

Claiming remedies from the private sector and corporate accountability



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Overview

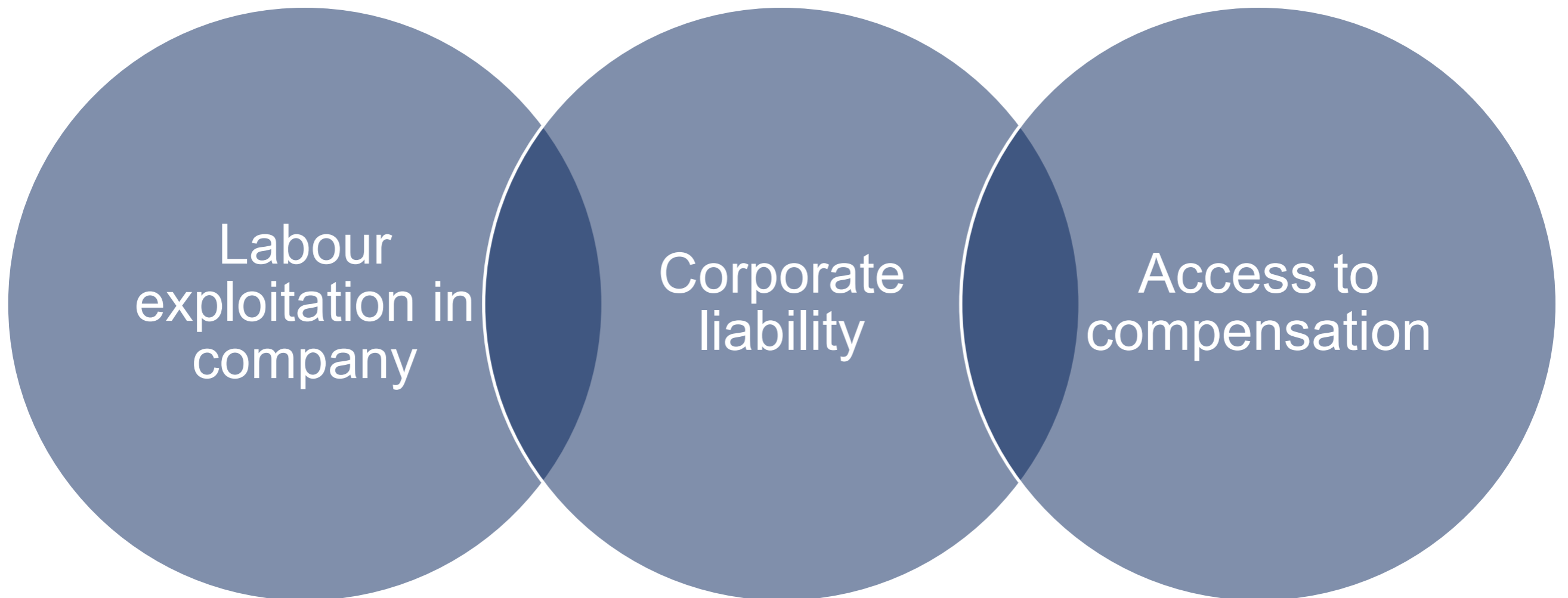


Figure 7: Economic sectors most prone to labour exploitation



Question: Which are the (up to) three economic sectors where you, in your professional work, have witnessed most often that migrant workers are severely exploited?

Note: N = 551; DK=65 (the graph summarises the answers given by 551 respondents; an additional 65 respondents selected the category 'don't know').
The economic sectors electricity, gas, steam and air conditioning supply; education; mining and quarrying; information and communication; activities of extraterritorial organisations and bodies and others have been included in the category 'other'.

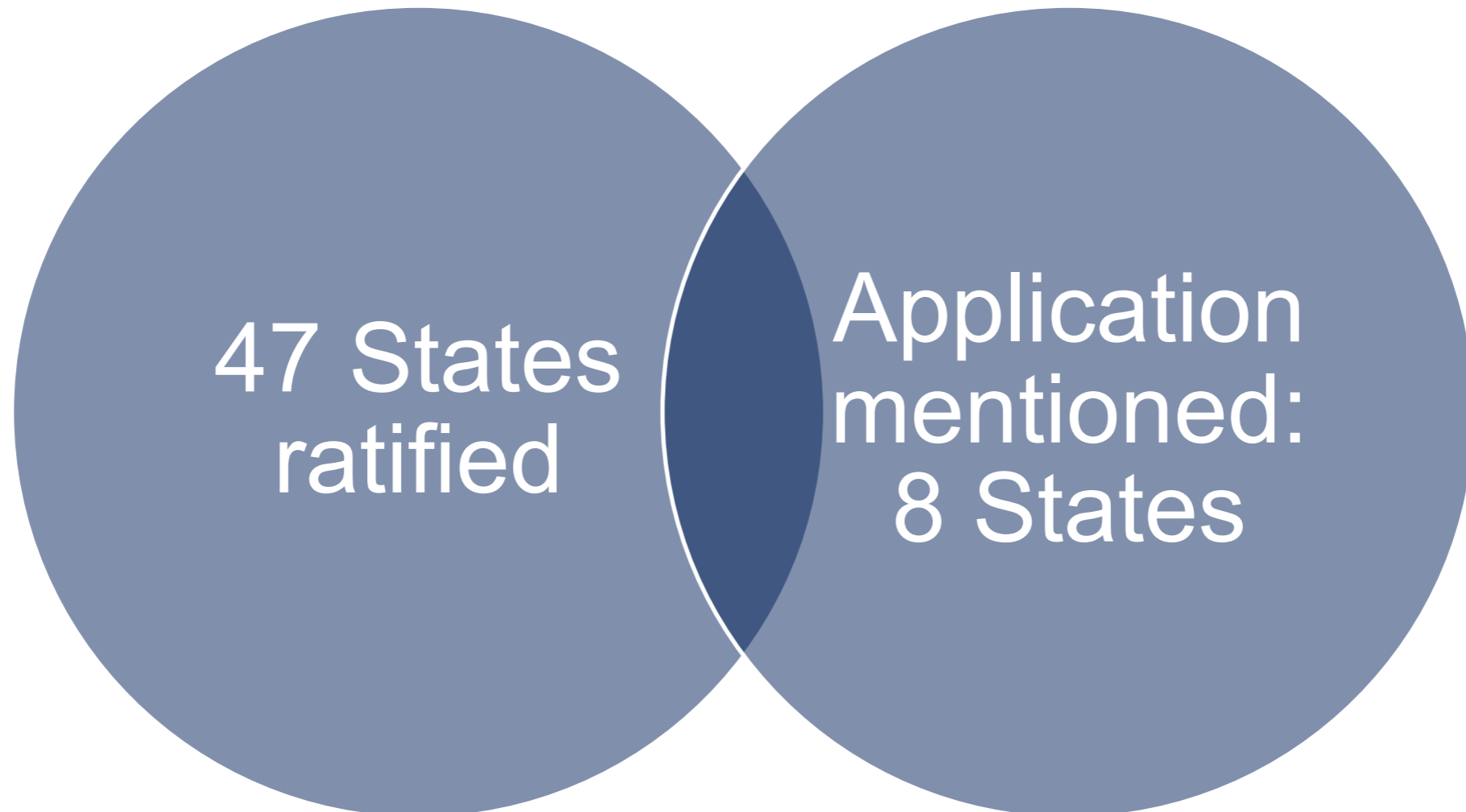
Source: FRA, 2015

Corporate liability and the obligations of States

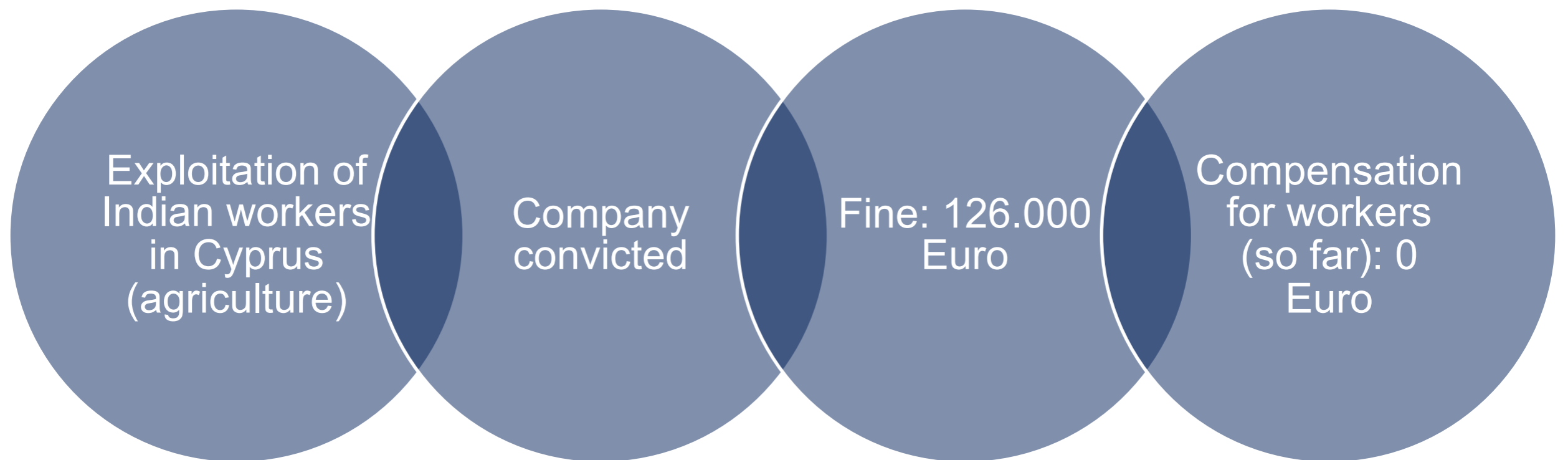
- ▶ Examples for States' obligations concerning corporate liability for trafficking in human beings:
- ▶ Council of Europe Convention on Action against Trafficking in Human Beings (2008):
 - ▶ States have to establish liability of corporations for relevant criminal offences (Art. 22)
 - ▶ Criminalisation of the use of services of trafficked persons (Art. 19)
- ▶ Directive 2011/36:
 - ▶ EU Member States have to implement measures which ensure that legal persons are held liable for THB (Art. 5)

Corporate criminal liability and its application in Europe

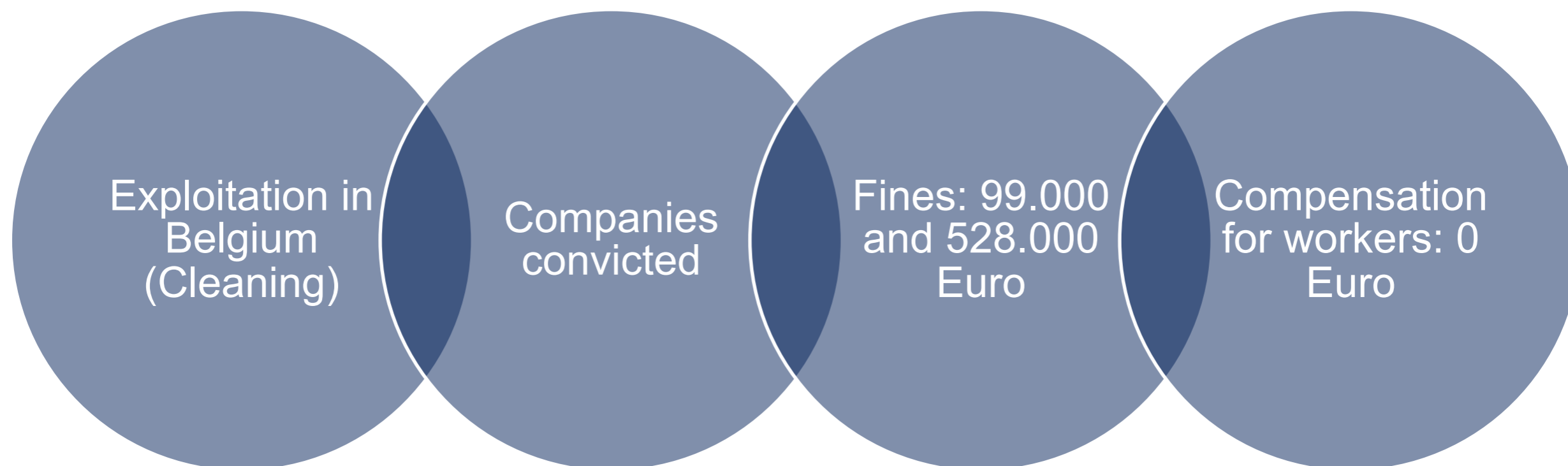
Council of Europe's Monitoring Mechanism GRETA: Country Reports



Corporate criminal liability and its application in Europe



Corporate liability and its application in Europe



Challenges in the application of corporate criminal law

- ▶ Bankruptcy of company concerned
- ▶ Fairly new provisions on corporate liability – lack of practice of applying provisions among state prosecutors
- ▶ Blurred lines between provisions on THB, social fraud or underpayment of workers

Can corporate liability improve access to remedy?

- ▶ Exploited person should (still!) be in the country/trafficked person plays essential role
- ▶ Criminal procedure against company disadvantageous for exploited persons: not heard anymore in court
- ▶ Fear of deportation and the lack of victim support
- ▶ Legal gaps concerning corporate criminal liability in subcontracting/supply chains
- ▶ Focus on sanctioning the company: link between sanctioning the company/employer and compensating the exploited person not sufficiently established
 - Assets confiscated (in case of criminal corporate liability) not necessarily used to compensate exploited person



Possible Alternative? Non-judicial grievance mechanisms

- ▶ Guiding Principles on Business and Human Rights:
 - ▶ State-based and non-state based grievance mechanisms
 - ▶ Judicial and non-judicial grievance mechanisms
- ▶ Non-state based:
 - ▶ Grievance mechanisms run by **third parties e.g. NGO** (face-to-face, managed by NGO as intermediary)
 - ▶ Sector/industry based initiatives (e.g. Fair Wear Foundation)
 - ▶ **Company-based grievance mechanisms** (managed by companies)



What is a non-judicial grievance mechanism?

It is **NOT**...

- ▶ A replacement for a binding and enforceable judicial decision
- ▶ Designed to handle criminal cases
- ▶ A replacement for the role of legitimate trade unions

BUT it can...

- ▶ **Offer efficient, timely and low-cost forms of conflict resolution**
- ▶ **Show that the company is committed** to continuous improvement and internal learning
- ▶ **Offer a valuable alternative** where there is little confidence in the state-run systems

Challenges

- ▶ Number of fully-developed (full-fledged) grievance mechanisms limited in Europe
- ▶ Long process to develop a grievance mechanism
- ▶ Making the mechanism known within company
- ▶ Establishment of mutual trust
- ▶ Independence
- ▶ Balance between transparency and confidentiality

Thank you!

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