



**Emerging Good Practice
by State Authorities,
the Business Community
and Civil Society
in the Area of
Reducing Demand
for Human Trafficking
for the Purpose of
Labour Exploitation**

**Research conducted within the project
“Improving Poland’s Capacity to Prevent
Trafficking in Human Beings” funded by
the Norway Grants Financial Mechanism**

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The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.

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ACRONYMS USED

€	Euro
\$	US Dollar
ATM	Automated Teller Machine (cash machine)
EU	European Union
GLA	Gangmasters Licencing Authority (UK)
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
ILO	International Labour Organisation
NGO	Non-governmental organisation
SOMO	Stichting Onderzoek Multinationale Ondernemingen (Centre for Research on Multinational Corporations)
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
UK	United Kingdom
UN	United Nations
US	United States of America

PART 1: WHAT CONSTITUTES “DEMAND” AND WHO CAN TAKE ACTION TO REDUCE IT?

1. Introduction

1.1. Aims of the report

This report describes examples of initiatives to prevent trafficking in human beings for the purpose of what in Europe is known as ‘labour exploitation’. It focuses on efforts to discourage the exploitation that leads to trafficking in human beings. The term ‘labour exploitation’ refers to purposes of human trafficking that do not involve the exploitation of the prostitution of others, or other forms of sexual exploitation or the removal of organs. In article 4 of the Council of Europe’s Convention on Action against Trafficking in Human Beings (2005), these purposes are specified as “forced labour or services, slavery or practices similar to slavery, [and] servitude”.

The report sets out to identify methods that, on the basis of the information currently available, represent good practice. It presents, in turn, examples of initiatives by governments, businesses and civil society organisations. It reviews their strengths and weaknesses in terms of their effectiveness at preventing human trafficking in business practices and supply chains (which are also known as product and value chains). It also aims at encouraging other governments, businesses and civil society organisations to review these examples with a view to developing similar methods of their own. The report includes some examples of initiatives taken from Europe and elsewhere, all of which are reckoned to be replicable within Europe.

1.2. Sources of information

The report has been compiled from existing publications, supplemented by information obtained from specialists in one country (Poland). The expert, Mike Dottridge, has been involved for almost two decades in monitoring initiatives by businesses to reduce levels of exploitation. The examples were selected by him to represent a cross-section of methods that have the effect of discouraging demand related to trafficking in human beings. Their inclusion does not represent formal endorsement by the Council of Europe.

Part 1 of the report reviews legal obligations at the level of States and businesses. Part 2 reviews what is being done in practice to discourage demand, that is to say, how commitments made by governments or businesses to stop abusive recruitment and human trafficking have been translated into practical measures, implemented by governments, businesses or others. The methods to discourage demand are summarized in three separate chapters:

- Chapter 3: methods deployed by States (governments);
- Chapter 4: methods used by businesses; and
- Chapter 5: methods initiated by civil society organisations.

In many cases the most effective methods require co-operation between organisations in these distinct categories: businesses working with government, civil society initiatives working with businesses, and so on. One salient characteristic of good practice has been the willingness of actors to work together in what are sometimes called ‘multi-stakeholder’ initiatives. When international organisations, governments or civil society organisations have tried to tell businesses what they should do without consulting or involving them, their efforts are usually unsuccessful. When business take action without consulting others, such as civil society monitors or representatives of the workers involved, their efforts are also markedly less effective.

The names of individual companies are mentioned in the report when they have been involved in good practice. In contrast, companies which have been named by others for allow abuse to occur are omitted, though the names of many appear in other publications that ‘name and shame’ businesses in order to encourage them to take action against human trafficking, various forms of exploitation or other abuse.

2. General comments about measures “to discourage demand”

2.1. What is meant by ‘demand’ in cases of trafficking in human beings

The nature of demand for the services and products of trafficked people is complex. A United Nations (UN) report noted that “the demand side of trafficking generally refers to the nature and extent of the exploitation of the trafficked persons after their arrival at the point of destination, as well as the social, cultural, political, economic, legal and developmental factors that shape the demand and facilitate the trafficking process”¹. This confirms that most, but not all of the methods described below to discourage demand focus on the places where people are exploited or, even further along the value chain,² in the places where the goods they have produced are sold, sometimes in an entirely different country. The UN report highlighted the role of what it called “employer demand”, that is to say demand for goods or services from “employers, owners, managers or subcontractors”, as well as referring to demand generated by corporate buyers.³

The UN report also referred to “consumer demand...in the sex industry”, however this is not reviewed by this report, which focuses more specifically on initiatives to discourage labour exploitation and trafficking for the purpose of labour exploitation. The methods described below look at how the behaviour of various key actors has been or potentially can be influenced and changed so that labour exploitation is less likely to occur.

¹ United Nations Office on Drugs and Crime (UNODC) (2008). *Toolkit to Combat Trafficking in Persons*. Global Programme against Trafficking in Human Beings. UN, New York.

² The term “value chain” refers to the other business entities with which a business has a direct or indirect business relationship and which either supply products or services to it (i.e., are in its ‘supply chain’), or receive products from it (its ‘production chain’ or ‘demand chain’).

³ The Toolkit also refers to two other categories of demand which are not reviewed in this report: “Consumer demand clients (in the sex industry), corporate buyers (in manufacturing), household members (in domestic work)” and “Third parties involved in the process (recruiters, agents, transporters and others who participate knowingly in the movement of persons for the purposes of exploitation)”.

2.2. Legal obligations under international conventions and standards

2.2.1. UN Trafficking Protocol requirements

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) (UN Trafficking Protocol) devotes article 9 to the prevention of human trafficking. One of the five preventive measures requires States parties “to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking”.⁴ The UN Trafficking Protocol mentions some generic categories of measures that should be taken to discourage demand and calls for “legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation”, without providing further precision. The Conference of the States which have ratified the UN Trafficking Protocol (and the UN Convention against Transnational Organized Crime, which it supplements) has set up various working groups, including a Working Group on Trafficking in Persons, which reviewed measures implemented by States to discourage demand. In 2010, the Chair of the Working Group suggested that States that had ratified the UN Protocol should consider the following six types of action:

1. “measures to regulate, register and license private recruitment agencies;
2. “raising the awareness of employers to ensure their supply chains are free of trafficking in persons;
3. “enforcing labour standards through labour inspections and other relevant means;
4. “enforcing labour regulations;
5. “increasing the protection of the rights of migrant workers; and/or
6. “adopting measures to discourage the use of the services of victims of trafficking”⁵

In 2014 a different UN body, the Inter-Agency Coordination Group against Trafficking in Persons (ICAT)⁶ identified six slightly different types of “strategies to address demand in the context of trafficking in persons for labour exploitation”⁷. These include actions to address “root causes” in general and also mention prosecutions of human traffickers as a measure to discourage demand, on the grounds that convictions deter others from becoming traffickers. Four are more directly relevant to this report and examples of these strategies are included in Part 2 below.

These are:

- ✓ Measures and mechanisms to improve labour conditions in sectors vulnerable to the use of victims trafficked for labour exploitation, through strengthening and enforcing labour standards and regulations;

⁴ Article 9, subparagraph 5, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), supplementing the UN Convention against Transnational Organized Crime (2000).

⁵ Conference of the Parties to the UN Convention against Transnational Organized Crime, Activities of the Working Group on Trafficking in Persons, Report submitted by the Chair of the Working Group (for the fifth session, 18-22 October 2010), UN document CTOC/COP/2010/6 (10 August 2010).

⁶ ICAT was set up within the UN in 2007 to allow intergovernmental agencies to work together to strengthen technical assistance concerning human trafficking.

⁷ ICAT (2014). Preventing Trafficking in Persons by Addressing Demand.

- ✓ Action against exploitation associated with the migration process, including through better regulation of private recruitment agencies and better protection of migrant and refugee workers;
- ✓ Private sector initiatives to address exploitative labour practices within supply chains;
- ✓ Consumer-based action against products made from trafficked labour.

2.2.2. UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights⁸ summarize the measures that States are expected to take to protect people against human rights abuse by third parties such as businesses and employers, both large ones (such as multinational companies or large factories with numerous suppliers) and small or medium-sized ones, such as individual farmers employing one or two farm workers. These measures are intended to prevent a much wider range of abuses than just the forms of exploitation associated with human trafficking. However, they set parameters for the measures to be taken by both States and businesses.

The Guiding Principles confirm that States have a duty to protect against human rights abuses by third parties and that this requires States to adopt appropriate policies, laws and regulations:

“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Foundational Principle 1 of the UN Guiding Principles).

The Guiding Principles also identify the specific measures that business entities must take (and that States have a responsibility to ensure that businesses are taking):

“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved” (Foundational Principle 11 of the UN Guiding Principles).

Five years after their publication, these Guiding Principles are still not well known to most business in Europe, many of which are acquainted with the concept of ‘corporate social responsibility’, but tend to assume that this requires them to engage in charitable works, rather than to make a substantial investment in addressing the effects of their own activities.

⁸ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN document A/HRC/17/31 of 21 March 2011.

Among the human rights to be respected, businesses, including individual employers, must respect the human rights of their workers and not keep them in forced labour or otherwise allow them to be trafficked for labour exploitation. However, this obligation also means looking at what happens along their value chains—which are made up of the other businesses from which they buy or to which they sell. The corporate responsibility to respect human rights means acting with due diligence to avoid infringing on the rights of others and to address adverse impacts if and when these occur. The Guiding Principles spell out that, concretely, this means:

- a) identifying actual or potential “adverse” human rights impacts (Principles 15 to 18);
- b) preventing and mitigating such impacts (Principle 19);
- c) accounting publicly for these impacts and for the business’ responses to them (Principle 21).

The Guiding Principles also require both States and businesses to ensure that victims of abuse have adequate access to effective remedies, both judicial and non-judicial (Principles 22 to 31).

Although not explicitly required to develop national plans to implement the UN Guiding Principles on Business and Human Rights, by the end of 2015 ten countries had adopted such national plans, including Lithuania (adopted in February 2015) and Sweden (August 2015). Doing so can certainly be regarded as good practice in order to ensure that the principles outlined in the UN Guiding Principles are observed by both government organisations and private businesses. Other governments in Europe are reported to be currently drafting such plans. In February 2016 the UN Working Group on Business and Human Rights noted that 19 national plans were under development, including, for instance, Germany and Slovenia.⁹

2.2.3. OECD Guidelines

The UN is not the only international point of reference for governments and business. The Organisation for Economic Co-operation and Development (OECD) adopted a set of Guidelines for Multinational Enterprises in 1986. These were revised in 2011¹⁰, in part to ensure their compatibility with the UN Guiding Principles. The OECD also adopted in 2012 Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence¹¹ which is intended to “promote coherence between Members’ policies regarding officially supported export credits, their international environmental, climate change, social and human rights policies, and their commitments under relevant international agreements and conventions”. This Recommendation has been the main point of reference for governments of industrialized countries when they consider what adverse human rights impacts they need take into account in international trade.

⁹ http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf

¹⁰ <http://www.oecd.org/corporate/mne/48004323.pdf>

¹¹ OECD Council, Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, TAD/ECG(2012)5 (28 June 2012).

The Recommendation requires OECD Member States to screen all applications for officially supported export credits. As part of this process, Export Credit Agencies (ECAs) should take into account potential social impacts, including labour and working conditions and other “project-related human rights impacts, including forced labour, child labour, and life-threatening occupational health and safety situations”.

2.3. Legal obligations under European conventions and standards

2.3.1. Council of Europe Convention on Action against Trafficking in Human Beings

Article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) focuses on “Measures to Discourage the Demand” in a more detailed manner than the UN Trafficking Protocol, by explicitly mentioning:

- ✓ 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, the importance of gender equality and the dignity and integrity of every human being.

The Council of Europe Convention also requires States Parties to consider making it a criminal offence to use the services of a trafficked person “with the knowledge that the person is a victim of trafficking in human beings” (Article 19). In 2013 the body set up to monitor the implementation of the Convention, the Group of Experts on Actions against Trafficking in Human Beings (GRETA), published general comments about measures to discourage demand, based on information collected during its visits to States which had ratified the convention:

“GRETA has noted in its reports that measures to discourage demand should target all forms of exploitation and not just the sex industry. The absence of effective regulation of certain labour market segments is one of the factors that help to create an environment in which it is possible and profitable to use trafficked labour. [E]ffectiveness requires combined labour inspection and enforcement powers, international information exchange, worker awareness of their rights, and practical support by the industry to ensure ethical standards by the companies they use”.¹²

¹² 3rd General Report on GRETA’s Activities, GRETA (2013)17, Strasbourg.

2.3.2. EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)

The European Union's (EU) Directive 2011/36/EU (5 April 2011) on preventing and combating trafficking in human beings and protecting its victims contains a similar requirement to other treaties, that "Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings". In 2012, the EU adopted a four-year strategy to combat human trafficking (COM (2012) 286 final). The strategy encourages the exchange of best practices concerning public awareness campaigns, targeting consumers and users of services, corporate social responsibility, codes of conduct, business and human rights and initiatives aimed at eliminating human trafficking from the supply chains of businesses". The main activity initiated under this point of the EU Strategy has been research on the topic of discouraging demand. This is underway (five publications were available by April 2016 on the project's website: www.demandat.eu). They are not due to be completed until 2017.

Referring to the important role of private sector business in taking action to reduce trafficking in human beings, the EU Strategy also foresaw the establishment of a 'European Business Coalition against Trafficking in Human Beings' in 2014, so that the European Commission could work with the Coalition in 2016 on developing "models and guidelines on reducing the demand for services provided by victims of trafficking in human beings". However, this Coalition has not yet been established.

2.3.3. OSCE Recommendations

Another regional organisation which includes most of the Council of Europe Member States, the Organisation for Security and Co-operation in Europe (OSCE), has adopted a series of recommendations for OSCE participating States on measures to discourage demand. The 2003 OSCE Action Plan to Combat Trafficking in Human Beings¹³ emphasised that countries of destination (of migrants) should address the links between demand for inexpensive migrant labour and human trafficking. It recommended that participating States should adopt policies to address the "problem of unprotected, informal and often illegal labour, with a view to seeking a balance between the demand for inexpensive labour and the possibilities of regular migration". In December 2013 the OSCE's Permanent Council adopted the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later¹⁴, which calls on States to encourage:

¹³ OSCE Permanent Council, Decision No. 557/Rev.1. OSCE Action Plan to Combat Trafficking in Human Beings (Vienna, 7 July 2005), chapter IV para. 3.2, adopted by OSCE Permanent Council Decision No. 557 on 24 July 2003.

¹⁴ OSCE Permanent Council, Decision No. 1107 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later, PC.DEC/1107 (6 December 2013).

“[T]he private sector, trade unions and relevant civil society institutions, to promote codes of conduct to ensure the protection of the human rights and fundamental freedoms of workers throughout the supply chain in order to prevent the exploitative situations that foster trafficking in human beings”.

In 2014 the OSCE’s Special Representative and Co-ordinator for Combating Trafficking in Human Beings published advice¹⁵ on measures to be taken by businesses to discourage demand, urging participating States to support efforts by businesses to ensure compliance with their human rights commitments, such as guarantees that workers will not be trafficked or otherwise subjected to labour exploitation.

¹⁵ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. Measures to Ensure that Businesses do not Contribute to Trafficking in Human Beings: The Duties of States, the Actions and Responsibilities of Business Entities, and Ways of Ensuring that Commitments Made by Businesses are Implemented in Practice. Occasional Paper Series no. 7, Vienna, November 2014.

PART 2: THE ROLES OF THE STATE, BUSINESS AND OTHER ORGANISATIONS IN REDUCING DEMAND

1. Demand reduction measures implemented by governments

While individual businesses and consumers make the purchasing decisions which constitute 'demand', the laws and policies adopted by governments have a strong influence on the way such decisions are made. This chapter outlines five sets of measures that have been taken by States and which have the effect of discouraging demand:

- ✓ Measures to discourage demand specified in the government's policies or plans on either business and human rights or human trafficking;
- ✓ Specifying the obligations of business (particularly those in the private sector);
- ✓ The procurement policies of government ministries, local government, state-run organisations, parastatals and businesses owned wholly or partly by the State;
- ✓ Influencing the State's export credit policies;
- ✓ Regulating recruitment.

At a general level, government institutions leading the country's efforts to stop human trafficking have a responsibility to promote an understanding of what constitutes human trafficking, in particular among law enforcement officials and any organisations which may potentially be involved in identifying a case of human trafficking or a trafficked person (a variety of front-line organisations, statutory and non-governmental, including health professionals, child protection professionals and trade unions), and also among businesses operating in sectors of the economy where there are reasons to suspect that cases of trafficking are occurring. Some law enforcement officials or businesses still assume that trafficking refers mainly to recruitment for the purpose of exploiting the prostitution of others. The responsibility of the government is to ensure that they are adequately informed about cases of forced labour or labour exploitation that have occurred.

1.1. Incorporating measures to reduce demand in the government's anti-trafficking policies or plans

Many governments have, at some point since 2000, adopted a national plan to combat human trafficking. These have generally focused on strengthening law enforcement responses to human trafficking and sometimes on improving protection for trafficked persons, along with some general measures to prevent human trafficking. Some mention measures to discourage demand for any forms of commercial sex (considering that, by doing so, they will reduce demand related to trafficking for the purpose of the exploitation of the prostitution of others). However, few national plans have mentioned measures to discourage demand that is unrelated to the sex industry.

One of the early exceptions was a plan developed in the Netherlands in 2004,¹⁶ which noted that:

“The demand side of THB [Trafficking in Human Beings] also requires attention. This particularly concerns raising awareness amongst employers and clients in the Netherlands of the punishability of THB and of possible signs of (victims of) THB. This awareness raising will be promoted by means of campaigns aimed at specific target groups... Where it appears that THB is occurring in other economic sectors (outside prostitution), additional measures will immediately be put in place. Any such measures would be in line with those geared towards the combating of illegal employment and ‘facilitators’, as laid down in the Policy Document on Illegal Aliens” (Unofficial translation from Dutch into English).

The weakness of the provision is clear. It suggested that “additional measures” would be taken, without specifying what they would be, so it was difficult to monitor if such measures were ever implemented. In practice, it was not until late in the decade that the authorities in the Netherlands started recognizing the extent of human trafficking outside the commercial sex sector.

National plans against trafficking in human beings nowadays tend to mention more elaborate preventive measures than just awareness-raising. However, once national legislation and policies had been amended to meet new international and regional standards about human trafficking, many States stopped developing dedicated plans against human trafficking. National plans on business and human rights offer a current opportunity to urge businesses to implement measures specifically to discourage trafficking in human beings in their workplaces and supply chains.

1.2. Governments specifying the obligations of private sector businesses

1.2.1. The framework of a National Plan on Business and Human Rights:

National plans on business and human rights have provided an opportunity for governments to spell out what is and what is not acceptable in terms of business practice and to indicate publicly the degree of government commitment to ensuring that businesses based in or operating in their countries respect the UN Guiding Principles on Business and Human Rights.

One salient example is the Action Plan for Business and Human Rights¹⁷ adopted in February 2015 in Sweden. The Action Plan puts a particular emphasis on the importance of sustainability and emphasises Sweden’s leading global role in fighting corruption. In a more general way it refers to the importance of businesses respecting human rights throughout their operations, summarising the main points that businesses’ human rights efforts are

¹⁶ National Action Plan against Trafficking in Human Beings. Additional Government measures in the framework of combating trafficking in human beings in the Netherlands. December 2004.

¹⁷ <http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf>

expected to follow and noting the importance of businesses being “transparent i.e. report on and communicate the risks and opportunities facing the company, as well as its impact on society, both favourable and adverse”. It mentions a number of examples where the Government has facilitated discussions that are intended to minimise abuse by business (see example in section 4.3.1 below).

While the national plans on business and human rights published so far have mostly been very general and do not focus on particular categories of human rights abuse, such as forced labour or labour exploitation, by spelling out the procedures that businesses are expected to follow (to adopt systems to ensure respect of human rights), they have the potential to prevent labour trafficking and thereby to discourage demand.

1.2.2. Requiring businesses to report publicly on measures to reduce human trafficking or forced labour in their supply chains: examples from the US and the UK

In 2010 the state-level government of California in the US was the first legislature to adopt legislation requiring the larger companies operating in the state to explain publicly if they were taking any measures to stop human trafficking or slavery occurring in their workplaces or supply chains. The California Transparency in Supply Chains Act (SB657) required companies worth more than US\$100 million a year that do business in California to disclose information on their web sites on the efforts to eradicate slavery and human trafficking from their supply chains from January 2012 onwards.¹⁸ Similar measures have now been taken elsewhere, in one case at national level (the United Kingdom, UK).

The specific reports about a business’ efforts to prevent human trafficking are set in addition to the business’ other public reporting obligations. The EU’s Directive 2014/95/EU¹⁹ recently modified the obligations on businesses to publish non-financial information on an annual basis.²⁰ It specified that companies employing more than 500 employees must report publicly on measures taken to respect human rights, including risks in the company’s operations and business relationships which might cause adverse impacts on human rights and on the measures taken to manage such risks.²¹ The references to

¹⁸ “Every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose...its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale” (section 1714.43. (a) (1) of the California Transparency in Supply Chains Act, accessed on 24 March 2016 at <http://www.state.gov/documents/organisation/164934.pdf>).

¹⁹ Directive of the European Parliament and the European Council 2014/95/EU dated 22 October 2014 amending Directive 2013/34/EU regarding disclosure of non-financial information and information regarding diversity by some large entities and groups (EU Official Journal 2014 L 330/1 of 15 November 2014).

²⁰ Directive 2014/95/EU says that “the information provided in the statement may concern the actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities”. The fundamental conventions of the ILO include two on forced labour and two on child labour, alongside others on freedom of association and freedom from discrimination.

²¹ Directive of the European Parliament and the European Council 2014/95/EU dated 22 October 2014 amending Directive 2013/34/EU regarding disclosure of non-financial information and information

business relationships means that companies must disclose information about risks that their suppliers might commit abuse such as trafficking for the purpose of labour exploitation. There is no explicit reference in the Directive to human trafficking. The European Commission is expected to publish guidelines on company reporting by the end of 2016.

The UK's Modern Slavery Act 2015 requires companies of a certain size to make an annual statement on their activities to address forced labour and human trafficking in both their own operations and their supply chains. The threshold of global turnover has been set at £36 million (approximately €48.5 million). Section 54 of the Act focuses on 'Transparency in Supply Chains' and applies to commercial organisations that carry on a business, or part of a business, in the UK. This includes companies headquartered or registered outside the UK, for example elsewhere in Europe. Although reporting under the UK Act did not become mandatory until the financial year starting in April 2016, by March 2016 more than a hundred companies had already published statements to meet the requirements of the Act. An analysis of these commented that:

"while there are some good examples of relatively detailed statements, which set out a company's approach to due diligence in respect of modern slavery, the majority do not go much beyond setting out broad commitments to ensure that there is no modern slavery in the relevant company's supply chains and descriptions of policies to support these commitment".²²

The majority of the businesses which had issued statements by March 2016 were in the manufacturing sector (almost a quarter) and the food and agriculture sector. Businesses in both sectors have substantial supply chains outside Europe, some of which are alleged to involve labour exploitation.

The transparency requirements of the UK Act address the issue of labour exploitation more directly than the EU's Directive 2014/95/EU and seem likely to generate more relevant information, although it is still too early to be sure. These requirements represent an important first step to providing other businesses and consumers with information about measures taken by a business to stop human trafficking or labour exploitation from occurring. However, beyond the first step there will be a need to check that the measures taken are proportionate and effective - and this can only be done if fuller information than that required by the UK Act is available publicly about cases of labour exploitation that are detected by the businesses concerned. While the €48.5 million threshold currently means that relatively few businesses based in other European countries are bound by its provisions, with changes in exchange rates and inflation, more of them are likely to cross this threshold in the future.

regarding diversity by some large entities and groups (EU Official Journal 2014 L 330/1 of 15 November 2014).

²² <http://www.ergonassociates.net/images/stories/articles/ergonmsastatement1.pdf>

1.3. Determining the procurement policies of state-run organisations, parastatals and businesses owned wholly or partly by the state

Governments have an obligation to ensure that all government-owned organisations avoid encouraging demand related to human trafficking in the context of their purchase of services and goods. States have substantial numbers of such organisations at both national and local level. They include government ministries, statutory bodies, law enforcement agencies and other branches of the security forces (i.e., the armed forces, police, intelligence services, immigration service, border police, customs and revenue services, the prison service and labour inspectorates). They also include parastatal organisations which are owned in part or entirely by the State. At regional and local level, relevant bodies include local government institutions that purchase products and services, for example, responsible for contracts for the construction of state-run schools and for cleaning public buildings, such as town halls. It is possible that a sub-contractor might secure cheap labour from a labour provider who traffics workers to work on construction sites or to clean offices.

The development of systems to identify which businesses should not be awarded public procurement contracts is still in its infancy in Europe, whereas in other regions government agencies have publicly named companies found to have engaged in labour trafficking and excluded them from such contracts (an example in Brazil is mentioned in 3.4 below). A 2014 Directive on public procurement²³ requires EU Member States to exclude businesses which have been convicted of offences involving human trafficking or child labour (in addition to other offences, such as corruption, fraud and money laundering). Requiring contractors to offer pro-active guarantees potentially has a wider impact than simply excluding businesses that have been convicted, especially as virtually no businesses have been found guilty in Europe of offences related to human trafficking.

➤ Government procurement policies to discourage demand: the example of the United States

The US authorities have put more emphasis than most other governments on developing specifications in procurement contracts that are intended to avoid contractors paying for the products or services of trafficked persons. US federal contracts are worth many millions of US dollars and some contractors are reported in the past to have been responsible for trafficking. The US Federal Acquisition Regulations require including a clause prohibiting trafficking in persons in all US government contracts, stating that:

“Contractors, contractor employees, subcontractors, subcontractor employees and their agents” are prohibited from:

- 1) *Engaging in severe forms of trafficking in persons during the period of performance of the contract;*
- 2) *Procuring commercial sex acts during the period of performance of the contract;*
- 3) *Using forced labor in the performance of the contract;*

²³ Directive of the European Parliament and the European Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

- 4) *Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;*
- 5) (i) *Using misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;*
- (ii) *Using recruiters that do not comply with local labour laws of the country in which the recruiting takes place;*
- 6) *Charging employees recruitment fees;*
- 7) *Failing to provide return transportation or pay for the cost of return transportation upon the end of employment;*
- 8) *Providing or arranging housing that fails to meet the host country housing and safety standards; or*
- 9) *If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document in writing..."²⁴*

The importance of these Regulations was emphasised by US President Obama when he issued an Executive Order in 2012 to strengthen protections in federal contracts. Adopting a procurement policy as detailed as this is, however, only likely to be effective if the authorities concerned have the capacity to check that the specifications are adhered to. In the US, the Inspector General of the armed forces has carried investigations to find out if the procurement rules were being adhered to and what their effects were. A 2014 report noted some positive developments, but also commented that most parts of the US Department of Defense had not yet reviewed their Combating Trafficking in Persons programmes²⁵. The evaluation was an opportunity for the Inspector General to recommend a series of measures for more effective implementation of the procurement rules.

1.4. Influencing the state's export credit policies

The responsibility of the State to ensure that government-run organisations take appropriate action to discourage demand extends to government-owned (or partially owned) organisations which provide credit, banking services or insurance (such as banks or other credit institutions). For example, in Brazil, in 2010 the government's National Monetary Council banned rural credit payments to any individuals or legal entities included in a register of employers that was published by the Ministry of Labour and Employment, containing the names of employers found by law enforcement officials to be exploiting

²⁴ Federal Acquisition Regulation, clause 22.170 - Combating Trafficking in Persons, accessed on 9 March 2016 at <http://www.acquisition.gov/>.

²⁵ Evaluation of the [US] Department of Defense Combating Trafficking in Persons Program. 16 June 2014. Accessed 25 April 2016 at <http://www.dodig.mil/pubs/documents/DODIG-2014-079.pdf>.

workers in rural areas in conditions analogous to slavery.²⁶ See section 4.4.4. below for further details on the register).

In much the same way, States also have a responsibility to ensure that any preferential customs tariffs concerning goods imported from other countries, including privileged reductions in regular tariffs, are not made available to goods which have involved human trafficking or labour exploitation. As the term 'labour exploitation' is not commonly used outside Europe, this means checking whether any forms of exploitation that are purposes of human trafficking occur, including forced labour, bonded labour (or debt bondage) or servitude.

➤ **Conditions for extending credit: the example of Sweden**

Sweden has two state-owned companies which give credit related to trade and development and which have been required to follow procedures intended to prevent human trafficking. First, AB Svensk Exportkredit (SEK), the Swedish Export Credit Corporation, which provides finance to underpin Swedish exports, with new lending in 2015 valued at 104.6 Billion Swedish Crowns (€11.27 billion). Secondly, Swedfund International AB (Swedfund), the Government's Development Finance Institution, which, by 2014, has provided 5.2 billion Swedish Crowns (€0.56 billion) in private sector development in low- and middle-income countries, mainly in Africa, since its establishment in 1979.

Both are under government instructions to follow OECD recommendations, particularly on the issue of bribery and, more generally, to ensure that their activities comply with the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Right and the UN Global Compact,²⁷ a voluntary initiative launched in 2000 that asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption²⁸. Once again, it is too early to know for certain whether these instructions are effective and specific enough to prevent cases of trafficking for labour exploitation. For example, when scandals were reported in Sweden in 2009 and subsequent years concerning the exploitation of migrant berry pickers from Thailand, the question of whether the Swedish businesses involved that were exporting berry-related products should continue to benefit from export credits is not known to have been raised by the authorities. In fact, many of the berries harvested in northern Sweden, were exported as skin creams of other beauty products.²⁹ No business was convicted of human trafficking.

²⁶ Maranhão Costa, P. T. (2009). *Fighting Forced Labour. The Example of Brazil*. ILO, Geneva.

²⁷ The UN Global Compact makes no explicit reference to human trafficking, but one of its core principles implicitly commits businesses joining the Global Compact to take action against human trafficking, requiring "the elimination of all forms of forced and compulsory labour".

²⁸ Action plan for business and human rights. Stockholm.

²⁹ *Methods to Prevent Trafficking for Labour Exploitation: What To Do and How* in OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, An Agenda For Prevention: Trafficking For Labour Exploitation.

1.5. Regulating recruitment

Reducing demand for labour exploitation workers can potentially be achieved by introducing statutory regulation of employment agencies and labour suppliers, including employment agencies and labour suppliers operating in both formal and informal sectors of the economy, rather than relying on voluntary self-regulation by the recruitment industry. However, introducing additional regulation is an anathema to some governments and political parties, even when it is designed to combat practices which they condemn, such as human trafficking. In some European countries the authorities have declined to introduce statutory regulation, but have encouraged self-regulation among employment agencies or temporary work agencies: an example of this in Netherlands is described in 4.1 below. The alternative is for government itself to regulate private employment agencies, reversing the trend towards deregulation of the 1980s and 1990s. This is now the case in the UK (see section 3.5.1 below).

➤ The example of the United Kingdom Gangmasters Licensing Law

The UK authorities preferred self-regulation among temporary work agencies until a tragedy occurred in 2004 when 23 Chinese migrants died while collecting shellfish. This created the momentum for regulation and the adoption of the Gangmasters (Licensing) Act 2004. The law created a compulsory licensing system for labour providers and employment agencies operating in certain sectors of the economy: agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. It applies to companies, unincorporated associations and partnerships active in these sectors. The UK's Kingdom's Employment Agencies Act 1973 had already made it illegal for agencies to charge workers for finding them employment. The 2004 law also established a special agency, the Gangmasters Licensing Authority (GLA), to issue licences and investigate possible violations of the Act. In 2006 it became an offence for companies in the specified sectors to use the services of a gangmaster who was not licensed.

The GLA is not a law enforcement agency, but an administrative one. This means it has powers of entry for inspection and search, and to intercept communications, but not to conduct criminal investigations, so it has to co-operate with the police when criminal offences are suspected. The reasons why the GLA was not given a mandate to licence labour providers in other sectors of the economy where migrant and contract labour is common (notably in the construction, catering, cleaning and care sectors) have not been clarified by successive British governments. By 2007, the recruitment industry in the UK was estimated to have a turnover of more than £27 billion (almost €40 billion) and between 1.1 and 1.5 million agency workers. During the first decade of operating, the GLA reportedly issued more than 2,000 licences to labour providers. Between April 2014 and March 2015, the GLA carried out 104 licence application inspections, refused 27 and revoked 23. With 69 staff in the financial year ending in March 2015, the GLA cost just under £4.4 million to run (appr. €6 million) and reckoned its licensing scheme had benefited some 550,000 workers.³⁰

³⁰ GLA (2015). Gangmasters Licensing Authority Annual Report and Accounts, 1 April 2014 to 31 March 2015.

A considerable amount of documentation can be consulted about the GLA and its experience.³¹ The Council of Europe's GRETA has described the GLA as a good practice as far as regulating businesses by licensing is concerned. GRETA commented that *"the GLA experience shows that effectiveness requires combined labour inspection and enforcement powers, international information exchange, worker awareness of their rights, and practical support by the industry to ensure ethical standards by the companies they use"*.³²

2. Demand reduction measures implemented by businesses

The purchasing decisions made by businesses have an enormous impact on the practices of other businesses from whom they buy products or services, whether these others are based in the same country or on the other side of the world. Consequently, it is the decisions of businesses to buy from (or sell to) other businesses that it are important to influence in order to discourage demand for exploitation. This, in turn, means that it is good practice for businesses to introduce systems to ensure that they are well informed about the working practices of their business partners and that they take remedial action whenever they become aware that workplace abuse is occurring, whether this is as serious as human trafficking and labour exploitation or somewhat less serious.

Some multinational companies conduct enough business to persuade their suppliers to change the way they work. However, for many other smaller businesses, it is only if they act together that they can wield enough influence to bring about significant change among their suppliers - and such co-operation is difficult to organise between competing businesses. Business organisations (sometimes known as trade associations) formed by companies doing similar business in the same country, or operating at international level in the same field, have been able to apply the most effective pressure for change, for example after the Rana Plaza disaster in Bangladesh in April 2013, when a building on the outskirts of Bangladesh's capital, Dhaka, collapsed, killing an estimated 1,138 people and injuring several thousand others. Those killed included workers in five factories supplying clothes to 28 garment retailers in industrialised countries. Following the disaster, these and other foreign businesses buying goods in Bangladesh worked together to bring about improvements in Bangladesh's factories (160 such businesses signed the Bangladesh Fire and Building Safety Accord).

Since the 1990s, when reports of abuse in the supply chains of retailers in industrialised countries become more frequent, with an initial focus on child labour, a large number of codes of conduct and other minimum standards have been developed for businesses to commit themselves voluntarily to observing. These concern both labour standards and other issues, such as a business' environmental impact. The term 'voluntary' signifies that a business agrees voluntarily to observe the standards specified in a code, but many subsequently accept legal obligations to adhere to the code and also require their suppliers to meet the code's minimum standards. Some codes were developed by individual

³¹ See, for example, Wilkinson, M., with Craig, G. and Gaus, A. (2010). Forced labour in the UK and the Gangmasters Licensing Authority. Contemporary Slavery Research Centre. The Wilberforce Institute on Slavery and Emancipation (WISE), University of Hull and the GLA website: <http://www.gla.gov.uk/>.

³² 3rd General Report on GRETA's Activities, GRETA (2013)17, Strasbourg.

businesses, some by trade associations and some by civil society organisations. There have been various attempts to reduce the differences and develop common standards, either for a specific industry or for all businesses, such as the UN Global Compact.

Experience soon showed that it was difficult for a company based in one country to ensure compliance with its code by suppliers in another country, even when it employed specialised auditors to do so. In a number of cases serious abuse was reported shortly after an inspection has occurred and after auditors have given a specific workplace a clean bill of health.³³ As a result, the standards set out for businesses in the UN Guiding Principles on Business and Human Rights focus on the process that an individual business should follow, rather than on the specific standards it should uphold in its workplaces or those of its suppliers, and describe the process as “human rights due diligence”.³⁴ The UN Guiding Principles also point to various methods by which a retailer can find out whether the minimum standards for recruitment or employment that it requires are adhered to (see 4.3 below).

Businesses are very diverse, so the methods they use to prevent workplace abuse need to be equally diverse and adapted to their particular business relationships. Some businesses in Europe purchase goods or services primarily from others who are based in the same country, where they are all obliged to respect the same laws and government policies. Others purchase goods and services principally from businesses based in different countries. A business concerned about forced labour in one of its suppliers in the same country can consult a relevant law enforcement agency or other organisations based locally. Businesses based in EU countries that are concerned about suppliers in other EU countries already face extra obstacles in finding out the facts, despite the existence of the EU’s single market. Businesses in Europe that import goods made on other continents are dealing with business partners that are subject to different laws and quite different cultural or social standards of behaviour. Even if laws look similar on paper, the way they are interpreted and enforced may be quite different.

When businesses buy primarily from suppliers in their own country or elsewhere in Europe, it is important that businesses should be aware of the sectors in European economies where human trafficking and labour exploitation have been reported. The particular sectors vary from country to country and have changed over the past 15 years, so there is no definitive list of these sectors. However, GRETA noted that the “economic sectors where the exploitation of high numbers of irregular migrants is common include agriculture, the

³³ For example, a fire at a garment factory in Pakistan in September 2012 caused the deaths of several hundred workers, even though it had been inspected and certified as ‘safe’ shortly beforehand. See Theuws et al (2013). *Analysis of recent factory fires in Pakistan and Bangladesh: A call to protect and respect garment workers’ lives*, SOMO and Clean Clothes Campaign, Amsterdam, March 2013.

³⁴ The UN Working Group on Business and Human Rights (2012) explained that “Human rights due diligence refers to the process of identifying and addressing the human rights impacts of a business enterprise across its operations and products, and throughout its supplier and business partner networks. Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations”.

http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

construction sector and the textile industry”.³⁵ Labour exploitation has been reported also other sectors, such as the hospitality sector (hotels, restaurants and catering), personal care and domestic work.

In the last case, concerning goods and services imported from outside Europe the sectors where trafficking for labour exploitation has been reported are even more diverse. In recent years, seafood products in Thailand have received bad publicity and been linked with human trafficking, whereas in the late 1980s the main sector being criticised involved the manufacture of hand-knotted carpets in South Asia. The US Department of Labor publishes a biannual list of goods whose production is reported to have involved forced labour³⁶, but most current advice for businesses suggests that they should develop an understanding for themselves of what constitutes forced labour and the constraints used to prevent workers from leaving their employer, so they can be on the lookout for any tell-tale signs. Despite the changing scene, recruitment agents and agencies have continued to be responsible for human trafficking around the world, so it should be a priority for every business concerned about its supply chains to check the circumstances in which workers are recruited, whether they come from abroad or have been recruited in the same country.

2.1. Setting minimum standards: human rights statements, codes and due diligence: examples from the recruitment industry in Europe

Better protection for migrants is key to discouraging their exploitation and to stopping human trafficking. Businesses involved in recruiting and finding jobs for migrants (generally private employment agencies, though in some countries employment agencies are state-run) consequently have a special responsibility to adopt policies and procedures that reduce to a minimum the likelihood that migrants will be trafficked.

The importance of governments providing oversight of the recruitment and temporary employment industry, notably to prevent businesses charging workers extortionate fees, was confirmed in 1997, when the ILO adopted Convention No. 181, the Private Employment Agencies Convention. Furthermore, in 2014 the ILO launched a Fair Recruitment Initiative, while at much the same time another international organisation, the International Organisation for Migration (IOM), announced that it was partnering with the International Organisation of Employers to launch an accreditation system for private employment agencies, the International Recruitment Integrity System (IRIS).

While some private employment agencies are involved exclusively in recruiting workers, many provide additional services such as arranging transportation from wherever a person is recruited to the place they will work and some act as employer as well. In this latter case, instead of ending their relationship with a recruit when he or she starts work, the agency is responsible for paying them, even though the daily supervision of their work is done by the business that has contracted their services. This is referred to as a triangular employment relationship. Private employment agencies which employ workers in countries other than

³⁵ 5th General Report on GRETA's Activities, covering the period from 1 October 2014 to 31 December 2015. Strasbourg.

³⁶ http://www.dol.gov/ilab/reports/pdf/TVPRA_Report2014.pdf

the one where they have their headquarters, evidently have a responsibility to keep in contact with their employees and to verify that they are not subjected to any form of illegal treatment, including forced labour. Some do so by providing additional services, such as using their website to teach employees the language of the country where they are working.

2.1.1. The advantages of working together at Europe-wide level

Agreeing common minimum standards among private employment agencies for the purpose of voluntary self-regulation has been facilitated by the existence of a national trade organisation. Regional and international trade associations have similarly provided a forum for agreeing common standards, for example in the form of codes of conduct, such as those adopted by the International Confederation of Private Employment Agencies (CIETT)³⁷ and the European Confederation of Private Employment Agencies (EUROCIETT).³⁸ The CIETT code is intended to be observed by all federations of private employment agencies belonging to the Confederation. At the operational level, the main provision that should prevent human trafficking and debt bondage is the reiteration of the principle that “private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services”. EUROCIETT’s code also guarantees that migrant workers are well informed in advance of their rights within the country of destination.

2.1.2. Voluntary self-regulation by the recruitment industry: the Netherlands example

Following a period of deregulation in the Netherlands, the private employment agency sector in the Netherlands “suffered from unscrupulous agencies in e.g. horticulture, construction, cleaning and meat processing”.³⁹ To deal with this, a national standard for employment agencies, NEN 4400, was agreed in 2006 by several national federations of private employment agencies, together with one of the country’s main trade unions and several organisations specialising in compliance. Employment agencies respecting this standard agree, for example, to keep full personnel and salary records and ensure that foreign workers have work permits. A dedicated non-governmental organisation, the Stichting Normering Arbeid (SNA), Labour Standards Foundation, was established to certify whether private employment agencies comply with the NEN 4400 standard, checking, for example, on whether taxes were being paid on behalf of employees and whether laws concerning migrant workers and the payment of minimum and holiday wages were being respected.

Since 2012, all employment agencies are required by the Government of the Netherlands to register in the Trade Register of the Chamber of Commerce or face a fine, although registration does not in itself involve complying with any minimum standards. By October 2012, 12,000 private employment agencies had registered. During 2015 the number of agencies certified by the SNA increased from 3,800 to more than 4,050, of which at least 150

³⁷ http://www.ciett.org/fileadmin/templates/ciett/docs/CIETT_Code_Conduct.pdf.

³⁸ http://www.eurociett.eu/fileadmin/templates/eurociett/docs/Eurociett_Code_of_Conduct.pdf

³⁹ Van Liemt, G. (2013), *Private employment agencies in the Netherlands, Spain and Sweden*. ILO Sectoral Activities Department Working Paper No. 290, Geneva, ILO.

were businesses registered in another country, recruiting workers to go to the Netherlands. A further 571 were deregistered in 2015.⁴⁰ This confirms that the SNA, set up by the recruitment industry to check compliance with self-regulation standards, is as able to revoke registration as the government-appointed licensing agency described in 3.5. For self-regulation to work, collective action is needed by the key actors in an industry (the federations of employment agencies), preferably supported by a collective agreement with workers' organisations. The drawback to the system in the Netherlands is that not all private employment agencies are required to comply with it. With 12,000 employment agencies registered in 2012 and just over 4,000 involved in self-regulation, many thousands are still operating outside the system, creating a two-tier system.

2.2. Finding out if forced labour (or other unacceptable exploitation) occurs in a particular industry in another country and taking remedial action: imported seafood products from Thailand

It is sometimes a challenge for managers to obtain accurate evidence about workplace abuse in their own factories or plantations, yet alone their suppliers' workplaces, wherever these are situated. Further, situations are dynamic and change over time: patterns of abuse come to an end, but at the same time, new patterns of abuse develop in locations which have been previously investigated and found to involve no forms of labour exploitation.

By the middle of the past decade, UN agencies were reporting that forced labour was occurring in Thailand's fishing industry, both at sea and on shore in seafood processing factories.⁴¹ The bad publicity surrounding the industry gathered momentum and in April 2015 the European Commission put Thailand on formal notice for not taking sufficient measures to combat illegal fishing, threatening to ban fish-related imports from Thailand. This is a process known as delivering a "yellow card".⁴² The decision did not relate specifically to human trafficking and labour exploitation (though this had received more publicity than other illegal practices), but rather to the Thai authorities' failure to provide adequate guarantees that illegal fishing was not taking place.

While the pressure created by the EU's "yellow card" on both the Thai Government and Thai businesses is clearly greater than anything that an individual company can achieve, once reports of trafficking and forced labour in Thailand received publicity, businesses began investigating what was happening in their own supply chains, knowing that their own reputations were at risk. A well-known multinational business based in Switzerland, Nestlé S.A., was importing relatively small quantities of fish products from Thailand (for cat food). It commissioned a specialist organisation based in the US, Verité, to collect information

⁴⁰ See <http://www.normeringarbeid.nl/lists/nieuws/artikel.aspx?ID=57&Source=/default.aspx>.

⁴¹ For example, the ILO reported that "Fishing workers are among the most exploited when compared to other migrant sectors [in Thailand]. Working conditions on the fishing boats are even worse than those in fish processing. Being forced to work is not uncommon on fishing boats" (International Labour Organisation (ILO) (2006). *Underpaid, Overworked and Overlooked. The realities of young migrant workers in Thailand* [volume 1]. The Mekong Sub-regional project to combat trafficking in children and women. IPEC, ILO, Bangkok.).

⁴² European Commission, Press Release 'EU acts on illegal fishing: Yellow card issued to Thailand while South Korea & Philippines are cleared'. Brussels, 21 April 2015, accessed on 30 March 2015 at http://europa.eu/rapid/press-release_IP-15-4806_en.htm.

about its suppliers in Thailand. Verité already had substantial experience of investigating whether suppliers were complying with the codes of conduct adopted by companies they were supplying and has published good practice guides on related issues, such as the recruitment of migrant workers.

Verité interviewed more than 100 people over three months. Those interviewed at six locations included boat owners, 80 workers, shrimp farm owners, site supervisors and representatives of Nestlé's suppliers. In its report to Nestlé published in November 2015, Verité said it "found indicators of forced labor, trafficking, and child labor to be present among sea-based and land-based workers engaged in the production sites covered by the assessment".⁴³ The report contained 17 recommendations to Nestlé and concluded that, "many of the problems reported by workers are systemic in nature and tied to the general vulnerabilities of migrant workers in Thailand; to recruitment, hiring and employment practices widely observed in the seafood sector".

Finding out the facts by commissioning a reputable specialist investigator was good practice, but once again it was just a first step. It had to be matched by an appropriate follow-on response by Nestlé, which published an action plan to be implemented in 2016, designed to address each of Verité's recommendations.⁴⁴ Nestlé reported that "key measures in our plan, to be implemented with our suppliers, include: co-ordinating the establishment of a response team to help protect Thai fishing labourers at risk, launching a grievance mechanism to allow workers to anonymously report abuses, putting in place a verification programme for fishing vessels that assesses working and living conditions, starting a training programme for boat owners and captains on minimum standards and improving traceability to enable greater oversight of where our supplies are coming from".⁴⁵ Four months later Nestlé informed of significant progress: "99% of the ingredients Nestlé sources from its seafood supply chain in Thailand are now traceable back to the individual fishing vessel, thanks to the enforcement by the Thai government of new laws on traceability and good co-operation from our suppliers".⁴⁶

At the same time, Nestlé reported that it had contracted a specialist monitoring organisation based in Thailand, the Issara Institute, to help workers in the Thai seafood industry raise any concerns they might have. The Issara Institute was set up in 2014 and also acted as convenor of a coalition of 10 UK-based retailers and seafood importers involved in the 'Seafood Coalition Pilot', another initiative to identify and address risks of human trafficking and labour abuses in their seafood supply chains. Because it runs telephone helplines for workers in Thailand's migrant communities (from Cambodia, Laos and Myanmar), the Issara Institute is well informed about abuses of labour rights occurring on Thai-owned vessels and in seafood processing factories.

⁴³ Verité Assessment of Recruitment Practices and Migrant Labor Conditions in Nestlé's Thai Shrimp Supply Chain. An Examination of Forced Labor and other Human Rights Risks Endemic to the Thai Seafood Sector. November 2015.

⁴⁴http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-eafood-action-plan-thailand-2015-2016.pdf.

⁴⁵ <http://www.nestle.com/ask-nestle/human-rights/answers/nestle-forced-labour-supply-chains>.

⁴⁶ <http://www.nestle.com/media/news/progress-in-tackling-seafood-supply-chain-abuses-thailand>.

In this example, Nestlé's decision to commission an independent investigation by a specialist organisation, followed by the implementation of a detailed action plan and public updates on progress all represent good practice (following the process set out in the UN Guiding Principles). It was important that, once probable abuse among its suppliers was confirmed, Nestlé did not turn its back on its suppliers in Thailand, abandoning exploited workers to their fate. Good practice requires the businesses buying services or products from another to take appropriate remedial action, rather than abandoning its business relationships. It is only if suppliers refuse or fail to make changes that are requested that it becomes reasonable to refuse to do further business with them. Nestlé did not have to publish the findings of the independent investigation, but doing so ensured transparency and reduced the likelihood that the company would be accused of covering up uncomfortable facts. However, with hindsight, it is unclear why it was not until 2014 that Nestlé and others importing seafood products from Thailand reacted in a substantial way, as a great deal of information about labour exploitation had been available for the previous decade. It appeared to be media publicity in 2013 which made the difference, meaning that reputable businesses had not felt any need to take note of detailed, technical reports about labour exploitation published by the ILO and UN.

2.3. Co-operation between workers' and employers' organisations: a 'social label' in the United States

The Coalition of Immokalee Workers' (CIW) Fair Food Program in the US is a partnership among farmers, farmworkers and retail food retailers, which endorses food products, to inform consumers that agricultural produce has been grown and harvested in conformity with workers' rights. This sort of endorsement, when attached to a product for the benefit of individuals or businesses which are considering buying it, is known as a 'social label'. The origins of the label lay in a campaign that pitted the Florida-based organisation of migrant farm workers, CIW, supported by campaigners elsewhere in the US, against producers of tomatoes and other fruit and vegetables and the supermarkets and other businesses that retailed their produce. It eventually changed into a partnership at the end of the last decade, following confirmation by the courts that farm workers had been trafficked for labour exploitation in the state of Florida. As a result of the convictions of traffickers, several well-known retailers joined the Fair Food Program and were swiftly followed by others.

To ensure and monitor the implementation of the Fair Food Program, a separate not-for-profit organisation, the Fair Foods Standards Council, was set up in 2011 with the sole function of overseeing the Program. The Council is responsible for both financial and systems audits of participating farms and retailers, for staffing a 24-hour toll-free complaint telephone line, for investigating and resolving complaints that arise, and for helping growers and corporate buyers comply with the requirements of the Program. By the end of 2015, the

Program reported having 14 participating buyers⁴⁷ and 17 businesses involved in producing food.⁴⁸

Businesses joining the Fair Food Program agree to observe seven minimum standards. One of these involves implementing the Program's code of conduct,⁴⁹ specifying "zero tolerance" of forced labour (i.e. covering trafficking for labour exploitation), child labour and sexual assault. Another involves making changes in harvesting operations to improve workers' wages and working conditions, including an end to certain abusive practices (requiring harvest workers to overfill the containers in which they put harvested tomatoes), the provision of shade in the fields, and the use of time clocks to record and count all compensable hours accurately. Finally, all businesses agree to ongoing checks by the Fair Food Standards Council.

The Fair Food Program has been congratulated by the Chairwoman of the UN Working Group on Business and Human Rights, Alexandra Guáqueta, who visited Florida in 2014 and said that the UN Working Group was keen to see the Fair Food Program "serve as a model elsewhere in the world",⁵⁰ noting that the Program was a "ground-breaking accountability arrangement" consisting of a "smart mix of tools" and "closely aligned with the UN Guiding Principles on Business and Human Rights." The success of the Fair Food Program and the endorsement of products that its social label provides depends on the commitment and objectivity of the system for checking compliance with the label, the Fair Foods Standards Council, as well as the willingness of both producers and retailers to support the code of conduct. The lesson that independent verification had to be genuinely independent and objective was learned the hard way in 2007, when news of the escape of some trafficked workers held in captivity broke on the very day that a supply chain monitoring business was quoted by a newspaper as saying that its audits had "found no slave labor". Having started in Florida State, by 2015 the Program had expanded to other states in the US such as Georgia, North and South Carolina, Virginia, Maryland and New Jersey.

Tomato production in European countries on the Mediterranean is also reported to have been marred by labour exploitation and other abuse of migrant workers,⁵¹ but no label is available to offer reassurance to either retailers or consumers. The Ethical Trading Initiatives, an alliance of companies, trade unions and NGOs, noted at the end of 2015 that "most Italian processing companies respect the right to good working standards within their firms. However, local trade unions have identified a small number that do not respect

⁴⁷ Participating retailers in the Fair Food Program as of 15 October 2015 were: Ahold USA, Aramark, Bon Appétit Management Co., Burger King, Chipotle Mexican Grill, Compass Group, The Fresh Market, McDonald's, Sodexo, Subway, Trader Joe's, Wal-Mart, Whole Foods Market, and Yum Brands (parent company of (parent of Taco Bell, Pizza Hut and KFC).

⁴⁸ Fair Foods Standards Council Annual Report 2015 (1 September 2014 - 14 October 2015).

⁴⁹ <http://www.fairfoodstandards.org/resources/fair-food-code-of-conduct/>

⁵⁰ UN Working Group on Business and Human Rights, 'Visit to Immokalee, Florida', 16 January 2014, <http://www.ohchr.org/EN/Issues/Business/Pages/2014Activities.aspx>, accessed 14 March 2016.

⁵¹ For example, in the summer of 2006, police in Italy and Poland mounted a joint operation, Terra Promesa, and Italian police reportedly freed more than a hundred Polish workers from forced labour in Puglia region (Lasocik and Wieczorek

http://www.heuni.fi/material/attachments/heuni/reports/6KmPT3ZIP/Polish_report.pdf).

Recent reports of exploitation of tomato pickers refer mainly to migrants from various African countries.

workers' rights, or even actively undermine them".⁵² In 2014 Italy's Puglia region introduced a voluntary certification scheme known as Equapulia, managed by the region's Immigration Department and designed to exclude exploitative labour providers, but the scheme is reported to have received little support from tomato producers or buyers.

2.4. Business-to-business agreements: the example of Brazil

As Brazil's economy has grown and boomed from the 1980s onwards, there have been consistent reports of trafficking for the purpose of labour exploitation, referred to in Brazilian law as "conditions analogous to slavery" and popularly known as "slave labour"⁵³. Initially most of the reports concerned isolated estates in Amazonia, but in the past decade there have also been reports of labour exploitation in sweatshops in large cities. In the mid-1990s the Brazilian government set up a special mobile inspection team to check estates or workplaces where slave labour was reported and to order the release of victims of such exploitation. According to Brazil's Ministry of Labour and Employment, by the end of 2010, a total of 38,000 slave workers had been released.

In 2003, the Ministry issued the first of what became known as the 'dirty lists'. This was a register of the names of employers that had been found by the mobile inspection team to be exploiting workers in slave labour (52 were named in the first list). After two years their names were removed from the list, provided that they had paid any fines imposed and any compensation awarded to workers, and that they had not committed further offences. For example, the list updated at the end of December 2010 contained 220 names, 88 listed for the first time, and noted that 7,895 workers employed by these 220 businesses had been found in "conditions analogous to slavery".⁵⁴

A 2004 study commissioned by the Brazilian government tracked products from 100 rural estates named on the first two lists. Approximately 200 other businesses (based in Brazil and elsewhere) were found to be doing business, directly or indirectly, with the estates that had been exploiting slave workers. The study provoked discussions among businesses that wanted to avoid being tarnished by slave labour and in 2005 they set up Brazil's National Pact to Eradicate Slave Labour.⁵⁵ Businesses signing the Pact guarantee that they will not use slave labour themselves, tolerate its use in their supply chain, or do business with companies which do. This last step is for the moment unique to Brazil. Part of the Pact is a code of conduct that signatories of the Pact agree to respect. The Pact is overseen by a Coordination and Monitoring Committee of which the ILO is a member, along with several specialist organisations. One of these, Repórter Brasil, is an NGO which has experience of investigating labour conditions. The Committee can suspend or exclude businesses which have signed the Pact but which fail to abide by its terms. By 2015, the Pact was reported to

⁵² Ethical Trading Initiatives (ETI) (2015). *Due diligence in agricultural supply chains: Counteracting exploitation of migrant workers in Italian tomato production*.

⁵³ Maranhão Costa, P. T. (2009). *Fighting Forced Labour. The Example of Brazil*. ILO, Geneva.

⁵⁴ The December 2010 dirty list was accessed in 2012 at <http://portal.mte.gov.br/portal-mte/includes/include/atualizada-a-lista-suja-de-trabalho-escravo.htm>. The list is no longer displayed on the Ministry's website.

⁵⁵ The portal of the Pact is <http://www.reporterbrasil.org.br/pacto/conteudo/view/4>.

have 250 businesses as members, accounting for almost one third of Brazil's Gross Domestic Product (GDP).

The dirty list was updated every six months by the Ministry of Labour and Employment from 2004 until the end of 2014. However, its legal basis was challenged by a real estate federation and a Supreme Court judge suspended its use in December 2014. It remains to be seen if it will restart, but since early 2015, Freedom of Information requests have been used by anti-forced labour activists to obtain and publish much of the same information (the names of employers found to be exploiting slave labour). The fact that it was a government ministry that publicly identified businesses that had been caught exploiting workers by law enforcement officials certainly give it more legitimacy and weight than denunciations by journalists or civil society organisations.

In theory, an initiative of this sort would be just as relevant in Europe, complementing existing initiatives to promote respect of human rights by employers and businesses. Brazil's experience suggests that, before businesses are willing to sign up to initiatives which have the effect of penalising business colleagues who condone labour exploitation, it is important for them to have confidence in the evidence available so that is clear that allegations of human trafficking or forced labour are not being made by one business against another to gain commercial advantage. A special characteristic of Brazil's experience is that all the businesses concerned are operating in the same country, minimising the risk that a government might also make allegations of forced labour against businesses from other countries to gain a commercial advantage for business based in their country or for other political reasons.

3. Demand-reduction measures by civil society organisations

Civil society organisations have played a key role in documenting abuse against workers around the world, publicizing cases and developing methods for businesses and specialists to use when checking whether abuse is occurring and also to remedy the harm when it does occur. Behind the initiatives are a variety of NGOs, faith-based organisations, trade unions and other parts of civil society, some of which work closely with business organisations.

This chapter describes efforts to reach consumers as they make purchasing decisions, campaigns to persuade businesses in the textile and garment sector to make purchasing decisions which avoid encouraging abuse, and a technical initiative to score the efforts of businesses to respect human rights. All seek to go beyond the blunt instrument used by anti-slavery campaigners in the 19th century, who, aware of the fact that most sugar cane was produced by slaves, boycotted products containing sugar. This is because boycotts potentially wound businesses which are not resorting to labour exploitation, as well as those which are. In contrast, influencing businesses which are proud of their reputation has become a major way for civil society to discourage labour exploitation and other workplace abuse. The boards of well-known brands regard public criticism of their business and its suppliers as a risk that they must take action to minimise.

3.1. Initiatives to provide consumers with information about whether products they buy have involved labour exploitation

A range of civil society organisations based in Europe and North America have undertaken initiatives to provide information directly to consumers about the goods they buy. As only a few products for sale are accompanied by a social label, recent initiatives have used computer-based technology to provide information directly to consumers about the products they are considering buying. These methods are still in the process of being developed, but, as they seem likely to become more influential in the near future, an example is mentioned here.

The US has been the country where more efforts have been made to provide individual consumers with information about human trafficking or exploitation. An initiative launched in 2013 aimed at providing shoppers with information about the “Slavery Footprint” of specific items for sale, using smart phone technology to help shoppers choose.⁵⁶ The initiative used digital technology to consult five separate sources of information about the conditions of production of specific products. However, the sources were too limited to provide consistently reliable information. The organisers of the Slavery Footprint initiative eventually joined another US effort, ‘Made in the Free World’, which refocused attention on providing information to businesses about the risk of forced labour occurring in their supply chains.

Despite much publicity about cases of human trafficking, forced labour and child labour over the past two decades, the evidence that purchasing decisions made by consumers have been influenced significantly is confined to relatively few commodities where intense publicity has focused attention on a particular product or retailer. Even when consumers are exposed to information suggesting that their money might end up in the pockets of traffickers or abusive employers, many still buy the cheapest product on offer. Considering that the information available about products is often inadequate or even defective, consumers can be forgiven for not feeling able to differentiate between the services or products provided by people who have been trafficked or subjected to abuse and those provided by workers who have not.

3.2. Initiatives to influence businesses in the garment and textile sector

3.2.1. Influencing businesses that buy clothes from factories using forced labour

Over three decades there has been regular publicity about cases of forced labour, child labour or other abuse in the textile industry around the world. The abuse occurs in factories, in smaller production units, and sometimes in the fields where cotton or other fibres are grown and harvested. One of the longest-running campaigns to stop the exploitation of workers, the Clean Clothes Campaign, started in the Netherlands in 1989. It aims to improve working conditions and support the empowerment of workers in the global garment and

⁵⁶ See <http://www.slaveryfootprint.org> for information on this initiative. It subsequently became part of a broader initiative entitled ‘made in a free world’ (see <http://madeinafreeworld.com>).

sportswear industries (the majority of whom are women). The campaign's website describes it as "an alliance of organisations in 16 European countries. Members include trade unions and NGOs covering a broad spectrum of perspectives and interests, such as women's rights, consumer advocacy and poverty reduction".⁵⁷ The Campaign works closely with a network of more than 200 organisations and trade unions in garment-producing countries "to identify local problems and objectives, and to help us develop campaign strategies to support workers in achieving their goals".

Retailers and businesses around Europe are wary of being the target of bad publicity by the Clean Clothes Campaign. Some are also keen to dismiss the campaign's reports as inaccurate or exaggerated. The Campaign countered this by asking the Center for Research on Multinational Corporations (SOMO), established in 1973, to collect evidence and publish reports on the issue. Reports by the Clean Clothes Campaign and its national branches have had considerable impact, particularly on retailers (its first campaign action in the Netherlands was aimed at influencing C&A) and on individual consumers. Some report on the exploitation of workers in the suppliers of well-known brands on sale all over Europe.

Other reports focus on harsh working conditions in factories in a particular country supplying a range of retailers in a European country. For example, the Clean Clothes Campaign in Poland focused in 2014 on the businesses in Bangladesh known to supply three Polish retailers.⁵⁸ While this report did not identify cases of forced labour, it noted that workers were unable to get time off work and concluded that the companies examined had not taken visible or comprehensive measures to ensure compliance by their suppliers with the standards set by labour law in Bangladesh. Some of the campaign's reports present evidence about labour exploitation or forced labour. For example, in 2015 SOMO published a joint report⁵⁹ with a Brazilian organisation that monitors forced labour in business value chains in Brazil, Repórter Brasil.

The strength of the Clean Clothes Campaign depends on the accuracy of the information it publishes. This in turn is partly based on its cooperation with a professional research institute and partly on its partnership with local organisations monitoring working conditions in their countries. Its proven strength in Europe has reportedly been its ability to act regional and local at the same time: providing coordination and giving coherence to campaign messages in all 16 European countries, while at the same time being in a position to investigate the activities of individual businesses operating in a particular European country. By influencing retailers in Europe, it reduces the extent to which retailers tolerate trafficking for labour exploitation among their suppliers and can thus be regarded as a discouraging demand. Of course, additional initiatives are required in the countries where textile factories use or allow labour exploitation. Employers and business owners must be involved in order for them and their governments to regard the initiatives as more

⁵⁷ The Clean Clothes Campaign website is at <http://www.cleanclothes.org>. In 2013 the campaign was supported by organisations in 15 European countries: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Norway, Poland, Spain, Switzerland, Turkey and the UK.

⁵⁸ http://www.ekonsument.pl/materialy/publ_585_grubymi_nicmi_szyte_raport_ccp.pdf.

⁵⁹ Stichting Onderzoek Multinationale Ondernemingen (SOMO) and Repórter Brasil. *From moral responsibility to legal liability? Modern day slavery conditions in the global garment supply chain and the need to strengthen regulatory frameworks: The case of Inditex-Zara in Brazil*

legitimate than publications from the other side of the world. For example, in March 2016 the ILO published, in Vietnamese and English, a guide for employers in Vietnam (Preventing forced labour in the textile and garment supply chains in Vietnam).

3.2.2. Influencing businesses that buy fibres (for making clothes) produced with forced labour

While the Clean Clothes Campaign publishes information primarily about conditions in factories where garments are manufactured, other campaigns have focused attention on the use of forced labour in cotton fields and in the production of fibres used for making textiles. As this information concerns forced labour used at two or more stages removed from retailers, businesses retailing garments in Europe seem to have felt sheltered from criticism. The result is that only some have taken notice and asked their suppliers to take action to stop the use of forced labour at the level of growing, harvesting and processing cotton and other raw materials.

The Cotton Campaign is a coalition of human rights organisations, trade unions, investors and business associations working together to end forced labour of children and adults in the cotton industry in Uzbekistan. It documents how the Government of Uzbekistan forces people to work in the country's cotton harvest (amounting to approximately 3.3 million tonnes in 2015) and has also published information about abuse in the cotton fields of other central Asian republics. They argue that, on account of extensive forced labour, businesses buying cotton should systematically avoid buying cotton from Uzbekistan or from companies known to buy Uzbek cotton. On its website the Cotton Campaign calls on all businesses purchasing cotton to "Establish a policy that prohibits the use of cotton from Uzbekistan and Turkmenistan and prohibits business with companies that use it".⁶⁰ In 2007, a group of retailers in Europe and North America announced that they would cease to allow Uzbek cotton to be used in products they sold.⁶¹ By 2013, 136 companies were reported to refuse to source their cotton in Uzbekistan.

In recent years the Cotton Campaign has focused criticism on three companies which continue to buy cotton in Uzbekistan and who have refused to address the use of forced labour in the production of cotton in Uzbekistan. One of these, based in the Republic of Korea, has repeatedly refused to answer inquiries about its reasons for not taking action. Another, based in Singapore, has responded to inquiries and claimed that there are no occurrences of child or forced labour at its facilities in Uzbekistan (or anywhere else).

Organisations supporting the Cotton Campaign do not rely on the power of information alone. They have also resorted to legal channels to challenge the import of goods made with cotton harvested by forced labour. For example, in April 2016 two organisations in the campaign submitted a complaint to the US Customs and Border Protection agency, calling for imports into the US from Turkmenistan containing cotton to be stopped under the terms

⁶⁰ See <http://www.cottoncampaign.org/what-companies-that-use-cotton-can-do.html>.

⁶¹ Including Wal-Mart Stores, Tesco and Marks & Spencer. See 'Update 1-Wal-Mart asks suppliers to avoid Uzbek cotton', *Reuters*, 30 September 2008, <http://www.reuters.com/article/idUSN3043422920080930>, accessed 31 March 2016.

of the US Tariff Act of 1930 which prohibits the import of goods made with forced labour, prison labour or indentured labour.

From the point of view of businesses wishing to avoid condoning forced labour, the Cotton Campaign is a useful source of information on abuse during Uzbekistan's cotton harvests as the Uzbek authorities continue to deny the accuracy of such information. In the absence of such campaigns, however, it is clear that abuse is able to continue occurring on a massive scale without evidence being collected or pressure being applied for improvement. In European countries where textile and fibre importers and retailers still pay little or no attention to abuse of workers by their suppliers, it seems that governments are reluctant to fill the information gap. In addition, civil society organisations are already engaged in several fronts and do not have the time required to fill this gap (already seeking numerous changes in business practices in their countries). In such instances the media can potentially play a useful role by highlighting the supply chain that brings Uzbek cotton, for example, onto the streets of a particular European provincial town. Otherwise, they depend on retailers in the larger economies of Western Europe to react first and to demonstrate which suppliers to trust.

3.3. Monitoring effectiveness of business efforts to prevent human rights abuse in their product chains and lobbying for improvements

Civil society organisations have played a prominent role in monitoring efforts by businesses to respect human rights in general, including workplace abuses such as human trafficking and labour exploitation. Working together with businesses, such organisations started developing a series of minimum standards for businesses to respect and which they also urged their business partners to implement. This was at the same time as the United Nations Secretary-General's Special Representatives on business and human rights, Professor John Ruggie, was developing the Guiding Principles on Business and Human Rights, between 2006 and 2011. Since the Guiding Principles were adopted, such organisations have pressed businesses to adopt the systems and procedures specified in the Guiding Principles. They have also started monitoring business performance and reporting publicly about it.

In 2016, some of the most experienced of these organisations are engaging in an exercise⁶² to assess the effectiveness of company efforts to respect human rights by scrutinising the systems used (by businesses) around the world and 'benchmarking' them. They are focusing on three specific sectors of economic activity: agriculture, the apparel industry and extractive industries (mines and quarries). The benchmarks represent specific standards, similar to those contained in some company codes of conduct. For example, on the issue of "debt bondage and other unacceptable financial costs" (in a business' agricultural operations), Benchmark D.1.5.a measures whether "the Company refrains from imposing any financial burdens on workers by withholding wages or expenses that should be covered by the Company, including recruitment fees and related recruitment costs". Separate benchmarks check whether agricultural workers are able to exercise their right to freedom

⁶² Aviva Investors, Business & Human Rights Resource Centre, Calvert Investments, Institute for Human Rights and Business, VBDO and Vigeo Eiris. *Corporate Human Rights Benchmark Pilot Methodology* 2016.

of movement. These ask whether businesses refrain “from restricting workers’ movement, including through the retention of passports or other personal identification or travel documents or ATM cards or similar arrangements for accessing wages or restricting workers’ freedom of movement outside of work hours or requiring workers to stay at and pay for accommodation by the Company” (Benchmark D.1.5.c).

The benchmarks summarise minimum standards for businesses and their suppliers in the three sectors and present a helpful list of the detailed questions that business managers should be asking about their workplace and those of their suppliers. Explaining the decision to develop the benchmarks, the report that launched them in March 2016 noted that: “a recent survey by the Economist Intelligence Unit found that of 853 senior corporate executives surveyed on which interventions could best enable them to meet their human rights responsibilities, the top choice was a public benchmark on companies’ human rights performance”.

Cooperation has been crucial to develop standards that are practical for businesses to apply in their operations and to ensure the high level of legitimacy that such standards require if they are to be taken seriously and respected. As seen above, the authors of the corporate human rights benchmark methodology include several NGOs (the Business & Human Rights Resource Centre and the Institute for Human Rights and Business) along with various investors (Aviva Investors, Calvert Investments, Vereniging van Beleggers voor Duurzame Ontwikkeling [VBDO], Association of Investors for Sustainable Development, and Vigeo Eiris).

Conclusions: the characteristics of good practice

The most effective initiatives which have been described in this report share some common characteristics:

- ✓ They involve several actors working together, sometimes competitors or organisations which traditionally disagree with each other, such as a business organisation and a trade union;
- ✓ They routinely have wider objectives than just discouraging demand related to labour exploitation or human trafficking, achieving other goals as well;
- ✓ Many now use the UN Guiding Principles on Business and Human Rights as their prime point of reference.

The UN Guiding Principles have persuaded some governments in Europe to be more explicit in national plans about the measures they expect businesses to take to respect human rights. However, this has been done without making explicit reference to the need to discourage demand associated with human trafficking. Some of the recommendations by the UN's Inter-Agency Coordination Group against Trafficking in Persons⁶³ have been reflected in measures taken by some European States to improve labour conditions in sectors vulnerable to the use of victims trafficked for labour exploitation and to introduce more effective regulation of private recruitment agencies.

What constitutes good practice by businesses is being documented, among others, by specialised organisations that focus on business and human rights (such as the UN Working Group on Business and Human Rights and a range of organisations in which business and civil society are working together). The due diligence process outlined in the UN Guiding Principles on Business and Human Rights offers a framework for responding to possible abuse both close to home and far away (in supply chains). Particular good practice examples featured in this report include:

- ✓ Taking notice of reports about human trafficking or labour exploitation when these are issued by reputable organisations (particular intergovernmental organisations);
- ✓ Finding out what is going on in a specific workplace or supply chain by asking an independent specialist to investigate and collect the facts;
- ✓ Taking appropriate remedial action when labour exploitation is reported or assessed to be a significant risk. This involves engaging with suppliers rather than a 'cut and run' response. If suppliers refuse or fail to make requested changes, it becomes reasonable to refuse to do further business with them.
- ✓ Reporting publicly when abuse is found to have occurred and subsequently on the progress of efforts to end abuse.

The actions of civil society organisations (and other actors) which collect and publish information about working conditions and cases of labour exploitation or human trafficking can be considered good practice, if the information is accurate and objective. For instance, Brazil's willingness in the past to name offending businesses (in its dirty list) provided other

⁶³ ICAT (2014). Preventing Trafficking in Persons by Addressing Demand.

actors with a source of clear information. However, if a government names businesses based in other countries as offenders it risks being accused of acting in its own partisan interests. To ensure that objective evidence is taken seriously, it is important that researchers investigating labour exploitation or other workplace abuses and auditors checking for compliance with standards avoid exaggerating or misreporting, notably through ‘packaging’ information in such a way that it downplays the seriousness of any abuse that may be occurring.

When ICAT analysed efforts to discourage demand in 2014, it was concerned that observers lined to various international organisations had all noted the lack of information available about what constituted demand (related to human trafficking) and measures to discourage demand. While it will be helpful to see further evidence and further clarification about what constitutes ‘demand’, it seems that a good deal has been done without explicitly labelling the methods as being ‘to discourage demand’, and that such efforts deserve replication by governments, businesses and civil society.

References and resources for further information

Cyrus, Norbert (2015). *The Concept of Demand in Relation to Trafficking in Human Beings. A Review of Debates since the late 19th Century*. Working Paper No. 2. Demand AT Project (2014-17), coordinated by the International Centre for Migration Policy Development (ICMPD).

European Union Agency for Fundamental Rights (FRA) (2015). *Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights*.

UN Guiding Principles Reporting Framework with Implementation Guidance. February 2015: http://www.ungpreporting.org/wp-content/uploads/2015/02/UNGuidingPrinciplesReportingFramework_withimplementationguidance_Feb2015.pdf.

www.coe.int