16) can only report to the police in cases of suspicion.

Figure 3: Power to investigate (N=16)

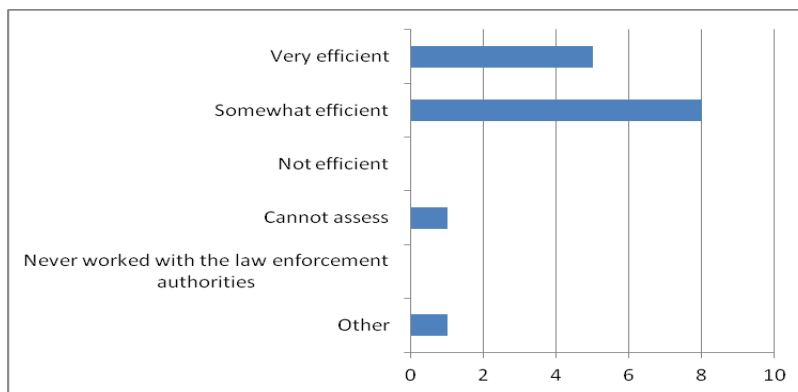


Co-operation with other law-enforcement authorities within the same country has been evaluated as either very efficient (5 out of 15) or somewhat efficient (8 out of 15) – see Figure 4. Labour inspectorates that have assessed their co-operation with law enforcement within their countries as very efficient or somewhat efficient are directly involved in the anti-trafficking co-

ordination mechanism (e.g. Working Group, Task Force etc.). One respondent regarded the regular formal obligatory meetings held with all law enforcement actors (prosecutor, labour prosecutor, police and others, if necessary) as good practice. Regional or local (cities) co-operation and joint investigations with specialised police units at workplaces at risk are also assessed as good practice.

However, in some instances, co-operation with non-specialised police units is regarded as challenging because of their lack of awareness – e.g. where police forces consider the workers' mistreatment as a civil matter – and training in terms of labour exploitation. A lack of specialised police units leads to difficulties in knowing who to contact. Sometimes local cooperation depends on individual priorities.

Figure 4. Assessment of co-operation with law-enforcement authorities within the same country (N=15)



Co-operation with labour inspectorates in other countries is only assessed by one respondent as very efficient and by 9 respondents as somewhat efficient.

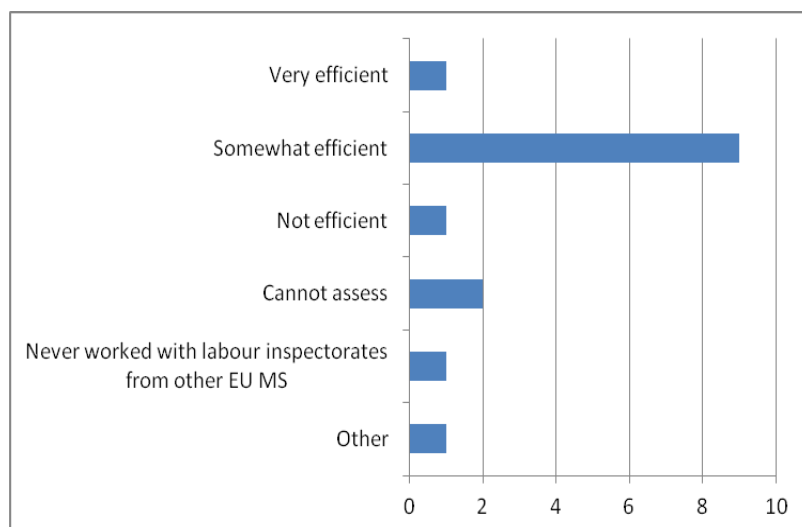
As 'somewhat efficient' the cooperation is assessed in cases of irregular posting of workers and the co-operation through the Internal Market Information System (IMI) when a posted worker is affected. Also, complaints of employees to/from the labour inspectorate from other EU member-states are regarded as 'somewhat efficient'.

However, the cooperation does not take place on a regular basis. One respondent stated:

'We do not often co-operate with labour inspectorates of other EU member states, I think mainly because we don't know each other's organisations, structures nor do we have personal contacts with responsible persons within these organisations. We do not have a complete list with the contact data of the labour inspectorates of other EU member-states.'

Another respondent stated, regarding the challenges, 'The key issue is speed of response, but it is recognised that the need to inspect in a different country may delay a response'.

Figure 5. Assessment of co-operation with labour inspectorates from other EU states (N=15)

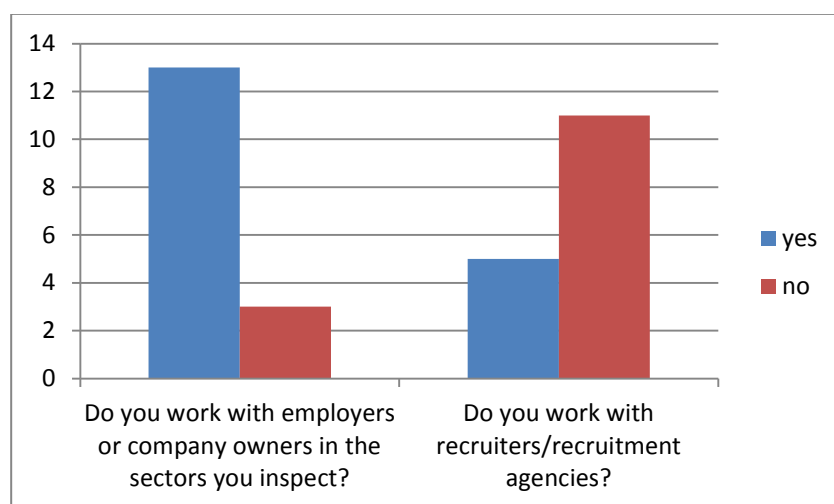


Other: efficient.

Almost all respondents (13 out of 16) stated that they co-operate with employers or company owners, while 11 work with recruiters or recruitment agencies.

One respondent reports on Working Groups with employers (not company owners) on specific campaign topics in the area of health and safety at work. It was also mentioned that employers are often present during the inspections.

Figure 6. Co-operation with employers/recruitment agencies (N=16)



6 Anti-trafficking and Labour Inspection in Austria, the Netherlands, Germany, the UK and the Czech Republic

6.1 Anti-trafficking and Labour Inspection in Austria

6.1.1 Regulatory Frame

The Austrian legal framework for trafficking for labour exploitation has no provision exclusively addressing labour exploitation. However, the offence of trafficking in human beings is codified in the Austrian Criminal Code (*Strafgesetzbuch, StGB*) under Article 104, which punishes the deprivation of a person's liberty through 'slavery' and 'slavery'-like practices. Besides sexual exploitation and the removal of organs, labour exploitation is explicitly included in Article 104a of the Criminal Code as a form of exploitation (ETC Graz 2014). However, until now there has only been a single conviction under this offence by 2014 (MEN 2014: 6).

Several provisions relevant to labour exploitation can be found in the Austrian migration law. The Austrian Aliens' Police Act (*Fremdenpolizeigesetz, FPG*) deals with the 'exploitation of a foreign person' under Article 116, which punishes the intention of a person to generate income by taking advantage of an alien's special state of dependency, whether the latter is irregularly residing in the country, does not possess a regular work permit or is in any other particular situation of dependency (Planitzer and Sax 2011). In practice, the two provisions are rarely applied (Hajdu *et al.* 2014). Article 28c (2) of the Employment of Aliens Act (*Ausländerbeschäftigungsgesetz, AuslBG*)⁸ also punishes the exploitation of a foreign person who has no residence title. The government has not yet appointed a National Rapporteur, but a National Co-ordinator on Combating Human Trafficking was appointed in 2009 under the Federal Ministry for European and International Affairs (*Bundesministerium für Europa, Integration und Äußeres, BMEIA*). This appointee also serves as the Head of the Austrian Task Force against Human Trafficking. The Task Force is the central co-operation and co-ordination mechanism, functioning mainly as a hub for the exchange of information. One of its priorities is to improve data collection on human trafficking, including the identification of victims.

Of greatest relevance to trafficking for labour exploitation is the Working Group on Labour Exploitation (*Arbeitsgruppe Menschenhandel zum Zweck der Arbeitsausbeutung*), which is a subgroup of the Task Force. Established in 2012, the group's members are representatives of all competent ministries, social partners, provinces and NGOs tasked with the counselling and protection of victims. The labour inspectorates are also represented but not the Agriculture and Forestry Labour Inspectorates (*Arbeitsgruppe Arbeitsausbeutung* nd; BMEIA 2016). The Working Group holds annual meetings (*Bundesländertagung*) taking place in one of the provinces on a rotation basis. Interviewees considered the Working Group to be a

⁸ Which is the transposition of the EU's Employer's Sanction Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

useful instrument for the exchange of information and experiences. Labour inspectors receive special training – about 30 have been trained per year since 2014 and 19 out of 20 labour inspectorates have attended the training (AT_GOV_2). Bearing in mind that addressing trafficking is not their core activity and a rather new field of action for them, the labour inspectors, in particular, said that they acquire valuable information on trafficking during the training. One labour inspector was very positive about the Working Group and its training seminars. Both have increased awareness of trafficking for labour exploitation, and labour inspectors have gained useful knowledge and skills, enhanced their abilities to detect signs of trafficking and improved their contacts with other actors in the area of trafficking (AT_LI_1). One NGO representative also had a positive view on the engagement of the labour inspectorate:

‘The interest of Austrian labour inspectorates in training (how to recognise cases of human trafficking) is increasing, the trainings are booked up immediately, there is real interest in human trafficking, this is very interesting to look at, that actually they don’t have the mandate but there is interest and there is the capacity to take an active role in this informally.’ (AT_NGO_11)

Linked to the Working Group, the contribution of the labour inspectorate to the anti-trafficking efforts has been given a formal framework. However, the co-operation benefits to a large extent from the personal commitment of individual persons or organisations rather than from formal procedures and formalised institutional co-operation.⁹

Formally the labour inspectorate is not mandated to conduct criminal investigations into trafficking for labour exploitation; however, the detection of signs of trafficking has become a supplementary task within the inspectorate’s regular routine activities.

Interviewees critically stated that the involvement of business associations (social partners such as the Chamber of Commerce, which only recently joined the Task Force) had not been particularly intense until now, although they are considered as pivotal partners, particularly in terms of helping to involve businesses – and, with that, the demand side – into the efforts to combat trafficking for labour exploitation. At present, one NGO representative commented (AT_NGO_11), these efforts are at the level of awareness-raising and informing more generally about trafficking.

6.1.2 The Austrian Labour Inspection System

The Austrian labour inspectorate is specialised in OSH issues. It is centrally organised under the Ministry of Labour, Social Affairs and Consumer Protection (*Bundesministerium für Arbeit, Soziales und Konsumentenschutz, BMASK*) with subordinate regional inspectorates. The Central Labour Inspectorate steers the activities of the regional divisions. The labour inspectorate covers all sectors except for employees of the provinces and local authorities

⁹ Which is the transposition of the EU’s Employer’s Sanction Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals – http://www.arbeitsinspektion.gv.at/inspektorat/Information_in_English/The_Labour_Inspectorate/, accessed 1 October 2016.

who do not work for a company, those working in the agricultural and forestry sector and those employed by institutions operated by legally recognised religious communities and private households.¹⁰ One inspectorate is specialised in the construction sector. In addition to the labour inspectorates, nine Agricultural and Forestry Labour Inspectorates under the provincial governments monitor labour conditions in the agricultural and forestry sector. The agricultural inspectorates are not members of the Working Group. The labour inspectorate does not cover self-employed persons. Consequently, the field of domestic work, where a huge number of self-employed persons work in domestic elderly care (so-called 24-hour-care) – in Austria, a specially regulated sector – is not inspected. The inspectorate also does not cover employment contracts, collective agreements, irregular employment, payment and social welfare fraud (labour-market fraud such as wages and social dumping). These issues are monitored and investigated by the financial police and other authorities. The labour inspectors do not impose any penalties or fines; in cases of irregularity, the labour inspectors can request that the situation be remedied. If the employers make no attempt to improve the work situation or the shortcoming is serious, a complaint to the regional administrative authorities will be filed. (AT_GOV_9).

A further actor important to labour inspection is the financial police. They have a wide remit, amongst which is the monitoring of the legality of employment and payment in general. The 'Illegal Employment of Aliens' also falls within their responsibility (in co-operation with the social security bodies and others) as does the controlling of compliance with the Combating Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSDBG*). The latter came into force in 2011 – at the same time as the labour-market liberalisation for citizens from the 'new' EU member-states took place – and is intended to avoid the deterioration of minimum wages through posted and temporary work and to have a preventative effect (Wiener Gebietskrankenkasse (WGKK) nd). The LSDGB made underpayment an administrative offence, making employers liable for any underpayment (payment below the collectively agreed minimum wage¹¹) of workers; this is applicable to all employers (no matter whether the company is registered in Austria or not) who are employing workers (from EU member-states, EEA and EU third-country nationals) in Austria with stricter regulations for non-Austrian employers. Non-Austrian employers have to keep supporting documents such as contracts, records of working hours and proof of payment at the workplace. A recent amendment entering into force in 2017 introduces a liability for the contractor in the construction sector which will allow posted or contracted workers to claim their unpaid wages from the contractor. According to the BMASK, this amendment means a very strict transposition of Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers.^{12, 13} This amendment is seen as remarkable progress in

¹¹ Austrian labour law does not contain a legally based minimum wage. Sector-specific minimum wages are stipulated in collective agreements which are negotiated between employers' associations and unions for employees on a regular basis. Apart from minimum wages, these collective agreements also contain issues on working hours and other labour conditions (Planitzer and Sax 2011).

¹² Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. Directive 2014/67/EU of the European Parliament and of

tackling social dumping and is strongly supported by the social partners. It is controlled by social insurance agencies;¹⁴ the financial police control employees who are not included in the social security system (e.g. posted workers, third-country nationals with a work permit). Many stakeholders in the field consider the Combating Wage and Social Dumping Act as an effective instrument to tackle underpayment and precarious labour conditions – an instrument influencing the demand side and, in this respect, also helping the prevention of trafficking for labour exploitation. However, the financial police have an enormous number of tasks (AT_GOV_9). Interestingly, the financial police expert we interviewed estimates the resources at their disposal to be sufficient (AT_GOV_3).

All in all, a multitude of actors are monitoring compliance with labour-related regulations. Other monitoring authorities are the Austrian Workers' Compensation Board (*Allgemeine Unfallversicherungsanstalt, AUVA*), the [public] health insurance bodies and, particularly in the construction sector, the Building Inspectorate (*Baupolizei*) and the Construction Workers' Holiday and Severance Pay Fund (*Bauarbeiterurlaubs- und Abfertigungskassa – BUAK*).

6.1.3 Anti-trafficking Approaches

The Austrian labour inspections system is steered by decrees from the Ministry of Labour, Social Affairs and Consumer Protection. The labour inspectorates operate according to a points system of priorities, which takes into account the accident-proneness (number of accidents in both businesses and in the sector), the period since a labour inspector last visited the business, the number of employees and the assessment of the situation with regard to the workers' protection. There are four reasons for inspections: 1) an accident, 2) complaints 3) priority actions – either regional or sector-wide, and 4) routine activities according to the above-mentioned points system. Despite this system, the final decision on operations is at the discretion of the regional labour inspectorate (AT_GOV_9). The approach is clearly focusing on occupational accidents, which were, incidentally, criticised by the audit office as being rather one-dimensional (Rechnungshof 2013). The Austrian Court of Audit also criticised the lack of effect-oriented steering and quality management. The objectives of the labour inspectorates are set out as general guidelines but not as measurable objectives – in other words, as the steering in terms of the objectives of labour inspectorates is not very pronounced. The court of audit criticised the wide disparities in terms of the number of inspections between regional inspectorates. (Rechnungshof 2013: 11, 18).

The resources of the labour inspectorates are scarce – about 300 inspectors have to cover some 350,000 businesses. 'Therefore, we cannot inspect on a regularly basis. [...] We are setting priorities, we look into the accident reports, but if a company is inconspicuous we may

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.

¹³ http://www.ots.at/presseaussendung/OTS_20160311_OTS0048/stoeger-gesetz-zur-bekaempfung-von-lohn-und-sozialdumping-in-begutachtung, accessed 1 October 2016.

¹⁴ Posted and temporary workers are controlled by the Vienna Regional Health Insurance Fund (Wiener Gebietskrankenkasse Kompetenzzentrum LSDBG, WGKK) and other workers by the respective social insurance agency.

inspect it every five to six years' (AT_GOV_9). Less-accident-prone sectors do not need to be seen so frequently and 'the employers count on that' (AT_GOV_9).

Procedures concerning trafficking are based on an internal decree from the ministry (legal department, central labour inspectorate, *Zentralarbeitsinspektorat*). The ministry specifies how to implement trafficking law and sets out the procedures to be followed if indicators of human trafficking are detected (AT_LI_1). The indicators were developed based on the experiences of the Working Group and are considered by labour inspectors to be a very useful instrument. Where signs of trafficking for labour exploitation are noticed, the labour inspectorates and any other monitoring authority (e.g. the financial police) notify the police. The number of cases reported is very low (AT_LI_1): according to one interviewee, there are only about five suspected cases per year (AT_LI_1).

Trafficking strategy is supported by the head of the legal department and an increase in efforts to tackle trafficking for labour exploitation (according to AT_LI_1) is planned. However, since the activities concerning trafficking have to be included in routine activities, no specific approach has been established – such as a risk assessment (AT_LI_1). The same applies to the financial police. According to one interviewee, in general, operations of the financial police need not be strategically planned since the sectors are very well known in Austria and many hints about improper working practices are received by individuals and organisations. New phenomena come to the surface very quickly. The information exchange is safeguarded by the obligation to provide information on any suspicious behaviour (AT_GOV_3).

Ultimately, the approach of the labour inspectorate with regards to trafficking for labour exploitation is based on the argument that the proper law enforcement of less-severe breaches of workplace regulations would also have a deterrent effect on more severe breaches, including labour exploitation and trafficking for labour exploitation. This belief is shared by almost all stakeholders. However, the deterrent effect of law enforcement may remain modest since the likelihood of inspections is quite low (AT_NGO_6), especially within sectors less prone to accidents and other OSH-relevant problems, due to the points system. Nevertheless, the approach seems to be quite positively viewed by labour inspectorates and it appears not to be considered a problem that sectors which are less prone to accidents might be overlooked.

It would be easy to conclude, therefore, that the labour inspectorate lays more responsibility on other authorities. For example, one interviewee, asked whether the scope of the mandate of the labour inspectorates is wide enough to enable them to act effectively, replied 'Yes, I would say that. Because there is another authority which does that: the financial police' (AT_GOV_10). However, questions of accountability concerning trafficking are unclear, especially as there is some confusion about who is allowed to exchange data in this respect. One interviewee indicated that the regulations (the decree) are too weak in this regard and a clear-cut regulation is lacking. Consequently, responsibilities are either not accepted or depend on the willingness and personal commitment of individual inspectors or departments.

Labour inspectorates do co-operate with other labour inspection authorities but not in a systematic way. Joint operations are not fixed or planned, but arise informally – for example, from the Working Group against Trafficking, from personal contacts or in reaction to current events (AT_LI_1, AT_GOV_2). Co-operation between the labour inspectorate and the financial police takes place, but is organised on a more *ad hoc* basis without any formal agreement (AT_GOV_3). Some experts in the field – including the labour inspectorates themselves – take a somewhat critical stance on joint inspection actions. Like other monitoring and inspection authorities, the financial police detect trafficking for labour exploitation in the course of their routine activities and report any suspicions to the police. The financial police also operate according to the indicator system of the Working Group, but their definition of trafficking for labour exploitation is narrower than that of many other stakeholders, particularly of NGOs and trade unions (AT_GOV_3).

Joint operations are viewed as being in conflict with the original mandate and self-image of labour inspectorates, based on the principles of prevention and counselling (compliance) approach rather than on the repressive policing approach employed by the police or the financial police as prosecuting authorities. Several interviewees indicated that joint operations with the police are problematic and that labour inspectorates might therefore be somewhat reserved about them (AT_GOV_2, AT_GOV_9). This is particularly the case when, for example, the financial police apply an aliens policing procedure – e.g. deportation (AT_GOV_9). Co-operation between the different authorities is often described as difficult, because of their varying organisational cultures and principles, diverging views on and lack of awareness of the problem of trafficking for labour exploitation, procedural hurdles – such as problems in exchanging data – a lack of information channels, different obligations about notification and official secrecy (AT_LI_1, AT_GOV_3, AT_GOV_10).

The police are viewed as the principal actor responsible for trafficking for labour exploitation; for all other authorities, tackling trafficking for labour exploitation is only one peripheral aspect of their work (AT_GOV_9): ‘I believe that the problem with labour exploitation is that no authority is directly responsible. For many of them it is only a side aspect’ (AT_GOV_9). The police co-operate more closely with the financial police than with labour inspectorates (AT_Ex_4). In general, actors in the field find that the co-operation is good, although sometimes loose and often governed by personal aspects than by professional reasons (AT_LI_1, AT_GOV_3, AT_Ex_4, AT_NGO_5, AT_NGO_6, AT_GOV_7, AT_TU_8, AT_NGO_11).

Austrian labour inspectorates are required to detect signs of trafficking for labour exploitation within their routine activities. However, their strategy is not tailored to address trafficking and there is no systematic approach to particularly deal with the demand side in terms of influencing employers’ (or end-consumers’) behaviour. Nevertheless, they already view their activities as influencing demand by enforcing labour law – on the one hand because their activities are based on the principle of prevention and counselling and, on the other, because they are deterring employers from breaches of the law by monitoring and routine inspections. There is a strong belief that effective law enforcement would prevent trafficking for labour

exploitation. The impact on trafficking for labour exploitation of labour inspectorates' activities (inspections, counselling, prevention activities and detection of signs of trafficking for labour exploitation) remains unclear. The resources of the labour inspectorate are far too small for them to be able to monitor all businesses.¹⁵ Since the operations are planned according to a points system which mainly looks into occupationally accident-prone sectors and industries, the focus is already quite narrow and tackling trafficking for labour exploitation is clearly only a side-effect of routine activities that have other priorities in a limited field of action.

According to labour inspectorates' self-image as counselling partners of businesses, their general approach can be described as one of compliance rather than of deterrence. At the same time, the inspectorates emphasise the deterrent effect of their activities with regards to trafficking for labour exploitation, which seems to be somewhat contradictory. Added to this is the fact that the logics of the anti-trafficking framework are causing conflict with 'standard' operational procedures, both of internal structures and in co-operation with other authorities. Internal procedures are partly based on command and control logics (e.g. the steering of the labour inspectorate by the ministry via decree), although there is also an element of discretion so that individual labour inspectorates or inspectors can *voluntarily* be more active in tackling trafficking for labour exploitation. However, their co-operation with other authorities seems not to fit with a more flexible, multi-agency-oriented strategy, which being a part of the Working Group might entail. Cumbersome procedures as well as uncertainty and confusion about responsibilities and authority are keeping actors from taking the initiative. However, personal initiative and commitment and networks enable (possibly quicker and easier) joint *ad hoc* operations, which might be more tailored to the needs of a particular situation than excessively investigated and managed operations.

6.2 Labour Inspection and the Anti-trafficking framework in the Netherlands

6.2.1 Regulatory Frame

In the Netherlands in 2005, the new trafficking article (Art. 273f DCC) came into force, which broadened the existent Penal Code (*Wetboek van strafrecht*). In addition to regulating exploitation in the sex industry, it covered trafficking for the removal of organs, and for forced or compulsory work or services, 'slavery' and practices similar to 'slavery' or servitude. Human trafficking does not need to be 'organised crime' to fulfil the criterion for the crime of human trafficking, although this ruling is different in other countries (Smit 2011: 186). However, the punishment is heavier when there are two or more 'united' criminals working together.¹⁶ The essence of the Dutch anti-trafficking law is '(intended) exploitation', regardless of the nationality of the victims or of movement across borders. Because there is no notion of border-crossing in the DCC, just of 'transporting people', Dutch citizens can equally be considered as trafficked (BNRM 2005: 5; Smit 2011: 189).¹⁷ Consequently, there

¹⁵ The effectiveness of the general activities of the Austrian LE approach is difficult to assess. The LI does not publish any reports. A report of the accounting office from 2013 was rather critical (Rechnungshof 2013).

¹⁶ <http://maxius.nl/wetboek-van-strafrecht/artikel273f>, accessed 21 March 2016.

¹⁷ According to Dutch criminal law, human trafficking does not require border crossings (BNRM 2005: 5), but the presence of three elements of the crime of trafficking: the act (e.g., transporting, accommodating or sheltering a

is no difference made between trafficked and non-trafficked victims of labour exploitation.¹⁸ Following a judgement by the Supreme Court in 2009, whether or not the victims gave their consent to their intended exploitation is irrelevant, therefore it is not necessary for traffickers to have taken the initiative of putting victims into the exploitative situation. Prior to that judgement (Supreme Court of 2009), the consent of the victims had played against them (GRETA 2014: 21, 25). Unlike, for instance, the Belgian and French criminalisation of trafficking which puts circumstances incompatible with human dignity as the central focus, exploitation is the key term in anti-trafficking legislation in the Netherlands (Article 273f, Criminal Code). Even so, exploitation must be linked to labour or services; in addition, the gravity of substandard conditions must be considered as an excessive breach of fundamental rights. Insofar as there is no excessive abuse, the matter will not be dealt with under trafficking provision (BNRM 2007: 12, 13). Nevertheless, the definition of excess remains vague – there is still much discussion in relation to the definition of trafficking for labour exploitation (Smit 2011: 186) – and assessment has to be done on a case-by-case basis (BNRM 2007).¹⁹

The Dutch anti-trafficking approach is frequently recommended as a model of best practice. The institution of the independent status of the National Rapporteur, in particular, has been recognised as highly progressive and is recommended for implementation in other European countries in accordance with Art. 29 (p. 4) of the Council of Europe Convention on Action against Trafficking in Human Beings (La Strada nd: 44). The anti-trafficking strategy laid down in the National Action Plan against Human Trafficking is drawn up by the National Task Force (*Taskforce Aanpak Mensenhandel*) and follows the recommendations of the National Rapporteur (National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children). It aims at strengthening and promoting an integrated approach based on the so-called Barrier Model (Government of the Netherlands 2011: 5). The Barrier Model is a conceptual framework within which to analyse the trafficking process. It was originally developed by the Dutch Social Intelligence and Investigation Service (*Sociale Inlichting en Opsporingsdienst*) and was designed to address international trafficking for sexual exploitation. It maps the barriers that can be used by the government and other partners in order to make human trafficking more difficult for traffickers and to prevent criminal organisations or individuals from using legal structures such as identity cards or residence

person), the means (e.g., coercion or deception), and the purpose of the exploitation (e.g., financial gain). <http://leidenlawblog.nl/articles/whats-in-a-name-are-labour-exploitation-and-human-trafficking-one-and-the-s>, accessed 10 October 2016.

¹⁸ Article 197a of the DCC prohibits an individual from helping another individual to enter or to transit through the Netherlands, when the first individual knows or has reason to suspect that this entering or transiting would not be in accordance with the law (<http://maxius.nl/wetboek-van-strafrecht/artikel197a>, accessed 21 March 2016). Article 197b prohibits an individual from employing another individual who illegally resides in the Netherlands, when the former knows or has reason to suspect that the latter's residence is illegal (<http://maxius.nl/wetboek-van-strafrecht/artikel197b>, accessed 21 March 2016). Article 197c states that the first individual mentioned in Article 197b will be prosecuted if he or she earns a living or makes a habit of employing individuals who are known or suspected to illegally reside in the Netherlands (<http://maxius.nl/wetboek-van-strafrecht/artikel197c>, accessed 21 March 2016). Article 197d states that when the first individual mentioned in article 197b and 197c does this to as part of his work, he can be forced to resign (<http://maxius.nl/wetboek-van-strafrecht/artikel197d>, accessed 21 March 2016).

¹⁹ This legal situation might explain why interviewees used the terms 'trafficking for the purpose of labour exploitation' and 'labour exploitation' interchangeably.

permits to enable trafficking in human beings. The barriers can be constructed at any of five stages: (1) entrance, (2) identity, (3) housing, (4) employment and (5) finances – ideally, there are barriers at all five (Aronowitz *et al.* 2010: 395; Centrum voor Criminaliteitspreventie en Veiligheid 2016). A further essential element of the barrier approach is that public and private partners – such as trade associations, providers of telecommunication services or transport companies – become involved in constructing these barriers (Government of the Netherlands 2011: 11).

What is also quite unique in the Dutch model is that municipalities have gained a relatively high level of responsibility and play a major role in enforcing the Barrier Model in co-operation with law-enforcement authorities. Among other things, they are competent to issue licences and permits for businesses (such as hotels, restaurants, bars, brothels and construction sites). The Public Administration (Probity Screening) Act (*Wet bevorderende integriteitsbeoordelingen door het openbaar bestuur, Wet Bibob*) enables municipalities to screen individuals and companies applying for permits or subsidies, including their business partners, to identify any criminal activities and, at their discretion, decide to withdraw a business licence or subsidy (de Jager *et al.* 2016; GRETA 2014). Many municipalities employ specialised staff, working particularly in the action field of prostitution (GRETA 2014: 17, 22). For example, in Amsterdam, multi-agency co-operation according to the Barrier Model takes place on a daily basis, with the Amsterdam Co-ordination Centre for Victims of Human Trafficking (*Amsterdams Coördinatiepunt Mensenhandel – ACM*) collaborating with the municipal authorities, anti-trafficking officers from the police and NGOs in order to provide the so-called ‘care chain’, which ensures adequate assistance for the victims of trafficking. Similar co-operation is just beginning in other main cities in the Netherlands.

6.2.2 The Dutch Labour Inspection System

The Dutch labour inspectorate (Inspectorate SZW) is the main authority competent to monitor regulations governing working conditions, OSH, working hours, payment, employment, fraud²⁰ and also, explicitly, trafficking for labour exploitation and labour exploitation. It covers all sectors and comprises 725 full-time staff members (Flex *et al.* 2015: 13). Among other departments, the labour inspectorate is comprised of a Criminal Investigations Department, which is responsible for criminal enforcement, including of trafficking for labour exploitation, under the direction of the Public Prosecution Service (GRETA 2014: 16). The labour inspectorate can carry out criminal investigations on trafficking for labour exploitation. Criminal investigators have the rank of an assistant prosecutor and enjoy the same investigative powers as the police (GRETA 2014: 54). They can order searches of all premises, including private homes, or special observations if there are any suspicions of labour exploitation. They can also trace criminal earnings as part of criminal proceedings. If (potential) victims of trafficking are detected by the inspectorate, they are referred to the competent law-enforcement officers (the police); this means that victims can be granted a reflection period and B-8 status if they are irregular migrant workers (GRETA 2014: 38).

²⁰ Labour-market fraud is covered by the Foreign Nationals (Employment) Act, Minimum Wage and Minimum Holiday Allowance Act, Working Hours Act and Temporary Working Agencies Act.

The Dutch anti-trafficking approach focuses on the most severe incidents of labour exploitation, although this is mitigated by a broad definition of trafficking for labour exploitation in the Penal Code. At the same time, the labour inspectorate employs a combined labour, migration and criminal justice approach (Houwerzijl and Rijken 2011). Therefore, besides criminal enforcement, labour-market regulations are also relevant to the anti-trafficking efforts of the labour inspectorate. It monitors the Foreign Nationals Employment Act (*Wav*), which bans employers and private individuals who employ a person who does not have free entry to the Dutch labour market or a valid work permit.²¹ The inspectorate can also impose penalties for violations of the Working Conditions Act (*Arbeidsomstandighedenwet, Arbowet*) and the Working Hours Act (*Arbeidstijdenwet, ATW*). Article 197b of the Criminal Code on the employment of irregular migrants penalises any employer hiring a person whose entry or stay in the country is known or suspected by the former to be irregular. This legal provision became obsolete in 2005 when an administrative fine was introduced; thus, Article 197b is applied only in a very few exceptional cases. More relevant is the administrative offence which is based on the Alien Employment Act (*Wet arbeid vreemdelingen*) determines the conditions under which the employment of aliens is permitted (Braakman *et al.* 2014: 7f). Of particular interest in the context of labour inspection is the Act of 23 March 2012 amending the Alien Employment Act, which allows employers liable for the payment of wages of irregularly employed migrants to be held for questioning. The act also includes a main contractor's liability, in the sense that employees of subcontractors can turn to the higher-level employer, the main contractor, for the back payment of wages. However, the act does not make any reference to labour exploitation. This amendment was the transposition of the EU Employers' Sanctions Directive into the Dutch legal framework (Braakman *et al.* 2014). Another relevant legal provision is the Minimum Wage and Vacation Benefit Act (*Wet minimumloon en vakantiebijslag*), which stipulates the minimum wage²² applicable to all sectors. Its amendment in 2007 was implemented as a flanking policy to the entry into force of the free movement of workers for the new EU member-states. It converted what was previously purely civil law enforcement into administrative enforcement, in the form of the ability for the inspectorate to impose administrative penalties. The amendment of the Minimum Wage and Vacation Benefit Act was the result of initiatives by the Ministry of Justice and the Ministry of Social Affairs and Employment, designed to reduce demand in the context of labour exploitation (Dutch National Rapporteur on trafficking in human beings 2013). The Dutch legal framework is characterised by the strong regulation of the sector for employment and recruitment agencies. The Intermediary Allocation of Labour Force Act (*Wet allocatie arbeidskrachten door intermediairs, WAADI*) regulates the framework according to which recruitment and

²¹ http://www.inspectieszw.nl/english/work_by_foreign_nationals, accessed 26 August 2016.

²² Compared to the collectively bargained wage, the minimum wage is extremely low – 1,507.80 Euro gross, of which about one third will be withheld by the employer for tax and insurance contributions. The Minimum Wage Act does not lay down how many hours there are in a full working week – usually accepted as 36 to 40 hours (<https://www.government.nl/topics/minimum-wage/contents/amount-of-the-minimum-wage>, accessed 16 September 2016). The gross minimum wage depends on the age of the worker and is lower if the worker is under 23 (452.35 Euro for a 15-year-old). The minimum wage is statutory although, in addition, there are collective bargaining agreements. Collective agreed wages are more generous, but have to be claimed via a civil procedure.

employment agencies carry out their activities; it also contains the rights of those working for these agencies (de Jager *et al.* 2016; GRETA 2014). Every company or entity that provides workers – even incidentally – must be on the Business Register of the Chamber of Commerce, no matter whether the company is based in the Netherlands or abroad. Affected by this act are temping and employment agencies, payroll companies and job pools.²³

6.2.3 Anti-trafficking Approaches

As mentioned above, nationwide, the so-called Barrier Model is implemented within the country's anti-trafficking strategy. It was initially developed by the labour inspectorate and further developed and extended; to date, there are multiple Barrier Models set up, *inter alia* for sexual and for labour exploitation. A central focus is on gathering and analysing intelligence (e.g. financial information, particularly the wiring of money) from different sources and from exchange within a multi-agency co-operation (members of the Task Force, National and Regional Centre for Information and Expertise (LIEC and RIEC) and Europol) (NL_LI_8). The labour inspectorate plays a major role because of its intimate knowledge of the sectors involved (NL_Gov_2). In this regard, the Task Force has also established international co-operation with Europol and the source countries of victims, a move which is regarded as promising (NL_LI_10, NL_GOV_1). The Expertise Centre on Human Trafficking and People Smuggling (EMM) systematically gathers and analyses information from different sources – both criminal and non-criminal investigations. Investigation proposals are handed over to the tactical investigation teams across the country (NL_EMM_11). After an investigation is closed, a review process is undertaken and the policy department of labour inspectorate provides input on what laws and procedures can or should be changed (NL_GOV_2).

The Department of Detection (criminal investigations) is responsible for criminal enforcement in cases of labour-market fraud, (organised) labour exploitation, (organised) benefit fraud and fraud with labour-related subsidies. It uses an integrated and risk-oriented approach and operates various measures. In 2011, it detected 417 incidents of fraud and 204 inspectors carried out 62 investigations, 11 of which concerned trafficking for labour exploitation and labour exploitation (Regioplan 2013: 32). In total, around 22,700 investigations and inspections, of which around 13,600 are active OSH inspections, are carried out per year (Inspectie SZW 2014: 7). According to NL_LI_12, the criminal investigation unit handles about 30 to 35 investigations involving labour exploitation²⁴ per year but only a few cases are taken to court. Where there are suspicions of trafficking for labour exploitation, the labour inspectorate is competent to start a criminal investigation with permission from the public prosecutor (NL_JUD_6), although this has to be substantiated by sufficient proof, which is actually a considerable challenge.

The labour inspectorate works selectively on the basis of a risk analysis and a risk matrix due to a limited budget and human resources. The risk assessment is based on the aims of the

²³ For more information see: <http://www.kvk.nl/english/how-to-register-deregister-and-report-changes/registering-with-the-chamber-of-commerce/hiring-or-provision-of-workers-in-the-netherlands/>, accessed 16 September 2016.

²⁴ Note that interviewees often talk about labour exploitation and trafficking for labour exploitation interchangeably.

Ministry of Social Affairs and Employment – which are for good and healthy workplaces, decent working conditions, fair labour markets and an effective social security system. The aim of the assessment is to identify risks and evaluate the damage they might cause – damage which is understood as negatively impacting on the functioning of the labour market, the social security system and employees. Combined with economic, demographic, technological, labour migration and other relevant factors, a priority order of risks and a corresponding strategic programme (long-term planning, strategic levels) are established. On this basis, the inspectorate decides which specific problems should be focused on – e.g. specific sectors, businesses or groups of workers. A problem analysis is then conducted in order to choose the instruments (tactical level) to be employed – for instance, large-scale or focused inspections. At an operational level, the subjects that are at high risk of violating regulations are chosen in order to conduct targeted inspections (Regioplan 2013: 32, NL_LI_10, NL_GOV_1, NL_GOV_2). Investigations either consist of more-general studies on certain phenomena or can focus on specific problems (Regioplan 2013: 26). A strong focus of the inspectorate is on data-gathering, for example from social security bodies,²⁵ systems on at international level²⁶ and within the Expertise Centre on Human Trafficking and People Smuggling (EMM). Currently, the labour inspectorate is creating an intelligence programme designed to collect information on indicators of labour exploitation. The aim is to ‘have actual, real-time information on what is happening’ (NL_LI_10).

Inspections concern administrations (personnel, wages, debit and credit and bank registers) and the workplace. On the spot checks are carried out of identity papers and the legality of employment of aliens. Interviews with workers are conducted in order to detect possible underpayment and non-compliance with legal minimum wages, holiday rights etc. Also, where temping agencies (labour providers) are used, the inspectors check whether they are on the registers of commerce and trade. Investigators also check that employers are registered with the relevant tax authorities, are on social security register, have up-to-date records of car ownership and whether there are any illegitimate activities which cannot be accounted for (penal cases). In cases of possible trafficking for labour exploitation, the appropriate investigation unit is notified (Regioplan 2013: 29f).

The interviewees (e.g. NL_LI_10) emphasised that it remains extremely difficult to gain sufficient information to start an investigation. Moreover, it always requires a sensible decision about the right moment to start an inspection (NL_LI_12). Recently, new approaches have been under discussion. For instance, there is a project running which deals with companies which repeatedly violate the law and are suspected of trafficking for the purpose of labour exploitation (NL_LI_12). Collaboration with the victims and the authorities of the source countries are carried out in co-operation with NGOs (e.g. NL_GOV_1). The labour inspectorate co-operates with the NGO CoMensha (Anti-Trafficking Co-ordination Centre, *Coördinatiecentrum Mensenhandel*), which helps to link the inspectorate with

²⁵ The labour inspectorate participates in a data-hub (Suwinet) for organisations primarily from the field of social security (Regioplan 2013: 29f).

²⁶ e.g. International Market Information System (IMI), Europol, Interpol, Senior Labours Inspectors’ Committee (SLIC) (Regioplan 2013: 29f).

(potential or actual) victims. Although it is not strictly necessary for the victim to press charges and prosecute the employer or trafficker in court, it is more likely for such action to be successful if as much information as possible is provided (NL_EMM_11). Nevertheless, NGO's and the labour inspectorates' interests and views regarding the protection of victims are sometimes conflicting.

Special Intervention Teams are also formed to target priority cases. They are managed through the strategic planning of the National Steering Group Interventions Teams, chaired by the Ministry of Social Affairs and Employment in collaboration with the relevant municipalities, tax authorities, Inspectorate SZW, police, Public Prosecutor's Office and other parties, and led by the appropriate authority. The intervention teams focus on geographical areas or sectors, whereas operations can be focused on specific phenomena – the decision on what should be focused on is based on the risk assessments. At present, the labour inspectorate leads intervention teams in the mushroom-cultivation sector and on temping agencies. The approach taken by them is integrative, which has proved to be the most effective according to the labour inspectorate (Regioplan 2013: 33). As an example, the intervention teams tackling fraudulent temping agencies started an investigation in summer 2012 in which they carried out a risk analysis and identified the top 100 suspicious agencies. By March 2013, 42 administrative investigations had begun concerning 66 temping agencies and 116 hiring agencies. Three criminal cases concerning exploitation and document forgery were completed (Regioplan 2013: 35). Currently, the focus is strongly on temping agencies but new sectors or businesses always develop which are prone to labour exploitation – for instance car-wash, transport and parcel-delivery companies (NL_LI_12).

A further distinguishing feature of the Dutch anti-trafficking approach is that municipalities play an important role within the Barrier Model and contribute to the integrated approach. Following research by the National Rapporteur and a report which was very critical of some municipalities in which there had been major cases of neglect of trafficking, the Ministries of Social Affairs and of Justice decided to strengthen the engagement of the municipalities in tackling human trafficking (NL_NGO_9). The municipalities now have a mandate to withdraw business licences in cases where human trafficking is suspected – also known as '*Wet Bibob*', i.e. the facilitation of integrity assessments by public administration (NL_GOV_3). Since the municipalities are in direct contact with their citizens and residents, and therefore with potential victims, they can contribute by recording signs of trafficking. For instance, civil servants at reception desks receive training by NGOs (for instance, NL_NGO_7) in detecting signs of trafficking and are now involved in so-called 'first-level identification'²⁷ (NL_GOV_3, NL_GOV_4, NL_NGO_7). The municipalities act in co-operation with the relevant Task Force members, especially the police but also the labour inspectorate. In the past, the main focus was on sexual exploitation, but labour exploitation has gained more significance in the last two years (NL_GOV_3). The larger municipalities (Amsterdam, The Hague, Rotterdam,

²⁷ First-level identification means not being able to grant B8 status – the determination and granting of victim status – which is the remit of the police.

Eindhoven), in particular, have put a great deal of effort into tackling trafficking for labour exploitation and have assigned special anti-trafficking co-ordinators. The municipalities also have a mandate for the inspection of housing conditions and certain (licensed) companies under the BIBOB Act (NL_GOV_3, NL_GOV_4), but they have no access to households – which would be required if they were to detect exploitative conditions for domestic workers (NL_GOV_3). A new pilot scheme is ongoing which is focused on seasonal workers, who are advised to register with the municipalities (NL_GOV_4). Currently the latter are working on an information structure to enhance the exchange of information between municipalities, the public prosecution service, the police and tax and customs administrators (NL_GOV_3). They also exchange regional information via the RIEC and are in close contact with the public prosecution service on the local level and with the tax and customs administration (NL_GOV_3, NL_GOV_4). Nevertheless, interviewees still pointed out that it remains very difficult to find sufficient evidence to make a case – one reason for which, according to them, is that signs of human trafficking are often not very obvious (NL_GOV_3, NL_GOV_4).

NL_GOV_3 considers the municipalities' approach to be very successful, as demonstrated by the increased attention paid to labour exploitation. On a municipal level, until two years ago the focus was mainly on sexual exploitation, but efforts to recognise that labour exploitation is on the increase (e.g. more civil servants receive training) is reflected in the sharp increase in reported signs of potential trafficking for labour exploitation. In 2014, altogether 15 suspicions of trafficking for the purpose of labour exploitation were reported while, within the first six months of 2015, as many as 25 had been reported. However, the municipalities are far from systematically addressing the demand side, as one interviewee stated. At the moment, 'they are learning to detect signals' (NL_GOV_4). Labour exploitation is a quite new focus for municipalities and it is not their responsibility to control working conditions, but to focus on issues such as fire prevention and environmental regulations (NL_GOV_4). According to NL_NGO_9, the number of detected signs of trafficking for labour exploitation has risen: 'They are very happy with the first results, with the growing number of at least signals'.

A further approach of the labour inspectorate is its co-operation with Cultural Mediators, who support communication with potential victims. One interviewee assessed the benefit of involving mediators in that potential victims feel more confident and are more willing to talk or complain with mediators and NGO representatives than with the police (NL_LI_10). Cultural mediators provide information to potentially trafficked persons. Currently, 30–35 mediators are working in the Netherlands on a voluntary basis, working 8 to 12 hours a week – EU citizens from Hungary, Poland, Bulgaria and Romania who operate in their migrant communities, making use of their networks in order to make contacts, spread information and detect not from a law-enforcement point of view but as a civil-society organisation, where people are in trouble or have questions or complaints etc. They refer them to the rest of the team who can provide support if necessary. The activities of the NGO can be viewed as an ongoing pilot scheme, as suggested by NL_NGO_7.

Activities and information-disseminating events take place in the various environments, e.g. on Bulgarian Election Day in the consulate (NL_NGO_7). The first priority for the inspectorate is to approach employers and raise their awareness of trafficking for labour exploitation through alternative approaches to criminal investigations (NL_LI_12). The law-enforcement authorities (the labour inspectorate and the police) also co-operate with trade unions. The Federation (FNV), in particular, is very active, according to (NL_GOV_2). Trade unions are sometimes invited to accompany inspections (NL_GOV_2, NL_TU_5).

The Dutch labour-inspection approach is part of the national anti-trafficking strategy which is characterised by the systematic integration of multiple actors. The focus is strongly on the gathering of intelligence in diverse areas. Multiple organisations are engaged in gathering indicators of possible crimes, which are then fused in order to receive enough proof for a criminal investigation, perhaps on trafficking for labour exploitation. Since the approach is altogether mainly a criminal one, it can be classified as a command-and-control approach. Risk assessment and intelligence tools are used extensively, and there are a number of management instruments which are used to design and evaluate strategies and operations. Altogether the regulation features a high degree of managerialism.

The operations of the labour inspectorate do not focus exclusively on trafficking for labour exploitation, but are embedded in a more comprehensive approach tackling various breaches of labour regulations and associated crimes, with a strong focus on foreign labour due to the legal framework. The approach makes use of synergies to tackle irregular employment. However, the number of investigations of trafficking for labour exploitation are only a small part of the whole remit of the inspectorate, and only a few trafficking cases are brought before the courts.

Public-private partnerships and self-regulation are not linked directly to the work of the inspectorate. However, Dutch policy is stimulating self-regulation within economic sectors. The g report states: 'Whenever social partners in an economic sector create a viable system of self-regulation, the SZW will operate in a more reserved manner' (2013: 40).

6.3 The Gangmasters Licensing Authority's Anti-trafficking efforts

6.3.1 Regulatory Frame

The UK anti-trafficking framework has undergone major changes with the enactment of the Modern Slavery Act (MSA) in 2015. The MSA codifies the offences of trafficking and labour exploitation, including 'slavery', servitude and forced or compulsory labour and even enjoys extra-territorial application.²⁸ It provides the authorities with new powers to combat human trafficking (Kyambi 2016: 4). Prior to the introduction of the MSA, legal provisions on the offences of trafficking and forced labour were found in various statutes. A shift in the Modern Slavery policy can be observed: initially its focus was on sexual exploitation but now the

²⁸ In 2009, a separate forced-labour offence was introduced and, as Kyambi (2016: 3f) notes, '...the UK has an unusual approach among European countries in that it addresses forced labour as an offence in itself, as well as treating forced labour as an offence when it occurs in the context of trafficking'.

'narrative has shifted from the morality of selling sex to that of abusing labour for profit – all labour in all sectors – a major departure from many anti-trafficking debates' (Craig 2015: 131).

Due to these significant policy changes, the UK National Referral Mechanism will also be reviewed (see Karen Bredely, Minister for Modern Slavery and Organised Crime, letter to GRETA, 11 March 2015 in GRETA 2015a). The UK government has not appointed a National Rapporteur – the latter's role is primarily exercised by the Inter-Departmental Ministerial Group (IDMG). The IDMG is supported in this by the UK Human Trafficking Centre (UKHTC), the UK Border Agency and the NGO Stakeholder Group.²⁹ The IDMG is responsible for the strategic oversight and monitoring of UK policy on human trafficking, as well as data collection and analysis. Data collection on human trafficking is also a key responsibility of the UKHTC in conjunction with law enforcement agencies. The centre also acts as a central point of co-ordination for intelligence, analysis and operational activities concerning human trafficking. It works very closely with law-enforcement agencies throughout the country and with non-governmental organisations and the Home Office³⁰ (GRETA 2015a).

6.3.1 The UK Labour Inspection System

Unlike most European countries, the UK does not have a comprehensive labour inspection system across the labour market. The labour-standards regulation landscape is highly fragmented, with different agencies tasked with monitoring and enforcing various aspects of labour relations and standards. Generally, it is true to say that the UK labour market is marked by high flexibility and weak labour rights and a policy focus that aims to reduce the regulatory burdens on businesses in favour of employers (Kyambi 2016).

The main actors are the Employment Agency Standards Inspectorate, the National Minimum Wage Team and the Health and Safety Executive, Her Majesty's Revenue and Customs (HMRC) and the Gangmasters Licensing Authority (GLA). Of these agencies, the GLA is the only pro-active inspectorate working to prevent and identify incidences of trafficking for labour exploitation or forced labour (Flex *et al.* 2015: 10) – although this is restricted to a few businesses.

In 2004, the Gangmasters (Licensing) Act was introduced. The drive to legislate had gained momentum due to the deaths of 21 migrant workers who were collecting shellfish under exploitative labour conditions in 2004. The Gangmasters (Licensing) Act introduced the two criminal offences of, firstly, providing labour without a licence and, secondly, of using unlicensed labour providers. Furthermore, the Act led to the establishment of the Gangmasters Licensing Authority (GLA).

The GLA implements the Gangmasters (Licensing) Act. This legislation creates the offences of providing labour without a licence and of using an unlicensed labour provider.

²⁹ <https://ec.europa.eu/anti-trafficking/national-rapporteurs/united%20kingdom>, accessed 16 September 2016.

³⁰ <https://ec.europa.eu/anti-trafficking/national-rapporteurs/united%20kingdom>, accessed 16 September 2016.

The GLA employs a licencing regime to regulate labour providers in a limited number of sectors, including agriculture, horticulture, shellfish gathering and any associated produce and packaging in the fresh-produce supply chain.³¹ All providers of labour to these specific sectors require a licence if they are to operate legally. They are monitored by the GLA to ensure that they comply with GLA licencing standards,³² and licences are issued only if the labour supplier complies with them. *Inter alia*, the standards set out the conditions for the prevention of forced labour, the mistreatment of workers, working conditions, health and safety and accommodation. The standard ‘mistreatment of workers’ contains three strands: (a) physical and mental mistreatment; (b) the restriction of a worker’s movement, debt bondage and the retention of a worker’s identity documents; and (c) the withholding of wages (Kyambi 2016).³³ Licences can be revoked in case of non-compliance. Operating as a gangmaster without a licence is a criminal offence, carrying prison sentences of up to 10 years and/or a fine of up to £5,000.³⁴

As well as implementing the licencing regime, the GLA works with law-enforcement agencies to investigate incidents involving serious labour exploitation, forced labour and trafficking for labour exploitation. Alongside the police and the local authorities, it is the only government agency tasked with the duty to notify the Home Secretary of suspected victims of ‘slavery’ and human trafficking under Section 52 of the Modern Slavery Act 2015 (Kyambi 2016: 7).³⁵ The passing of the Modern Slavery Act (MSA) has led to major changes in the legislative and institutional landscape and will modify the operating environment of the GLA as it consolidates and simplifies existing offences, introduces new powers and penalties and creates new institutions and roles (Kyambi 2016).

6.3.1 Anti-trafficking Approaches

Compared to other labour inspection systems, the licencing system is a completely different regulatory approach. It is quite unique in terms of the regulation of the labour market and labour standards (Kyambi 2016: 9). The GLA licence model is limited to labour providers in specific sectors and therefore only a small number of businesses and of employees is covered. However the definition of these providers is very broad in order to leave no loopholes (2016: 10) – at least within this limited scope. The objectives of the GLA are not defined in a statute, only its functions. The mission statement says: ‘Working in partnership to protect vulnerable and exploited workers’. Black (2010) sees the GLA’s scope as being ‘explained in terms of the identification of those sectors where the ‘risk of exploitation’ is deemed to be highest’ (2010: 304). This is also reflected in suggestions to expand the

³¹ <http://www.gla.gov.uk/i-am-a/i-supply-workers/i-need-a-gla-licence/applying-for-a-gla-licence-1/>, accessed 16 September 2016.

³² <http://www.gla.gov.uk/media/2743/licensing-standards-may-2012-reprinted-july-2015.pdf>, accessed 16 September 2016.

³³ <http://www.gla.gov.uk/media/2743/licensing-standards-may-2012-reprinted-july-2015.pdf>, accessed 19 September 2016.

³⁴ <http://www.gla.gov.uk/Our-Impact/Convictions/>, accessed 16 February 2016; <http://www.gla.gov.uk/our-impact/how-we-inspect-and-prosecute/>, accessed 19 September 2016.

³⁵ UK NRM statistics show that a very low proportion of referrals come from the GLA (7 out of 2,284 in 2015). However, this may mainly reflect the fact that the GLA would not investigate such cases on its own, but would work in partnership with the police.

licencing system into new sectors such as care, cleaning and domestic work, construction and hospitality (Migration Advisory Committee 2014; Skrivankova 2014).

The GLA describes its own approach to inspection and enforcement as operating a 'national intelligence model' like that of the police and other law-enforcement bodies. Fortnightly co-ordination meetings are held at which intelligence on non-compliance is assessed. Based on this, actions are prioritised and decisions made on whether compliance inspections or other enforcement activity are necessary and whether there are issues around the treatment of workers which it would require the police to investigate (Kyambi 2016: 15f).

The GLA's regulatory code requires it to base its regulatory activities on risk assessment. Risk assessment instruments are used to categorise new applications as requiring either a mandatory or a discretionary inspection. The assessment is based on a review of the data held on a company by other government departments as well as on criteria developed by the GLA (GLA 2013). A follow-up analysis of this approach in 2014 showed that a high proportion (94 per cent) of new applicants continued to be inspected, despite the move to a discretionary approach. 'In maintaining the integrity of the licensing regime however, the GLA finds it necessary to inspect the vast majority of license applicants as well as conduct compliance inspections' (Kyambi 2016:19).

Noticeably, this discretionary approach was introduced in order to reduce the regulatory burden on businesses, not because of the GLA's limited resources. Similar considerations shape the GLA's engagement with retailers and suppliers, focusing clearly on co-operation rather than on sanctions or on imposing any regulatory or monitoring burden on them. Some interviewees noted that the power lies firmly on the side of the retailers (iv6, iv7, cited in Kyambi 2016: 18). Activities of the GLA with retailers and suppliers include softer interventions alongside monitoring, inspection and enforcement activities. Softer intervention measures are training for retailers and suppliers, the setting up of specific points of contact and protocols to enable the sharing of information between the GLA and suppliers/retailers (2016: 17). Experts have concerns that these approaches tend towards increased self-regulation. They fear that such approaches (self-auditing, self-monitoring, self-reporting) without any oversight will damage the reputation of the GLA (Department for Business Innovation and Skills/Home Office 2015: 19; iv3, cited in Kyambi 2016: 18). Other experts are more positive about self-regulation and argue that businesses are concerned to maintain their reputation (iv7, iv8, cited in Kyambi 2016: 18).

When the GLA was first launched, an elaborate instrument with indicators for the evaluation of the agency's activities and impact was developed (Balch 2012) but has not been implemented to date. Instead the evaluation has changed from being ends-oriented to being means-oriented, which implies that it does not allow assessment of GLA's impact. This reduction in evaluation may be due to a lack of resources for research and development, as well as changes in personnel and outlook at the GLA (iv9, cited in Kyambi 2016: 8). The GLA also conducts surveys with licence-holders and stake-holders but, interestingly, not with workers directly.

Several experts see the GLA model as a preventative framework and therefore also as a model that is effective in addressing the demand side by changing the behaviour of labour providers through the operation of the licencing regime (iv1, iv6, iv8, iv10, cited in Kyambi 2016: 9, 11).

‘Licensing is a fundamental part of the approach to protect workers and it has a preventative effect. You cannot supply workers into the sectors that [the GLA] controls without demonstrating that you are compliant with the legislation and therefore not exploiting workers’ (iv1, cited in Kyambi 2016: 10).

The GLA’s annual report for 2015 states that it has issued over 2,000 licences, of which nearly 1,000 are current and led to more than 90 prosecutions. It claims to have prevented the further exploitation of over 10,000 workers in the past decade (2015: 5). According to its website, the GLA has revoked 28 licences with immediate effect and 221 with suspensive effect between 2006/07 and 2016/17.³⁶ Licence revocations are appealable but the GLA has a strong track record in defending its decisions, with no appeals granted since 2010 and an overall success rate at appeal of 94 per cent.³⁷ Between September 2008 and May 2016 there were 58 convictions for operating without a licence and 24 for using an unlicensed labour provider³⁸ (Kyambi 2016: 7).

A deterrent effect is evidenced in that fewer people are granted licences with additional conditions. The number of non-compliant businesses – as measured in licence revocations – has also dropped and the GLA has concluded that the sector has become more compliant overall. However, it was also pointed out that non-compliant labour providers were deliberately shifting from regulated sectors to those that are not well regulated, including construction, hospitality and care (Flex *et al.* 2015: 10). To what extent the GLA’s licencing approach could have had an effect on the unlicensed sectors and on the economy as a whole remains open. Of course, gaps remain in its enforcement activities in terms of uncovering and prosecuting offences of trafficking for labour exploitation. One interviewee reported several victims who had experienced GLA inspections that failed to spot their on-going labour exploitation, attributing this lacuna to the fact that the GLA inspectors were too thin on the ground rather than to any lack of training for the latter in spotting signs of trafficking for labour exploitation; in fact, the interviewee rated GLA officers highly (iv5, cited in Kyambi 2016: 15). Even so, interviewees believed that the GLA has a positive impact on regulated sectors (2016: 11).

In October 2015, a consultation by the Department for Business Innovation Skills and the Home Office had at its core a review of the GLA, as required by s.55 of the MSA. ‘The review reveals a remarkably wide approach to exploitation, taking impetus from the anti-trafficking

³⁶ <http://www.gla.gov.uk/our-impact/revocations-results/>, accessed 20 September 2016.

³⁷ <http://www.gla.gov.uk/our-impact/appeals-against-the-gla/http://www.gla.gov.uk/our-impact/appeals-against-the-gla/>, accessed 20 September 2016.

³⁸ <http://www.gla.gov.uk/our-impact/conviction-totals/>, accessed 10 September 2016.

legislation of the MSA' (Kyambi 2016: 8). The then Home Secretary Theresa May noted in the foreword:

'We must go further. Exploitation can take various forms and can occur in various contexts, and we must now expand our approach to deal with all forms of forced labour and abuses of employment law. Not only so we can protect the vulnerable, but also to protect local workers and responsible businesses affected by those prepared to exploit cheap labour' (Department for Business Innovation and Skills/Home Office 2015: 5).

The consultation discusses labour exploitation across the spectrum, from low-level non-compliance to serious organised crime and the bodies³⁹ spanning the spectrum of infringements. It proposes the introduction of a new criminal offence of 'aggravated breach of labour law', identifies the need for greater data-sharing and a single set of priorities between enforcement bodies. Regarding the GLA, the consultation proposes its reform into the Gangmasters and Labour Abuse Authority, that 'moves from a narrow focus on licensing in specific sectors to a wider role of preventing and tackling serious worker exploitation using a broader range of tools' (Department for Business Innovation and Skills/Home Office 2015: 33).

Although there is general agreement that the GLA's efforts should be increased, this should not be interpreted as a negative reflection on the agency's record, but rather as an appreciation of the scale of the task (Kyambi 2016: 9). The recent consultation document proposes this reform and the creation of a new agency with a labour-market-wide remit to provide a strategic lead on labour-market enforcement. It also references the need for risk assessment approaches and light-touch regulation for compliant businesses, indicating that the new authority would operate a more targeted approach that makes greater use of risk assessment and intelligence and spends less time and resources on compliance inspections. This raises concerns that the GLA's role will, in practice, be less effective – particularly if resources do not increase in line with the proposed expansion from a sector-specific remit to a labour-market-wide one. Indeed, the lack of resources and, therefore, patchy enforcement were the central criticisms that emerged from the interviews in this study (Kyambi 2016: 9). 'This bears objective scrutiny given that the number of inspectors per 100,00 workers in the UK (excluding health and safety inspectors) is 0.9 – compared with 18.9 in France, 12.5 in Belgium, 5.1 in the Netherlands and 4.6 in Ireland' (Flex et al. 2015: 3).

The consultation document observes a shift in how labour exploitation occurs towards an increased involvement in serious organised crime: 'There is some evidence that suggests that serious and organised crime gangs are infiltrating legitimate labour supply chains across a number of sectors' (Department for Business Innovation and Skills/Home Office 2015: 19).

³⁹ The Employment Agency Standards Inspectorate, the National Minimum Wage Team, the Health and Safety Executive (HMRC), the Gangmasters Licensing Authority (GLA), the National Crime Agency and the Police.

Our interviewees varied in their response to this way of framing the issues involved in tackling trafficking for labour exploitation, with some thinking that this

‘was borne out in their experience and that there is increased activity by organised crime and increased collaboration between criminal gangs in supplying and exploiting labour. Others expressed scepticism and were concerned that governments were re-framing labour exploitation as an issue that required a predominantly criminal law enforcement approach rather than a labour inspection approach. They saw this shift as a way of stepping away from responses grounded in labour standards and the licensing framework currently operated by the GLA’ (Kyambi 2016: 15).

One interviewee said: ‘We know that the government hates licencing and they hate inspections. So, they move into looking at a couple of rogue operators’ (iv3, cited in Kyambi 2016: 15).

Another noted:

‘There is this drift towards the GLA [...], focusing on a small number of really severe, high-profile cases, probably organised crime, probably foreign, criminal gangs dealing with migrant labour and there is less and less discussion and understanding of the whole spectrum of non-compliance that really needs to be addressed if you’re really going to prevent and tackle labour market exploitation’ (iv10, cited in Kyambi 2016: 15).

The government was thought to prefer to tackle forced labour issues as one-off problems created by ‘one or two rogue operators’ rather than ‘a systemic problem’ (iv3, cited in Kyambi 2016: 10). The advantage that they thought was gained by this reframing was that governments could then justify having minimally regulated labour markets (under the argument that general compliance exists) while claiming to tackle modern slavery (iv6, cited in Kyambi 2016: 15f). Kyambi concludes from this:

‘From this perspective the UK government seeks to gain plaudits for tackling ‘modern slavery’ while at the same time removing practical access to labour rights,⁴⁰ creating (at least) a tier of the economy that is minimally regulated and cheap’ (2016: 15).

The licencing framework of the GLA is seen as preventing demand for exploitative employment practices since it claims to change employers’ behaviour regarding the treatment of workers (Kyambi 2016). However, the regime is very selective and covers only labour providers in a number of sectors that are particularly prone to labour-law breaches and trafficking for labour exploitation. The narrow focus allows a relatively dense inspection system compared to other labour inspection systems which have the remit to control all or a much wider range of businesses and sectors. Although the GLA is obliged to keep the regulatory burden on employers low by conducting risk assessments, most labour providers

⁴⁰ For example, restricting access to legal aid for employment tribunals, and no longer refunding statutory sick pay to smaller employers.

are controlled *before* they are granted a licence. This is the decisive difference with other inspection systems, besides the smaller scope of the regime. However, this dense inspection regime is also determined by its resources and it might fail – as is currently being debated – as a preventive approach that could be transposed to other sectors prone to trafficking for labour exploitation or other forms of crimes. However, it is not very probable that such a density of inspections would be feasible with the same capacities. The system tends to self-regulation, particularly in areas where the power rests with businesses. It applies a managerial approach, mainly based on risk assessment.

6.4 The Czech Labour Inspectorate and its Efforts in Combatting Trafficking for Labour Exploitation

6.4.1 Regulatory Frame

In the Czech Republic, the function of the National Rapporteur for the European Commission is delegated to the Ministry of the Interior, which is also the National Co-Ordinator and the main authority responsible for combatting human trafficking.⁴¹ As a result, human trafficking is predominantly treated within the security sector, where several police authorities and departments are involved in efforts to eradicate it. These bodies are represented in a co-ordination group (Interdepartmental Co-ordination Group for Combatting Trafficking in Human Beings (ICG⁴²), which serves as a platform for the exchange of information between its members (Majerová and Kutálková 2016: 11). The MLSA (Ministry of Labour and Social Affairs) is a member and key partner in the field in the fight against trafficking for labour exploitation. The State Labour Inspection Office (SLIO) is directly subordinated to the MLSA. Penal-law enforcement falls under the responsibility of the police authorities, but the labour inspectors are also expected to contribute to anti-trafficking efforts. They are trained and tasked to identify indicators of trafficking and can identify victims within their routine activities and hand over their findings to the police (CZ_MPSV_1, Majerová and Kutálková 2016: 11, 17).

The relevant legal provision for human trafficking and labour exploitation is the Offence on Human Trafficking (Art 168 CC), which covers, *inter alia*, exploitation for the purpose of forced labour, ‘slavery’ and servitude. Hence, exploitation and forced labour are punishable only in relation to trafficking (Majerová and Kutálková 2016). There is no explicit offence of child labour within the Czech criminal code, although it may be prosecuted under Article 168

⁴¹ <http://www.mvcr.cz/mvcren/article/czech-republic.aspx>, accessed 1 September 2016.

⁴² Regular members of the ICG include representatives of individual departments: MI – including representatives of SCIP (Service of the Criminal Investigation Police), OCID (Organised Crime Investigation Department), Alien Police, Refugee Facilities Administration, MJ (Ministry of Justice), including representatives of SPO (Supreme Prosecutor’s Office) and ICSP (The Institute of Criminology and Social Prevention), MEYS (Ministry of Education, Youth and Sports), MFA (Ministry of Foreign Affairs), MLSA (Ministry of Labour and Social Affairs), Ministry of Agriculture, Government Council for National Minorities, Government Council for Human Rights, Government Council for Equal Opportunities for Women and Men), and representatives of non-governmental non-profit organisations engaged in the issue of trafficking in human beings (La Strada Česká republika, o. p. s., Projekt Magdala Arcidiecézní charity Praha, Diakonie ČCE and Rozkoš bez rizika o.s.) and a representative of the intergovernmental organisation International Organisation for Migration Prague – IOM Prague (Majerová and Kutálková 2016: 12).

of the Criminal Code when related to the offence of trafficking in human beings (Strohsová Vanková and Toušek 2014). In the Czech Republic, terms like (severe) labour exploitation are regarded as not applicable, and the definition of labour exploitation and trafficking for labour exploitation either causes problems to practitioners in the field of labour relations or is lacking entirely.⁴³ Experts suggest extending the scope of the offence of labour exploitation in order to support its penal prosecution – for example to include wage-withholding (Soukupová *et al.* 2015). Because the trafficking law is viewed as not applicable, labour inspectorates or other law enforcement actors frequently circumvent the anti-trafficking law and apply others which are easier to implement. However, interviewees often considered the corresponding sanctions as not having a deterrent impact because their levels were too low and because employers are not held liable for the back pay of wages, as is the case in the Czech Republic (Majerová and Kutálková 2016: 17).

6.4.2 The Czech Labour Inspection System

The labour inspectorate is the only authority that supervises the labour market and compliance with the labour law and that, with the exception of the police, is actively counteracting trafficking for labour exploitation. The SLIO and RLI carry out inspections and related activities sanctioned by the MLSA (Majerová and Kutálková 2016: 16). They monitor employers' compliance with labour law standards (Labour Code Act No. 262/2006, *Zákoník práce*⁴⁴), including those of health and safety (Strohsová Vanková and Toušek 2014: 5, 9),⁴⁵ and oversee undeclared (irregular) employment, which has become a high priority in recent years (Majerová and Kutálková 2016: 28; SYNDEX 2012: 17).⁴⁶ Provision on the Illegal Employment of Foreigners (Art 342 CC) is considered of high relevance for tackling human trafficking. Majerová and Kutálková (2016) highlight that this offence is applicable only to the employment of persons staying on the territory of the Czech Republic without authorisation. Thus, it cannot be applied to foreigners with regular residence and to EU citizens who enjoy freedom of movement in EU member-states.

Furthermore, regulations or recruitment and employment agencies are considered as elements contributing to the shaping of the demand side in the context of trafficking for labour exploitation. Recruitment and employment agencies require a licence issued by the General Directorate of the Labour Office⁴⁷ of the Czech Republic. Several conditions have to be met

⁴³ 'In the Czech Republic the main problem, overall, is that a) there is no comprehensive definition of labour exploitation and b) it is virtually not punishable under the penal law because under the Czech penal law it falls under other forms of exploitation and it is quite difficult to subsume labour exploitation under trafficking in human beings, lack of evidence usually constituting the main problem' (Majerová and Kutálková 2016: 8).

⁴⁴ http://www.mpsv.cz/files/clanky/3221/labour_code.pdf, accessed 1 October 2016.

⁴⁵ The most important laws in this (labour-law) area are: Act No. 262/2006 Coll., Labour Code, as amended (available in Czech at: <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=262~2F2006&rpp=15#seznam>), Act No. 251/2005 Coll. on Labour Inspection, as amended (available in Czech at: <http://www.zakonyprolidi.cz/cs/2005-251>), Act No. 435/2004 Coll., on Employment, as amended (available in Czech at: <http://www.zakonyprolidi.cz/cs/2004-435>), Act No. 118/2000 Sb., on the Protection of Employees in Case of Insolvency of the Employer, as amended (available in Czech at: <http://www.zakonyprolidi.cz/cs/2000-118>), <http://www.strada.cz/en/labour-law-legislation>, accessed 16 September 2016.

⁴⁶ Labour Code, (full translation), No. 262/2006 Coll. as amended, 'Zákoník práce' and http://www.mpsv.cz/files/clanky/3221/Labour_Code_2012.pdf,
⁴⁷ http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=74435, accessed 1 October 2016.

⁴⁷ The Labour Office belongs to the Ministry of Labour and Social Affairs.

in order to fulfil the requirements for being granted a licence, one of which is to have a clean criminal record. The licence is issued for three years and needs to be renewed. The Labour Office has the power to revoke licences if the holder does not meet the conditions.⁴⁸ The list of registered recruitment and employment agencies is available online and it is therefore possible to verify whether or not an agency operates in line with the legal requirements (Majerová and Kutálková 2016).

The labour inspectorate is entitled to require licence-holders to remedy identified irregularities in administrative proceedings and to impose penalties (2016: 13, 18). However, according to interviewees, in practice the labour inspectors have very limited powers (CZ_OIP_7). The labour inspectorates can only request rectification of identified irregularities or impose a penalty – they are not responsible for collecting such penalties. However, this applies to many labour inspection systems, particularly to those specialised in OSH matters. However, in the Czech Republic many penalties remain as proposals and only a few are ever followed through. The entire process is rather lengthy and complicated (Svobodová and Vacovská 2015). The labour inspectorates can notify other authorities based on their competence and powers, including the Czech Social Security Administration, the police, the Customs Authority, Regional Public Health Authorities, local authorities, the OCID or NGOs (Majerová and Kutálková 2016: 12).

6.4.3 Anti-Trafficking Approaches

Investigations of cases of trafficking for labour exploitation and enforcement of anti-trafficking law are not core tasks of the labour inspectorate but have become supplementary tasks embedded in its routine activities. The labour inspectorate has a strong focus on irregular employment (Majerová and Kutálková 2016: 20). The issues of trafficking for labour exploitation and irregular employment appear to be institutionally and operationally interwoven. For example, in the past, two projects addressing irregular employment were implemented. As part of one of these projects⁴⁹ labour inspectorate staff received training in the fields of irregular employment and trafficking for labour exploitation, and information on labour regulations and advice on how to act in cases of labour exploitation were drawn up (2016: 20). That irregular employment or labour and trafficking for labour exploitation are closely intertwined issues in the Czech Republic is also reflected in the organisational set-up: the Department for Trafficking in Human Beings and Illegal Migration in the Organised Crime Investigation Department (OCID) is a nationwide police department specialised in combatting organised crime; it is made up of several independent departments and is the principal actor in tackling irregular employment and human trafficking. It is a member of both the ICG and the Interdepartmental Body for Combatting Illegal Employment of Foreigners (the working

⁴⁸ <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/czech-republic/czech-republic-temporary-agency-work-and-collective-bargaining-in-the-eu>, accessed 13 September 2016.

⁴⁹ *Efektivní systém rozvoje zaměstnanosti, výkonu komplexních kontrol a potírání nelegálního zaměstnávání v ČR* [Effective system of employment development, exercise of comprehensive controls and combatting illegal employment in the Czech Republic].

body of the MLSA). The OCID also works on the basis of wide interdisciplinary co-operation, including with labour inspectorates (CZ_UOOZ_8; Majerová and Kutálková 2016: 12).

Although the labour inspectorates in general are emphasising the importance of taking a preventative approach (and also of having some preventative strategies and projects in place) rather than a repressive approach, that in the Czech Republic is strongly focused on the issue of irregular employment or labour when it comes to tackling trafficking. At the same time, this approach is framed as tackling the demand side. According to interviewees, inspection activities operate on the assumption that labour exploitation is frequently linked to poor working conditions and that there is a very narrow line distinguishing them from irregular employment (CZ_OIP_7). According to this understanding labour inspectorates address the demand side by focusing on the following three areas: irregular employment, working conditions and the payment of wages (CZ_OIP_7, CZ_OIP_5, CZ_SUIP_9). This is achieved by thorough monitoring during inspections of irregular employment. In 2014, a total of 15,911 inspections were carried out in a bid to reveal the irregular employment of Czech and foreign nationals in the Czech Republic. However, the other side of the coin is that labour inspectors are confronted with a lack of trust by workers, since the inspectors' interventions expose the workers to potential deportation. This problem was criticised by several experts, since exploited persons are not willing to co-operate with labour inspectorates and other authorities, particularly in the initial phases, due to their fear of penalties and deportation (CZ_SIMI_2, in CZ 19). This is a vicious circle that impedes the detection of trafficking for labour exploitation. This phenomenon is not, of course, limited to the Czech Republic but is well known in other countries too (Majerová and Kutálková 2016: 18f).

As mentioned critically by several interviewees the way the Sanctions Directive was implemented has perverted some of its intentions. It has not contributed to eliminating irregular employment since it imposes sanctions not on the employers but rather on their irregularly employed foreign national workers (Jelínková 2014; Majerová and Kutálková 2016: 23).

Activities that the labour inspectorates (SLIO, RLI) carry out as part of their standard and project work are not primarily conceptualised as measures for addressing the demand side; however, when asked to think in terms of demand, the interviewees spoke about inspection activities and sanctions directed at the activities of staffing agencies, of efforts to eliminate so-called pseudo-agencies that operate without a licence, and about inspections and other activities to combat irregular employment that are viewed as measures to address the demand side of trafficking for labour exploitation (CZ_SUIP_9; CZ_OIP_7; Majerová and Kutálková 2016).

Since the anti-trafficking approach of the Czech Republic is situated in the security sector (Ministry of the Interior) it tends to be more of a criminal justice approach. The anti-trafficking activities of the labour inspectorate are integrated in its routine activities, and are linked to efforts to tackle irregular employment – the focus of efforts to tackle labour crimes. The labour inspectorate uses a command-and-control approach, together with elements of a

compliance approach (requiring rectification), as is the practice in most labour inspection systems. In terms of labour-law breaches, it seems to not be very effective in the implementation of sanctions, meaning that employers might not be significantly affected by them.

6.5 Anti-trafficking and Labour Inspection in Germany

6.5.1 Legislative and Political Anti-Trafficking Framework Germany

Introduced in 2005, the German Criminal Code criminalises human trafficking for labour exploitation in Article 233, and assisting in human trafficking in Article 233A. In Article 232, human trafficking for sexual exploitation is criminalised. This is entirely relevant as its paragraphs 3–5 – which describe specific constellations such as under-age victims, physical abuse of victims, the placing of victims in danger of death and the commitment of the offence on a commercial basis or as a gang activity – also apply to Article 233.

The UN Convention, to which Germany is a party, mentions three components to human trafficking. The first one, an action, concerns the ‘recruitment, transportation, transfer, harbouring or receipt of persons’. These actions are covered in 233A. The second component is the means, defined as the ‘threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person’. Not all of these are explicitly mentioned in German law, and there remains doubt as to whether ‘abuse of power’ as a mean is adequately reflected in the criminal code (GRETA 2015b: 19). In line with the UN Convention, the use of means becomes irrelevant when the victim is under age – and, as a German particularity, this includes persons younger than 21 – and the criminal offence of human trafficking for labour exploitation is fulfilled. The third element concerns the purpose of exploitation (GRETA 2015b: 19; Winkler 2016).

In practice, the articles on human trafficking for labour exploitation are rarely applied (Berliner Bündnis gegen Menschenhandel zum Zweck der Arbeitsausbeutung 2012: 33). One of the reasons for this is the vague wording of the law, which defines labour exploitation as working conditions between which there is a ‘clear discrepancy’ with those of other workers doing the same or a similar activity, and which leave a lot of room for interpretation; further, the law names ‘slavery’ and bonded labour as examples, which leads to associations that have little to do with the reality of trafficking for labour exploitation in Germany (Hoffmann and Rabe 2014; Thielmann *et al.* 2015: 10). In addition, application of the offence is hampered because it refers to the subjective features of a perpetrator’s purpose or a victim’s sense of being coerced, which are both difficult to prove but which define the offence. For these reasons, other laws – such as article 266a, ‘non-payment and misuse of wages and salaries’ – are more commonly applied in cases of trafficking for labour exploitation, as the offence is easier to prove (Berliner Bündnis gegen Menschenhandel zum Zweck der Arbeitsausbeutung 2012: 33; Winkler 2016).

In 2015, the government presented a draft for a new law on human trafficking in order to be in line with Directive 2011/36/EU, which expired in 2013. These suggested changes had little specific impact on the laws on trafficking for labour exploitation, as they were mostly additions covering trafficking for organs or to commit crimes. The problems with the law – voiced by experts and actors in the field – were not taken into account in this draft, as the German government saw this only as a first step in a complete overhaul of the laws on human trafficking. This process would include ways to better protect victims and, in particular, a fresh examination of the law on human trafficking for labour exploitation⁵⁰. The second step in this overhaul was agreed by the German Federal Cabinet in April 2016. The Minister of Justice and Consumer Protection, Heiko Maas, put forward a suggestion on how to further improve the draft bill, introducing extensive changes, including the separation of trafficking for labour exploitation and labour exploitation itself (Bundesministerium der Justiz und für Verbraucherschutz 2016). Labour exploitation is here defined as an occupation under working conditions – for the ruthless pursuit of profit – that do not match conditions for those working in the same or a similar occupation⁵¹ (Winkler 2016). In order for the offence to be considered as labour exploitation, the element of abuse of a worker's personal or economic vulnerability, or the helplessness that arises from being in a foreign country, are also essential. The proposed changes in the law on (human trafficking for) labour exploitation are justified by the need to make them more applicable in practice. However, they are criticised by NGOs for not simply criminalising labour exploitation, no matter whether an element of abuse of a victim's situation is included in the exploitation or not. The law came into effect in October 2016 (KOK 2016 ; Winkler 2016).

Germany has established neither a National Rapporteur nor a National Task Force although the Federal Criminal Office has a special section on trafficking and publishes an annual situation report on trafficking in human beings which takes into account police activities and results⁵² (KOK 2016). The mechanisms and co-ordination instruments are decentralised and organised at the level of federal states or *Länder*, i.e. on the basis of round-tables. All in all, the anti-trafficking instruments appear to be less institutionalised or more based on individual projects and initiatives. Most of the projects and co-operation agreements at *Länder* level are still limited to sexual exploitation. The actors usually involved are the police and counselling centres although, in some *Länder*, other actors such as job centres, social administration and foreigners' registration offices are also included.

The country's strategy for tackling trafficking for labour exploitation is just taking shape. In recent years, there seemed to be some conflict about responsibility for trafficking for labour

⁵⁰ BR-Drs. 54/15. Entwurf eines Gesetzes zur Umsetzung der Richtlinie 2011/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbeschlusses 2002/629/JI d. (2015).

⁵¹ BT-Drs. 18/4613. Zusammenstellung des Entwurfs eines Gesetzes zur Umsetzung der Richtlinie 2011/36/EU des Europäischen Parlaments und des Rates vom 5. April 2011 zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer sowie zur Ersetzung des Rahmenbes., Pub. L. No. BT-Drs. 18/4613 (2016).

⁵² <https://www.bka.de/SharedDocs/Downloads/EN/Publications/AnnualReportsAndSituationAssessments/TraffickingInHumanBeings/traffickingInHumanBeingsReport2014.html?nn=39740>, accessed 18 December 2016.

exploitation. Originally, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) initiated a strategy focusing mainly on trafficking for sexual exploitation, which they later extended to trafficking for the labour exploitation of women. Since the Federal Ministry for Labour and Social Affairs showed a willingness to take this matter into their own hands, conflicts about responsibilities arose. When the research for this study was conducted, it was still unclear how this conflict of competence would be resolved. In 2015, a Working Group on Labour Exploitation (*Bund-Länder-Arbeitsgruppe (B-L AG) Bekämpfung des Menschenhandels zum Zweck der Arbeitsausbeutung*) was introduced which brought together both federal and national authorities in order to establish co-ordination; since then, the Working Group has held three meetings and presented a proposal for a policy strategy to the public.⁵³ The federal states are represented by a member of the Conference of Social and Labour Ministries of the federal states. There are unsettled differences of opinion about the federal government and federal state agencies' responsibilities.

Single federal states like Hamburg that have shown a particular interest in the topic have established small-scale initiatives dealing with trafficking for labour exploitation, but there are no initiatives that stretch across several states or even nationwide. However, several projects and initiatives do or did co-operate with government authorities – for instance, the Alliance against Human Trafficking for Labour Exploitation (*Bündnis gegen Menschenhandel zur Arbeitsausbeutung*), a project which was running until 2015, linked together several actors of the field in selected federal states – including actors such as the police, customs, prosecution, trade unions, employment agencies and NGOs – and offered workshops, conducted research and provided counselling for victims. The idea behind these workshops was to create a working atmosphere in which co-operation and knowledge exchange could take place to improve the work in practice. Towards the end of the existence of the Alliance, the police also started referring victims to them, but never as part of a formal co-operation agreement (DE_NGO_3, Winkler 2016).

6.5.2 Germany: Labour Inspectorate Authorities

In Germany, labour markets are inspected by a wide range of actors, the most important of which are the labour inspectorates and the Financial Monitoring Unit to Combat Illicit Employment (FKS). The German labour inspectorate (*Gewerbeaufsicht, Arbeitsschutz*) is specialised in the control of occupational health and safety regulations in the private sector. The functions of OSH authorities are carried out by over 100 local administrative entities of the federal states, with different scopes for action based on the German Occupations Safety and Health Act (*Arbeitsschutzgesetz, ArbSchG*) and the Act on Working Hours (*Arbeitszeitgesetz, ArbZg*). Labour inspectorates have the same competences as local police departments. Where inspectors find irregularities, they ask the employer to remedy them; if the employer fails to do so, a fine can be imposed (Hoffmann and Rabe 2014: 9). The prevention of labour exploitation or even human trafficking is not in their mandate; however,

⁵³ <http://www.bmas.de/EN/Services/Press/recent-publications/2016/second-workshop-combating-human-traffic.html>, accessed 1 October 2016.

they are expected to pass on any suspicion of crimes they may have to the police or the public prosecutor (Hoffmann and Rabe 2014).

Several interviewees (e.g. GE_GOV_5) stated that the labour inspectorate authorities do not play a significant role in efforts to prevent trafficking for labour exploitation. One reason given is that it would not make sense to involve OSH authorities because they do not monitor payment or employment issues, though these are important matters in relation to exploitation (GE_GOV_5).

The FKS is expected by many stakeholders in the field to be the more relevant actor in tackling trafficking for labour exploitation since it is the only federal body monitoring workplaces, mandated under the Control of Unreported Employment Act (*Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung* – *SchwarzArbG*). Article 10 (1) of the act punishes the offence of the employment of persons without a regular residence permit in conditions that are 'in clear discrepancy to those of German workers carrying out the same or comparable work' (see above, Hoffmann and Rabe 2014). This phrase was first introduced in Article 15a (1) of the Law on Labour Leasing (*Arbeitnehmerüberlassungsgesetz, AÜG*), applicable only to subcontracted employees (Hoffmann and Rabe 2014). The FKS is a part of the country's customs and excise body and a federal structure under the authority of the Federal Ministry of Finance responsible for fighting 'undeclared and illicit employment', and inspections to determine whether social security provisions are adhered to and whether migrant workers have a residence permit. In contrast to the labour inspectorate system, the FKS is the only authority at the federal level to carry out armed inspections at workplaces. Nevertheless, like the authorities in charge of detecting trafficking for labour exploitation in other countries, it is, in practice, only a side effect of other, more prioritised inspection activities. This was also criticised in the 2015 GRETA report which suggests that frontline actors such as FKS need to have a formal role in the identification process and to be provided with harmonised operational indicators. Actors like the police, FKS and the labour inspectorate should also adopt a more proactive approach and increase their outreach work (GRETA 2015b: 37). The report also states that there is a 'crucial lack of awareness amongst key authorities like labour inspectorates, the police, prosecutors, judges [and] foreigners' registration' (2015b: 36).

However, the FKS already takes part, at either local or regional level, in officially established co-operation and is also involved in several initiatives and projects. For example, in the federal state of North Rhine-Westphalia, the Ministry of the Interior and Municipal Affairs (*Ministerium für Inneres und Kommunales*) regulates how authorities deal with foreign victims of human trafficking. In 2010, a directive was passed that explicitly covers, *inter alia*, trafficking for labour exploitation. It lays out the tasks and the legal framework of the Aliens Department in cases of suspected human trafficking. Originally introduced in the context of sexual exploitation, a co-operation decree between the police, the customs authority (now FKS) and information centres has now been extended to also cover victims of trafficking for labour exploitation. The same applies to further systematic co-operation between the FKS

and the OSH authorities. Following this, suspicions of exploitation recognised during OSH inspections will be passed to the Financial Monitoring Unit, a measure supported by leaflets from the Federal Criminal Police Office specifying indicators of exploitation to be aware of. Specific measures exist for the construction sector. Not only does it co-operate with the Ministry for Labour, Integration and Social Affairs in tackling undeclared employment, but there is also a new initiative to make it easier for the FKS to control large construction sites through an improved information flow between them and regional governments (Thielmann 2013).

The FKS is also involved in the *Fachkommission Menschenhandel* in Berlin, an initiative supported by the Senate Administration, which tries to establish systematic co-operation in cases of extreme exploitation and human trafficking. However, it was also mentioned by an interviewee that this co-operation proved to be difficult and complicated: 'After three years there are regular meetings and it has been established what the problems are, and how co-operation would have to be' (GE_TU_6).

6.5.3 Anti-trafficking Approaches

Unlike Austria, Germany's labour inspectorate does not play an effective role in efforts to combat trafficking for labour exploitation – there have been criticisms that the inspectors are lacking qualifications and training in its detection. There are also concerns expressed by experts that the fragmentation of the inspection tasks reduces the capacity for implementation, co-ordination and co-operation (SYNDEX 2012: 43). In contrast, the Financial Monitoring Unit to Combat Illicit Employment (FKS) is frequently mentioned as another authority that inspects workplaces and has a mandate to detect cases of human trafficking. Despite its mandate being based on the Control of Unreported Employment Act,⁵⁴ which explicitly mentions trafficking for labour exploitation (restricted, however, to foreign nationals without a residence permit, a restriction not included in the penal law offence of trafficking for labour exploitation), the FKS' focus is clearly on detecting irregularities in the payment of social security contributions and taxes (GE_TU_4). It is said that its approach consists mainly of checking identity papers and payment records, an approach that its critics believe does not help to unveil irregularities but, instead, is often misleading in terms of trafficking for labour exploitation (GE_TU_2, GE_TU_4). The same applies to the labour inspectorate. 'It does happen quite often that FKS or occupational health and safety turn up at the workplace, but they only check the situation on paper' (GE_TU_2).

According to the interviewee (GE_TU_2), the manipulation of documents is often used to conceal the actual situation: victims say that, when FKS was there, they were pressured into saying specific things, bringing in their paperwork or tricking the authorities. In fact, the likelihood that a company would be inspected is very low, due to scarce staff resources.

⁵⁴ http://www.gesetze-im-internet.de/schwarzarbg_2004/_§10a.html, § 10a Beschäftigung von Ausländern ohne Aufenthaltstitel, die Opfer von Menschenhandel sind, http://www.gesetze-im-internet.de/schwarzarbg_2004/_§10a.html, accessed 16 September 2016. http://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligations-during-inspections/obligations-during-inspections_node.html, accessed 16 September 2016.

There is systematic co-operation between the financial monitoring body FKS and the OSH authorities whose remit has been expanded to include the identification of trafficking cases. However, research with relevant stakeholders has revealed that neither authority is very active in the area of anti-trafficking.

The FKS is supposed to be the principal actor in the detection of trafficking for labour exploitation, at least in the view of a number of stakeholders in the field. NGOs and trade unions express some frustrations about the FKS. It is also assumed that the FKS is not really interested in engaging with the persecution of trafficking for labour exploitation. For some interviewees, the same applies to both the judiciary and the government. Budget restraints are mentioned as the main reason for the lack of inspection activities and the enforcement of anti-trafficking law. One interviewee summarised this problem as follows: Human trafficking is an *'unattractive topic'* and also not very rewarding in terms of yielding successful investigations. One interviewee explained that the FKS is told at the beginning of the year how much money they have to make in the different areas of their work so, for them, it is much easier to find small problems and charge them many small sums of money – it simply makes no sense to investigate something that involves so much work and makes virtually no money. Also, as the police do not carry out inspections, they cannot really co-operate with the FKS. Taking along a police officer would simply be too expensive given the large number of inspections the FKS is carrying out and the fact that the police are also understaffed. The same applies to the prosecutors because it makes a lot of work for them with little financial outcome (GE_TU_6).

Although these accusations cannot be verified within this study, not least because FKS officials refused to give an interview, it is plausible that cost effectiveness will be a decisive issue in any future planning of the FKS and the police. There may well be political reasons too. One expert conceded that it is difficult to change the focus of the authorities, not only because of their lack of experience and awareness but especially because there is no political pressure to do so (GE_TU_4). Although guidelines with indicators already exist, they are not used by the inspection authorities, at least not in any officially binding way (GE_TU_4). Only at the federal state level are there initiatives by NGOs and trade unions that include the FKS in efforts to wipe out trafficking for labour exploitation. However, these actors are struggling financially and any initiatives are usually on a temporary basis. Nevertheless, initiatives like the Alliance against Human Trafficking for Labour Exploitation alliance are described as quite successful at working with the FKS and being a positive experience, because FKS officials showed interest in learning in the workshops and being integrated in the regional structures. Apparently, the organisation to which one respondent (GE_TU_4) belonged conducted about 60 workshops, half of them with the FKS alone (GE_TU_4).

Several experts are of the opinion that there are gaps in the current practice of identifying victims of trafficking for labour exploitation (GE_NGO_3, GE_GOV_5). An NGO representative (GE_NGO_3) mentioned that there is no strong interest in the topic and that relevant actor, such as the police or customs officers consider trafficking for labour

exploitation to be a niche topic. Another interviewee said that the FKS might notice labour exploitation but opts instead for 'more easily applicable' laws such as the non-payment of social security (Ge_Gov-5).

GE_NGO_3 said that it is a challenge to find *someone* who wants to take on the responsibility of being a point of contact in matters concerning labour exploitation. A representative from a city government co-ordinating a regional network against human trafficking voiced an even more severe criticism: 'It is true. Customs, eh, FKS, state prosecution, are not doing their work for whatever reason. They do not fulfil their tasks. That's how we see it' (GE_GOV_1).

In contrast, a representative of the Ministry for Labour and Social Affairs portrayed the FKS as engaged, but with a very extensive remit and insufficient resources to allow them to be further involved in efforts to tackle trafficking for labour exploitation (GE_GOV_5). However, he conceded that the federal structure makes it difficult to react sufficiently to the changes that human trafficking has undergone in the past years, because of the fact that several institutions are responsible (Ge_GOV_5). Trafficking structures adapt and learn quickly whereas, on the other side, the system is very slow about doing something against them (Ge_GOV_1).

It is no surprise, therefore, that some people believe that the government is responsible for the lack of action against trafficking in labour exploitation:

'I have also often complained about the FKS because it annoyed me that, if someone comes to my office and I prepare the case with the criminal sections, the suspicions and the evidence [of trafficking for labour exploitation] I imagined that they would only have to open it and say, 'Oh okay, great, these are all the areas, now I can voice an official initial suspicion'. I have often complained because I thought they just didn't feel like doing that. Until I realised, at some point, that I did not actually know what their task is. When you speak to someone who is not the official spokesperson they always say something nice, but if you actually speak to those employees who are part of the investigation, then you understand that this is simply such a small part of their work that they just cannot give this more attention, and that at the end of the day it is stupid to assign human trafficking or the investigation of human trafficking to the FKS. It is clearly an indication that there is no interest from the national government (GE_TU_6).

At the local or regional level, systematic approaches can be found (e.g. in North Rhine-Westphalia) where different stakeholders like NGOs, church organisations, regional or municipal government authorities, job centres, the police and customs are organised to tackle human trafficking (GE_GOV_1). Nevertheless, the FKS and labour inspectorates (Arbeitsschutz) are often thought to ignore invitations to co-operate on such initiatives or projects (KOK 2011: 106). This is even more the case with the labour inspectorate (Arbeitsschutz). According to criticism voiced by several stakeholders, the FKS (and, to a

lesser extent, the labour inspectorate) are viewed as being responsible for the inspection of workplaces but are not doing it either sufficiently or effectively. However, these claims could be based on unfounded assumptions and accusations of exerting pressure on grounds of moral confidence.

The anti-trafficking structure in Germany is currently undergoing changes in terms of its legislative frame and steering (establishment of the Working Group on labour exploitation), with regional initiatives of more relevance than federal ones. The FKS and also certain labour inspection authorities are officially tasked with the detection of trafficking for labour exploitation. This is embedded in their routine controlling activities. The FKS approach is a command-and-control one predominately focusing on irregular and foreign labour. However, instead of implications that the FKS is unwilling to tackle trafficking for labour exploitation, its approach could also be interpreted as not using the ideology and rhetoric of anti-trafficking to legitimate their original criminal approach in combatting undocumented labour.

7 Labour Inspection and Law Enforcement in Labour Markets and their Impact on Demand in the Context of Trafficking for Labour exploitation

In the following section, the different national frameworks steering anti-trafficking efforts are analysed and compared. The results should reveal the extent to which labour inspection authorities are expected to regulate demand in the context of trafficking for labour exploitation and what that means in terms of the resources, mandates and institutional and legislative set-up they are provided with in order to identify the limitations of their efforts. Further we examine how far the assignment of these additional tasks has resulted in substantive shifts in the informal structures and practice of labour inspection authorities and the extent to which tendencies towards a regulatory state can be observed. The aim is to identify the different measures and approaches used by law enforcement actors in labour markets and their potential and limitations – within their regulatory national and institutional contexts – for addressing demand. As set out in the first section, different approaches and strategies can be identified and developments towards a regulatory state observed in some areas. Theoretically command-and-control and deterrence approaches can be distinguished from approaches that go beyond these, such as smart regulation, self-regulation and compliance approaches. The latter regulatory instruments can indicate what Majone (1994) calls the ‘rise of the regulatory state’. Within the spectrum of smart approaches fall market, peer-pressure, moral-suasion and design approaches (Boswell and Kyambi 2016).

7.1 Strategies and Approaches of Labour Inspectorates to Address Trafficking for Labour Exploitation

The strategies and approaches of the labour inspecting authorities vary considerably, not only because of the different institutional set-ups of the national anti-trafficking framework and labour and migration regulation regimes, but also due to the different original principles

and mandates they act upon. The operations of the labour inspectorate do not focus exclusively on trafficking for labour exploitation, but are embedded into more-comprehensive approaches tackling various labour- and employment-law breaches and criminal offences.

In Austria, the Netherlands and the Czech Republic, both approaches to tackle trafficking and the organisation of the labour inspection system are federally steered. In Germany, the FKS is also organised at a federal level; however, the labour inspection system operates on a *Länder* level, while the federal structures regarding anti-trafficking are currently being reorganised. The institutional landscapes regarding the supervision of labour standards are rather complex and fragmented in Austria, Germany and the UK. In the latter, a reorganisation is ongoing and a more integrated and strategic approach is being discussed. The passing of the Modern Slavery Act (MSA) led to major changes in the country's legislative and institutional landscape which will change the operating environment of the GLA (Kyambi 2016). In Austria, co-operation between the various law enforcement actors is anchored within a specialised sub-group of the Task Force against Human Trafficking. This co-operation is less formal and is highly dependent on the personal or organisational engagement of individual actors – this is viewed as both practicable and useful in a small country like Austria. The Dutch anti-trafficking framework is the most systematically steered one; the National Rapporteur plays a major role in steering and developing strategies. The Dutch anti-trafficking efforts create an extensive institutional framework that is both multidisciplinary and integrated, with a co-ordinated collaboration of multiple actors including, for instance, the municipalities and NGOs. A special criminal investigations department within the labour inspectorate is mandated to investigate in the area of labour-related crimes, including trafficking for labour exploitation, and has policing functions. In the Czech Republic, efforts against trafficking for labour exploitation are situated much more in the security realm, possibly as a consequence of the fact that the Ministry of the Interior functions as the National Rapporteur and Co-Ordinator. In the Czech system, the investigation and prevention of trafficking for labour exploitation are strongly intertwined with the strategy against irregular employment.

Overall, labour inspection bodies are involved in national anti-trafficking efforts and are expected to contribute to the detection of trafficking for labour exploitation in all the investigated countries, at least on paper. However, it is not clear how far this has resulted in substantive shifts in the informal structures and practices of labour inspection authorities. Therefore, in the following section, approaches used by labour inspection bodies will be analysed.

Labour inspection systems can be both comprehensive and dual. In comprehensive labour inspection systems like those in the Czech Republic and the Netherlands, the two areas of protection and prevention (OSH), on the one hand, and criminal investigations on the other, are covered by the labour inspectorate, though these domains are assigned to different departments. Both inspectorates apply approaches that combine tackling various labour breaches and crimes as well as trafficking for labour exploitation. In a similar vein, the Austrian financial police and the FKS in Germany have a strong focus on undeclared

employment – and consequently on migrant workers. Nevertheless, these tasks are always at risk of being conflated and it is not possible to draw a clear-cut line across the continuum of breaches ranging from carelessness and less-severe violations of the law to severe crime (see Skrivankova 2010). From the literature (Flex *et al.* 2015) and also the interviews conducted for this study we know that, in cases where the identification of victims of trafficking for labour exploitation is embedded in a criminal department that involves the detection of undeclared or irregular work and/or immigration, this can inhibit the identification of victims of trafficking.

The objectives of prevention, detection and investigation actually create considerable tension, particularly for the labour inspectorates. From their perspective and in practice, detecting cases of trafficking can conflict with their principles of prevention and advice, which they act upon according to their original mandate. The result is that the anti-trafficking framework sits uncomfortably alongside other operational priorities, creating difficulties both in internal operations and in external co-operation with other bodies. The focus on extreme cases also risks diminishing appreciation of lesser incidents of exploitation, thereby normalising precarious and even exploitative labour conditions that do not meet the same threshold. However, the status of ‘trafficking victim’ which comes with particular entitlements, in theory at least, should solve the problem for control agencies. In practice, for the victims or workers, this solution is often not satisfactory since they lose their jobs and are transferred to the victim protection system (e.g. shelters) and eventually back to their countries of origin. For this reason, joint action with other law enforcement actors (e. g. the police, the financial police) are viewed critically not only by the labour inspectorates themselves but also by NGOs and trade unions.

Dual systems, like the Austrian and German ones, are characterised by the separation of the tasks of monitoring OSH issues in a narrow sense – including working hours – by the labour inspectorate, on the one hand, and employment and payment issues – including fiscal and social welfare fraud and undeclared employment monitored by the financial authorities (financial police in Austria or the FKS in Germany) – on the other. The two actors follow different principles: the labour inspectorates’ aim in general is understood as the protection of the lives and the health of employees in the workplace.⁵⁵ The aim of the financial police in Austria and the FKS in Germany is to ensure fair and equal terms for participants in economic life while protecting the financial interests of the state. In both countries, interviewees pointed out that they have a narrow understanding of anti-trafficking law and are thus acting quite reservedly in this regard.

All labour inspectorates apply predominately command-and-control approaches which rely, to a great extent, on deterrence, since their resources are limited and the likelihood for a

⁵⁵ See, for example, http://www.arbeitsinspektion.gv.at/inspektorat/Information_in_English/, accessed 12 December 2016. Historically, the idea behind this concept was the protection of persons who are in a situation in which they are financially dependent on their employer. However, social protection was achieved not only out of humanitarian but also economic and political considerations – e.g. the growing strength of social democracy (von Richthofen 2002: 8) – and when employers were convinced that the benefits of social protection would exceed the cost.

business to become controlled is quite low, although the link with tackling irregular (migrant) employment includes elements of a targeted approach. In terms of influencing demand in the context of trafficking for labour exploitation, Austrian interviewees, in particular, often argued that a repressive approach would have a deterrent effect and would influence employers to comply with the whole range of standards. Additionally, it is often argued that addressing less-severe incidents of labour standard breaches will prevent more-severe ones. Generally, monitoring and inspection are viewed as effective means of prevention of poor working conditions and labour-law breaches, and consequently of all forms of labour exploitation, including trafficking for labour exploitation – thus also addressing the demand side. However, there is no evidence to support such an opinion. For instance, the report of Austria's accounting office does not really provide any indication of an effective deterrence approach (Rechnungshof 2013). In Austria, particularly in contrast to the UK, these beliefs might be due to the strong social partnership and the tripartite set-up of actors involved in labour inspections and relatively high labour standards. The Austrian approach can be described as legalistic and strongly influenced by its neo-corporatist political culture. Like Austria, the Netherlands and Germany also have a strong neo-corporatist tradition.

Conversely, self-controlling and private regulation systems are rarely employed and clearly separate from the labour inspection system in Austria. Private or self-controlling systems are generally viewed rather sceptically, with legal – command-and-control – measures being seen as the most efficient. This is reflected, for instance, in the view that legal provisions like the Combating Wage and Social Dumping Act are considered among the most important remedies for addressing the behaviour of employers. Similarly, in Germany, the introduction of a minimum wage in 2015 is regarded as a milestone and as an important measure with which to address the demand for cheap labour by deterring employers from underpaying their staff (GRETA 2015b: 32). Responsibility for controlling lies with the FKS as an additional task. In the Netherlands, the WAS Act (*Wetsvoorstel aanpak schijnconstructies*), which fully entered into force in 2016, is felt to have had an impact on employers' behaviour, to prevent the underpayment of (foreign) employees and to strengthen the latter's legal status by various means (e.g. by holding the main contractor liable for wage payments).

A central finding with regards to addressing demand in the context of trafficking for labour exploitation is that these command-and-control strategies rely, to a great extent, on the effectiveness of the country's legal instruments and law enforcement; their effectiveness depends on various factors such as the scope of the regulation regime and the power of the labour inspectorates to administer sanctions and remedies, the likelihood of inspection and detection, and the quality of sanctions (swiftness, level of penalty, appropriateness). Limited funding and staff can be overcome by more-selective strategies – i.e., more targeted in terms of effectiveness and/or profit.

The GLA's licencing approach is quite unique in terms of its enforcement of labour standards. The approach addresses labour issues comprehensively, while focusing specifically on the most vulnerable workers and sectors. At the same time and in contrast to the remit of other inspection systems, the GLA's mandate is very specialised while limited in terms of sectors

and businesses; it includes self-regulation in some areas. The implicit assumption of the GLA's approach is that the majority of employers comply with the law (the compliance approach).

Plans to extend the scope of the licensing regime to other sectors vulnerable to exploitative practices are appreciated by several actors in the field – and the GLA itself, in principle – but are overshadowed by concerns that it will not be effective without an adequate increase in budget and resources (staff). Already the likelihood of inspections taking place is very low, even within the current limited GLA regime. Nevertheless, experts rate the effectiveness of the GLA licensing approach – within the set limits – as high. What differentiates the GLA approach from the others is that it is deliberately based on the principle of avoiding the imposition of too great a regulatory burden on businesses. This suggests that some sectors in particular (e.g. the retail and supply sectors) are in a more powerful situation than the law enforcement actors or that the political will not to regulate businesses so much but rather to leave them to self-regulate is politically prioritised (Kyambi 2016: 17f). The GLA approach reflects, to some extent, a market-oriented political culture situated in an environment of labour deregulation.

Nevertheless, debates on the appropriateness of the regulatory burden could well be an issue in all countries. For instance, in Austria, the labour inspection authorities sense a climate of pressure exerted by economic actors and are probably acting with more restraint in response. In the recent past, business associations have regularly protested against the growing regulatory burden and against inspections – above all by the financial police and inspections regarding employment issues, but also by the labour inspectorates.⁵⁶ At the same time, the number of inspections by the labour inspectorates has decreased⁵⁷, although it is feared that worker protection will be weakened by constant claims by employer associations (e.g. *Wirtschaftsbund*) and the conservative party for further reductions. Critics also feel that the level of penalties is too low to have a deterrent effect. These developments show that labour-law standards and inspection systems are coming under increasing pressure while, at the same time, labour inspectorates are tasked to also detect signs of trafficking for labour exploitation. This could indicate that the regulation of less-severe cases of labour-law breaches tend to be less prioritised or even to no longer exist – consequently, such breaches might again become increasingly normalised.

Since labour inspection authorities in all the countries in our study have limited resources, businesses know that there is little likelihood of their being inspected too often and that follow-up inspections are rare, say the critics. There is much discussion on how best to allocate the authorities' limited resources, and more specifically on how to achieve a deterrent effect and employer compliance with labour standards generally.

⁵⁶ http://www.wirtschaftsbund.at/Content.Node/bundesleitung/aktuelles/Haubner_zu_Arbeitnehmerschutz.php, accessed 1 October 2016; http://www.ots.at/presseaussendung/OTS_20160828_OTS0023/haubner-zu-arbeitnehmerschutz-brauchen-praxistaugliche-losungen, accessed 1 October 2016; https://www.parlament.gv.at/PAKT/VHG/XXV/J/J_09063/imfname_528386.pdf accessed 1 October 2016

⁵⁷ <http://blog.arbeit-wirtschaft.at/arbeitnehmerschutz> accessed 1 October 2016

The approach of the Dutch labour inspectorate explicitly addresses trafficking for labour exploitation and that of the GLA forced labour, although it is not the main task of either of these authorities. In general, their approaches are based on systematic risk assessment and intelligence; their activities also undergo systematic evaluation. Both have incorporated managerial elements to a great extent into their approaches. In contrast to the Netherlands and the UK, intelligence gathering seems not to be strongly developed in the other countries. However, an element of randomness with regard to the focus of attention can be observed in all countries. A strong focus on a specific sector is often for factual reasons – e.g. many posted workers in a specific sector. For example, it is obvious that the meat-processing sector in Germany has received the most attention in recent years, since it is simply a huge sector in which thousands of migrant workers are employed and where, because of the immense number of subcontractors, it is extremely easy to conceal cases of trafficking for labour exploitation. However, the focus is rarely on trafficking cases exclusively but is also linked to other operations like undocumented and/or foreign employment. The priorities are clearly not on combatting trafficking for labour exploitation in any of the countries or authorities in our study.

A number of experts, particularly from NGOs and trade unions, pointed out that labour inspections are quite selective and were critical of the fact that blind spots are overlooked, such as small businesses or domestic work or work in private households. The detection of cases obviously depends on where and at what the labour inspectorates decide to look. Sectors considered being particularly prone to trafficking for labour exploitation receive more attention, while new phenomena are discussed within international networks and are said to become known very quickly, particularly in small countries like Austria. Personal contacts constitute a valuable source in this regard. They are partly used in a kind of combined peer-pressure and community-based command-and-control approach to gather intelligence. For example, one interviewee from the GLA mentioned that it was very fruitful to be in contact with employees outside their working hours in order to gather useful information (Kyambi 2016). Hotlines or email contacts have been established – particularly in Austria and the Netherlands – which, to some extent, provide useful data. Companies are often said to be interested in providing information about the exploitative practices of their competitors since they want to point out unfair market competition.

In general, the effectiveness or ineffectiveness of law enforcement is determined by a variety of factors: the scope of the regulation regime and power of the labour inspectorates to administer sanctions and remedies, the likelihood of inspection and detection, and the quality of sanctions (swiftness, level of penalty, appropriateness). Due to lengthy and cumbersome procedures and a lack of staff, effectiveness is at risk of diminishing. For example, in Austria, it is said that it can take weeks for a follow-up inspection to take place or for the police to investigate a case. This is a major problem, in particular in the construction sector, since the turnover of companies and workers is high due to the dense networks of companies and subcontractors. The impact of sanctions (penalties or fines) is also weakening, as they are often not as high enough to have a deterrent impact or cannot be enforced. The main reason for

this latter lies in complex and opaque business networks and the lack of transnational law enforcement. Moreover, the procedures are lengthy and cumbersome. The GLA calls for more immediate but lower-level penalties which it can enforce (mainly licence revocations) or new sanctions such as improvement orders (Kyambi 2016: 14).

The actual impact of labour inspections is difficult to assess. To date, systematic evaluation systems seem to be either not very widespread or being developed. Evaluations barely look into the effectiveness and impact of the labour inspectorates' activities – certainly not specifically regarding their impact on the demand side of trafficking for labour exploitation. The Dutch labour inspectorate and the GLA provide reports on their output in terms of the numbers of inspections and investigations of criminal cases and trafficking for labour exploitation they have carried out. Other inspectorates do not make such information public. Eventually, all labour inspectorates report signs of trafficking for labour exploitation to the police, and the police are therefore the principal actor in addressing the phenomenon. The most important point is that there is, in fact, no authority tasked specifically with the investigation of trafficking for labour exploitation; instead, this is a side aspect embedded in the routine activities of the various actors. However, the inspection authorities are expected to play a more active role in tackling trafficking for labour exploitation, at least by some stakeholders in the field, due to their international obligations. Since tackling trafficking is not the main task of any one authority, a general lack of responsibility is observed. This is especially the case in Germany, where systematic steering, at least at the federal level, is not taking place and where anti-trafficking measures with regards to trafficking for labour exploitation are weakly developed. In Austria, the Working Group acts as a network that fulfils the more or less voluntary commitment and establishes a certain responsibility, at least on a personal and ideational level. Nevertheless, who should bear the responsibility remains vague.

7.2 Approaches that Go beyond Command-and-control

In Austria, the construction sector receives special attention through different measures, e.g. there is a specific inspectorate and special legislation (*AuftraggeberInnenhaftung*) which are regarded as explicitly tackling demand. Under the contractors' liability law (*AuftraggeberInnenhaftungsgesetz*),⁵⁸ for example, companies in the construction sector are obliged to control the social-security contributions and income taxes of the companies they commission as sub-contractors.⁵⁹ The social security has a green list of companies which have no financial arrears and which is made public. This system is only partly successful because it covers only domestic businesses; if sub-contractors from another country are taken on by companies, then the measure is no longer effective. Since the green list is made

⁵⁸ <http://www.wgkk.at/portal27/wgkkdgportal/content?contentid=10007.724467&portal:componentId=gtnc7a900f7-1e8e-41c7-a145-ba0a1d388ee4&viewmode=content>, accessed 1 October 2016.

⁵⁹ If a sub-contracted company is not listed (has arrears) it can pay 20 per cent of the commission directly to the social security in order to cover its contributions. The commissioning company could also pay the full amount to the sub-contractor but it would lose the amount in social security and taxes if the sub-contracted company is not honest.

public, this instrument is considered as a measure influencing the demand side and operating according to a peer-pressure approach. Such instruments lists are becoming more and more widespread. They are implemented mostly sector-wide – for example, for temping agencies in the Netherlands – and are considered as promising instruments in terms of addressing employers. Recruitment and temporary work agencies (intermediaries) are a main concern not only of the GLA but also in the Netherlands and the Czech Republic. Specific measures, registration duties and black or white lists are used in this case. Some of these agencies are operated by public–private partnerships. However, the labour inspectorates are not involved but the measures are perceived as helpful flanking instruments.

7.2.1 Awareness Raising

Measures implemented by governments to combat trafficking for labour exploitation are the most often not necessarily earmarked as influencing the demand side. However, a wide range of awareness-raising initiatives addressing all parties involved in labour relations – including end consumers – are frequently mentioned as influencing the demand side; sometimes indirectly in the context of trafficking for labour exploitation by raising awareness in potential victims. Labour inspectorates are also occasionally involved in such projects. Often these initiatives have a more temporal character. For example, in the Czech Republic a project entitled *Inovacemi k prevenci pracovního vykořisťování občanů EU* [Preventing Labour Exploitation of EU Citizens through Innovation] was carried out in 2014–2015 in response to negative events connected to the increasing trend for labour migration. Within this project, the MLSA co-operated with foreign partners from Austria and Bulgaria. The aim of this international co-operation was to identify best practices in preventing labour exploitation (CZ_MPSV_ 1; Majerová and Kutálková 2016: 12).

Interestingly, awareness-raising measures that address employers are relatively seldom employed. One exception is the GLA which is active in training and awareness-raising activities with suppliers and retailers and other relevant stakeholders. These activities led to the development of a Supplier/Retailer Protocol in 2013 and to the establishment, in November 2015, of a GLA Academy which delivers accredited training within the supply chain on how to prevent labour exploitation (Kyambi 2016: 7) In the province of Upper Austria a tripartite arrangement in co-operation with the public employment service (*Arbeitsmarktservice, AMS*) has been set up that holds annual meetings. At these fora, employers of seasonal workers (who are third-country nationals) are informed about their obligations regarding labour law and the minimum wage. In general, such regional or sectoral initiatives are thought to be quite successful. In Austria, Germany and the Netherlands, NGOs and trade unions play a major role in anti-trafficking efforts. The Czech labour inspectorate offers education and counselling, creates training programmes, and participates in round-tables and various information campaigns. They co-operate with actors such as labour offices, the Czech Social Security Administration (the CSSA), the Trade Licencing Department or TLO, customs and excise, the Police of the Czech Republic (PCR), the OCID and NGOs (Majerová and Kutálková 2016: 12).

7.2.2 Self-regulation systems

In the Czech Republic, corporate social responsibility (CSR) instruments are promoted by the government (Majerová and Kutáľková 2016). However, self-monitoring and -regulation instruments are relatively new in all countries, though they are becoming increasingly widespread. For example, in the Czech Republic, the trade associations of temporary work (staffing) agencies came up with a private initiative to improve the reputation of staffing agencies and to 'clean up the market' from 'illegal pseudo-agencies' who disregard the applicable laws and ultimately 'taint the reputation' of other agencies (CZ_APA_10; Majerová and Kutáľková 2016: 26). A certification in forestry also exists, aimed at, among other things, fair working conditions for persons working in the sector (Kutáľková and Hronková 2015).

In some countries, such self-regulation systems – certification systems or codes of conducts – are also supported by the government. In the Czech Republic, the Netherlands and the UK, the governments and authorities show some similarities with regards to their openness to approaches that go beyond mere 'command-and-control' and seem to be more open than the Austrian and German authorities to approaches involving the demand side (i.e. the employers) by means of self-regulating measures (e.g. voluntary codes, codes of conduct). In Austria, such soft-law initiatives are not very common or are not linked to any public measure or authority. One interviewee pointed out that, in Austria, the supermarkets (there is a high concentration on a small number of supermarket chains in Austria) create their own regulation systems, certificates or labels but do not co-operate with the labour inspectorate (AT_GOV_10). There seems to be greater reservation about self-regulation systems there. One expert very firmly stated that effective law enforcement to prevent labour exploitation and trafficking for labour exploitation should be the country's first choice and that then there would be no need for private instruments or new concepts like that of demand.

However, public–private partnerships, market-based instruments and soft-law like self-regulation systems, are often disputed in all the countries we investigated and viewed more critically by some NGOs, employees' associations and trade unions. In most countries, these instruments are not directly linked to the work of the labour inspectorate. Many experts consider approaches that combine law enforcement and private instruments as useful. The certification system within the Dutch agricultural sector is one such an approach. Trafficking for labour exploitation was initially brought to the public attention by a trade union (NL_TU_5) – in the wake of a major trafficking scandal that attracted huge media attention, the NGO Fair Produce introduced a certification system that obliges employers to meet the requirements of the Dutch regulations, and to guarantee fair wages and decent labour conditions and accommodation etc. (according to Dutch law) in the agricultural sector. The certification system is also addresses at the supply chain involving wholesalers, exporters, retailers and processors. Nowadays 75–95 per cent of the mushroom industry is certified by the Fair Produce label (Asscher 2015). According to one NGO representative, 'In the beginning, in 90 per cent of the sector, labour exploitation was found; now 90 per cent of the production has the Fair Produce certificate (NL_NGO_9). According to the public prosecutor, the number of breaches in the agricultural sector has been reduced, although, he believes, this decrease is

due to the fact that the employers have learned to better circumvent the regulations (NL_JUD_6). Consequently, it is even more difficult to detect cases of exploitation (NL_JUD_6). Such circumventions take the form of paying the minimum (but not the collectively agreed) wage but asking for a percentage of it back from employees as an in-kind payment for accommodation or agency fees etc. (NL_JUD_6, NL_GOV_4, NL_TU_5). The case has increased the attention paid to the mushroom industry and to the agricultural sector as a whole. In 2007, a special intervention team was established in response to the indications of irregular labour and wage under-payment in the mushroom sector (NLR9, 2013) and the Ministry for Social Affairs and Employment supported (not financially but rhetorically) this private initiative (NL_GOV_2).

In terms of the enforcement of regulations, the certification scheme means that the requirements for the awarding of a certificate are set and controlled by a private actor. A representative of a trade union spoke of 'private enforcement' in this regard (NL_TU_5). However, some interviewees doubted that the audits would be effective in shedding light on trafficking cases. They criticized the fact that only a small number of interviews with employees were conducted and that the workers tended to deny and did not report any breaches of the law or poor work conditions because they were afraid of losing their jobs. NL_NGO_9 notes that it is very difficult to get information from the workers. It is common that, during the audits, the auditors speak to 15 or 20 workers at each workplace. Compared to the Fair Produce certificate, the Fair Food programme interviews a far greater number of workers. At a workplace with fewer than 100 workers, all were interviewed; at bigger farms at least 50 per cent. In general, certification carries some problems: the control of certificates is very difficult (NL_NGO_9) and it is difficult to withdraw a certificate when standards drop, because obtaining proof is hard (NL_GOV_2, NGO_9).

Critics believe that it has simply been a question of shifting responsibilities. Though supermarkets are under considerable pressure to offer certified products while simultaneously maintaining cheap prices, they tend to pass on this pressure – and consequently the cost – to the producers. As a result, the latter have to pay for the cost of compliance with the laws and regulations and of the auditing by the certifying organisation (NL_NGO_9). It is also true that some companies cannot afford certification (NL_NGO_7), hence the assumption that the certification system remains patchy. Since the cost of the monitoring and enforcement of private regulation systems is passed on to the suppliers or producers and, finally, to the end consumer, compliance with labour standards is subject to market mechanisms.

In general, there is much public attention given to certificates, but not necessarily to fair working conditions (NGO_9). It can also be assumed that certification systems are more successful in sectors where the public is involved more directly, which is the case with product end-consumer use. It is also the case, though to a lesser extent, with products or goods which are concealed within the supply chain or where end consumers are not, or are less, directly involved, for example, in the construction sector. One interview partner viewed certification systems mainly based on a normative mechanism: 'It becomes something you

should do [...] it is not an incentive but your own decision [...] and here it's much more your own will and then it becomes something bigger, and then it becomes something that you should do (NGO_7). So, compliance also depends on the other actors in a particular environment.

One interview partner, who described the GLA regime as a 'preventative framework', offered an analogy of the impact of the licencing regime as the 'broken windows theory' in criminology, stating:

„If you look at criminological research you come across the broken windows theory. If you come across a house windows are broken then next thing is graffiti then the whole area starts to go downhill. So, what we are doing. The licensing compliance provides framework, maintain compliance, if don't maintain compliance well revoke your license etc. If you don't do that people will see a company getting away with something, they will start doing it themselves and then it will spiral out of control.” (iv1; Kyambi 2016: 11).

However, we can conclude that private enforcement actors are facing similar challenges to labour inspectorates and the value of privately financed and operated certification adds value to the existing inspection system. It might also be true that such an instrument can address additional target groups – particularly and more directly the end consumer – and, in this way, multiply the moral pressure to comply.

8 Concluding Remarks

In all countries investigated the idea that trafficking for labour exploitation is a problem which should be tackled by labour inspection authorities has become widely accepted. Although labour inspectorates do not operate explicitly on demand, there is consensus among the actors involved that those authorities tasked with the monitoring of labour standards and conditions influence employers' behaviour with regards to trafficking for labour exploitation and thus deal with employer demand. As a corollary, stakeholders see labour inspection as an effective measure to tackle trafficking. At the same time, outcomes in terms of prosecutions and convictions remain limited. However, the actual impact of labour inspections is difficult to assess. To date, most inspection services lack systematic evaluation mechanisms and, where they do exist, they rarely look into the effectiveness or impact of inspection activities.

However, addressing trafficking for labour exploitation, or labour exploitation more widely, is not necessarily a core part of their mandate. In addition, monitoring is constrained by their limited resources and the continuous expansion of labour inspectorates' mandates and tasks.

In principle, all the inspection authorities operate through traditional command-and-control approaches, emphasising the importance of the deterrent effect of inspections and sanctioning, particularly when it comes to more severe labour-law breaches. At the same

time, law enforcement is patchy in all countries, thus diminishing the deterrent effect of the anti-trafficking (or other) law. Law enforcement activities are reduced and it is questionable whether the increasing number of regulations can contribute to better law enforcement, particularly as the funding of law enforcement bodies bears no relation to the multiplication of tasks involved in these regulations.

The findings of the present study reflect the theoretical assumption that developments in the regulatory state are increasingly concerned with the operation of the market, economic efficiency and procedural fairness instead of with the welfare of the people. Inspections focus particularly on undocumented and migrant employment or labour. Smart approaches like certification, codes of conduct and CSR are in place in some sectors and regions. However, most do not deal directly or exclusively with trafficking for labour exploitation but with working conditions in general. These instruments address the demand side (employers) and aim to incentivise the latter's compliance through the promise of a better reputation for a business and greater competitiveness. Nevertheless, such private compliance approaches and instruments are regarded more as a supplementary means additional to effective inspection, monitoring activities and law enforcement than as a substitute, although command-and-control approaches are frequently accused of being inefficient and costly.

Smart approaches like market approaches, peer pressure, moral suasion or design approaches (like nudging) are not implemented in their purest forms. Regulations that go beyond control are found mainly in combination with more-dominant command-and-control approaches. However, elements of smart approaches are incorporated in some strategies. The Dutch and GLA approaches, in particular, involve a managerial style which is reflected in the extensive use of risk assessment and evaluation and the gathering of intelligence. Their efforts are also more transparent in terms of being publicly disseminated via websites and reports. Labour inspectorates that are specialised in OSH issues apply approaches that are more compliance-oriented (the counselling of employers). In general, labour inspectorates are under pressure to reduce the regulatory burden on businesses and to this end might act in a more tentative way. They have also experienced cuts in resources and even in their powers.

Anti-trafficking frameworks are more diffuse and network-like and involve stakeholder engagement. Therefore, any steering appears sometimes to be bifurcated and might produce conflicting agendas and institutional and cultural conflicts, instead of synergies, when anti-trafficking regulations and national regulatory styles clash. The approaches employed by labour inspection authorities the most often combine diverse instruments and are sequenced so that the compartmentalisation of instruments does not make sense. Instead, dimensions within a continuum ranging from coercive command-and-control approaches to more-compliance-based approaches tending to self-regulation can be discerned although, when it comes to trafficking for labour exploitation, and thus to the most severe breaches of the law, these instruments appear not to be appropriate in practice. However, the demand side (employers, businesses) is hardly ever voluntarily involved in anti-trafficking efforts. Self-regulation measures are more often employed in realms such as environmental issues than

in anti-trafficking efforts. At the same time, there are doubts whether such measures are more effective in terms of preventing and prosecuting trafficking for labour exploitation since, ultimately, they have to be controlled in the same way as the more traditional command-and-control measures.

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10 Annexes

10.1 Interview codes per country

Interview codes per country		
The Netherlands	Austria	Germany
NL_GOV_1	AT_LI_1	GE_GOV_1
NL_GOV_2	AT_GOV_2	GE_TU_2
NL_GOV_3	AT_GOV_3	GE_NGO_3
NL_GOV_4	AT_POL_4	GE_TU_4
NL_TU_5	AT_NGO_5	GE_GOV_5
NL_JUD_6	AT_NGO_6	GE_TU_6
NL_NGO_7	AT_GOV_7	GE_NGO_7
NL_LI_8	AT_TU_8	
NL_NGO_9	AT_GOV_9	
NL_LI_10	AT_GOV_10	
NL_LI_11	AT_NGO_11	
NL_LI_12		

10.2 List of organisations, UK

List of organisations to which interviewees were, or had previously been, affiliated. In some cases, there were multiple interviewees:

1. Association of Labour Providers
2. Ethical Trading Initiative
3. Focus on Labour Exploitation
4. Gangmasters Licensing Authority
5. International Labour Organisation
6. Migrant Help
7. Trades Union Congress
8. Universities

10.3 List of interviewees/organisations, Czech Republic

Name	Organisation/ institution	Type of organisation/ institution	Date	Code in the text
Magda Faltová, Mgr., Director	Association for Migration and Integration	NGO	23.2.2016	(CZ_SIMI_1)
Wished to remain anonymous	Ministry of Social and Labour Affairs	State institution	23.2.2016	(CZ_MPSV_2)
Wished to remain anonymous	Ministry of the Interior	State institution	24.2.2016	(CZ_MV_3)
Wished to remain anonymous	Wished to remain anonymous	NGO	25.2.2016	(CZ_NGO_4)

Wished to remain anonymous	State Labour Inspection Office	State institution	26.2.2016	(CZ_OIP_5)
Vít Samek, JUDr. President	Czech-Moravian Confederation of Trade Unions	Trade unions	1.3.2016	(CZ_CMKOS_6)
Wished to remain anonymous	State Labour Inspection Office	State institution	2.3.2016	(CZ_OIP_7)
Wished to remain anonymous	Organised Crime Investigation Department	State institution	3.3.2016	(CZ-UOOZ_8)
Wished to remain anonymous	State Labour Inspection Office	State institution	4.3.2016	(CZ_SUIP_9)
Radovan Burkovič Ing., President	Association of Employment Agencies	NGO	4.3.2016	(CZ_APA_10)
Wished to remain anonymous	Wished to remain anonymous	State institution	7.3.2016	(CZ_SI_11)

About the author

Almut Bachinger is a political scientist and Research Officer at ICMPD. Her research foci are on gender and intersectionality, social inequality, labour, care, domestic work and qualitative methodology. She has worked in the fields of domestic work, social services, long-term care and health for several research and implementation projects. Almut started working for the DemandAT Project in May 2015.

Addressing demand in anti-trafficking efforts and policies (DemandAT)

COORDINATOR: International Centre for Migration Policy Development
Vienna, Austria,

CONSORTIUM:

University of Bremen – Arbeitsbereich Interkulturelle Bildung
Bremen, Germany

University of Edinburgh – School of Social and Political Science
Edinburgh, United Kingdom

La Strada International
Amsterdam, The Netherlands

Lund University – Department of Social Anthropology
Lund, Sweden

University of Durham – Department of Geography
Durham, United Kingdom

European University Institute – Robert Schuman Centre for Advanced
Studies
Florence, Italy

Geneva Centre for the Democratic Control of Armed Forces
Geneva, Switzerland

La Strada Czech Republic
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