



HOW WORKPLACE INSPECTORS CAN
PROTECT THIRD-COUNTRY WORKERS'
RIGHTS

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TRAINING MANUAL

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ABBREVIATIONS

CJEU	Court of Justice of the European Union
ECtHR	European Court of Human Rights
ELA	European Labour Authority
EMN	European Migration Network
Impact	European Multidisciplinary Platform against Criminal Threats
ESD	employer sanctions directive
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
FRA	European Union Agency for Fundamental Rights
GRETA	Group of Experts on Action against Trafficking in Human Beings
HEUNI	European Institute for Crime Prevention and Control, affiliated with the United Nations
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights
OFII	French Office for Immigration and Integration (Office Français de l'Immigration et de l'Intégration)
OHCHR	United Nations Human Rights Office of the High Commissioner
OSCE	Organization for Security and Co-operation in Europe
PICUM	Platform for International Cooperation on Undocumented Migrants
TFEU	Treaty on the Functioning of the European Union
UNDOK	Contact Point for Trade Union Assistance for Undocumented Workers
UNHCR	Office of the United Nations High Commissioner for Refugees

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INTRODUCTION

In July 2022, 174 migrant workers were found to be working illegally in the factory of the chemical manufacturer Borealis at the Port of Antwerp in Belgium. The majority were from Bangladesh, the Philippines and Türkiye. They had been working 6 days per week for EUR 650 per month and were housed in poor accommodation. Many were in an irregular migration situation, as they had entered the EU having been issued with temporary work permits in Hungary or Poland but these permits had expired.

A Belgian public prosecutor is investigating whether the workers were trafficked. The workers have been granted temporary residency until a decision is made.

This case, and the large number of victims involved, shows that labour exploitation is a reality in the heart of Europe. The European Union Agency for Fundamental Rights (FRA) has in previous reports explored the mechanisms behind labour exploitation and how difficult it is for victims to obtain compensation and justice. While both EU and non-EU nationals are at risk of labour exploitation, the latter are, in some instances, more vulnerable. This is due to their dependency on their employer for obtaining (and renewing) their work and residence permits in the EU Member State.

Workplace inspections offer labour inspectors opportunities to play a significant role in preventing and identifying labour exploitation. They can inform workers of their right to decent working conditions and to obtain unpaid wages. They can also tell them how they can seek redress when their rights are violated.

All migrant workers, including those in an irregular situation, enjoy core employment rights as workers. However, some rights depend on residence status. This manual seeks to inform workplace inspectors of the safeguards applying to third-country workers – meaning workers who are not from a Member State or

from Iceland, Liechtenstein, Norway or Switzerland – under EU law. The manual also outlines ways to best protect these workers' rights in practice in the context of inspections.

A systematic application of the safeguards under EU law described in this manual would go a long way towards combating labour exploitation of migrant workers across the EU.

Purpose of the manual

This manual is designed to be used by workplace inspection staff in the Member States. It is intended to empower them to enforce the protective standards in EU law that safeguard the rights of third-country workers, including seasonal workers, migrant workers with temporary permits and migrants in an irregular situation. Third-country workers are nationals who are not from a Member State or from Iceland, Liechtenstein, Norway or Switzerland.

EU law contains important provisions to protect third-country workers from exploitation, namely in the employer sanctions directive (ESD) ⁽¹⁾, the seasonal workers directive ⁽²⁾, the single permit directive ⁽³⁾, the posted workers directive ⁽⁴⁾, the anti-trafficking directive ⁽⁵⁾, the victims' rights directive ⁽⁶⁾ and other EU legal instruments. These provisions are little known to workplace inspectorates.

This manual is only partly relevant to Denmark and Ireland. Of these instruments, only the posted workers directive applies to both those countries; the anti-trafficking directive and the victims' rights directive apply to Ireland but not to Denmark.

This manual is for officials responsible for workplace inspections and those responsible for training them:

- individual workplace inspectors may use the manual to familiarise themselves with the

safeguards that EU law provides for third-country workers;

- national trainers who provide training to workplace inspectors in their Member State may use the modules presented in this manual to design training courses.

The manual does not cover EU nationals working in a Member State other than their own or migrant workers residing in the EU under the long-term residents directive ⁽⁷⁾, the blue card directive ⁽⁸⁾, the intra-corporate transfers directive ⁽⁹⁾ or the students and researchers directive ⁽¹⁰⁾.

This manual uses the term ‘migrant worker’ to describe workers in the EU who are not nationals of an EU Member State, Iceland, Liechtenstein, Norway or Switzerland.

This manual was developed with contributions from the European Labour Authority (ELA), representatives of national labour inspectorates of selected Member States and experts from the European Commission, the International Labour Organization (ILO), the International Trade Union Confederation, the European Trade Union Confederation, the International Organization for Migration (IOM), the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), the Council of Europe, the Platform for International Cooperation on Undocumented Migrants (PICUM), the European Trade Union Confederation (ETUC) and the International Trade Union Confederation (ITUC). Three online meetings with experts and two online ‘validation workshops’ with labour inspectors were held between March and September 2023. The aim of these meetings and workshops was to review first the outline and then the key training tools stemming from the manual. The final draft manual was shared with participants for comments.

Structure of the manual

This manual presents the elements in EU law that protect migrant workers. It contains seven modules. It is aimed at both workplace inspection staff and trainers.

Learning materials

Learning materials published on FRA’s website support this manual.

- **Practical exercises for training.** Workplace inspection staff may use these practical interactive exercises to better understand how to apply the relevant EU law presented in this manual. Trainers may use them to explore the topics covered in each module.

- **Training organisation guide.** This guide contains instructions for trainers on how to prepare training courses and deliver the different modules, covering tasks before, during and after the training.

PowerPoint presentations can be requested by contacting migration@fra.europa.eu.

Modules

The training manual contains seven modules:

1. Module 1: Introduction and legal framework,
2. Module 2: Speaking with migrant workers during inspections,
3. Module 3: Providing information (protective element 1),
4. Module 4: Access to justice and facilitation of complaints (protective element 2),
5. Module 5: Identification and referral of exploited workers (protective element 3),
6. Module 6: The right to backpay and compensation (protective element 4),
7. Module 7: Decent housing and changing employer (protective element 5).

How to use the manual

Each module of the manual starts with learning objectives and finishes with key takeaways and further reading.

Modules 1 and 2 provide general overviews of the legal framework and communication during inspections, respectively. Modules 3–7 present the five protective elements included in EU law. These modules first introduce each element, then present EU law in the area in question and provide guidance for workplace inspectors on how to apply it. Module 5 has no specific section about EU law, as the relevant EU legal provisions are included in the thematic sections on identifying labour exploitation, referring victims to support services and temporary residence permits for victims.

Most of the pieces of EU legislation referred to in the manual are directives. Directives require Member States to adopt national laws to incorporate the rules into national legislation. Considering that Member States have some flexibility when transposing EU law into their national legal systems, each module in this manual contains a set of questions to help the reader to understand how EU law is applied nationally. The modules refer to international legal standards throughout the text where appropriate.

The manual uses the following icons to help the reader navigate through the text:



evidence from research with information on sources



examples from Member States



legal standards



further reading.

This manual uses the following colour coding:

- red boxes help workplace inspectors to understand **how EU law is implemented at the national level** in their Member State;
- yellow boxes offer examples of **promising practices** to provide workplace inspectors and trainers with effective ways to address specific challenges in a protection-minded manner.

The manual's annexes provide the following resources:

- Annex 1 lists the relevant EU legal instruments and provides links to the relevant multilingual [EUR-Lex](#) pages;
- Annex 2 lists selected case-law of the Court of Justice of the European Union (CJEU);
- Annex 3 lists selected international instruments that are relevant to this manual and the Member States where they apply;
- Annex 4 provides an overview of the protective elements included in selected EU legal instruments;
- Annex 5 defines key terminology – for each concept, the annex provides an official legal definition and explains in clear and simple language how the term is used in the context of this manual;
- Annex 6 reproduces the IOM's checklist on migrant-sensitive interview techniques;
- Annex 7 reproduces the ILO's indicators of labour exploitation;
- Annex 8 provides a list of additional reading, including reports, training materials, guides and academic and other sources.

ENDNOTES

- (¹) [Directive 2009/52/EC](#) of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).
- (²) [Directive 2014/36/EU](#) of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (OJ L 94, 28.3.2014, p. 375).
- (³) [Directive \(EU\) 2024/1233](#) of the European Parliament and of the Council of 24 April 2024 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast) (O J L 2024/1233, 30.04.2024, p. 1).
- (⁴) [Directive 96/71/EC](#) of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).
- (⁵) [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1) as amended by [Directive \(EU\) 2024/1712](#) (OJ L, 2024/1712, 24.6.2024).
- (⁶) [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).
- (⁷) [Council Directive 2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).
- (⁸) [Directive \(EU\) 2021/1883](#) of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC (OJ L 382, 28.10.2021, p. 1).
- (⁹) [Directive 2014/66/EU](#) of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).
- (¹⁰) [Directive \(EU\) 2016/801](#) of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21).

MODULE 1:

INTRODUCTION AND LEGAL FRAMEWORK

Through this module, workplace inspectors will:

1. learn that migrant workers are in a situation of vulnerability and understand the main circumstances that make them vulnerable to exploitative practices;
2. understand that the rights of migrant workers vary according to their residence status;
3. familiarise themselves with the main legal documents that protect migrant workers in the EU;
4. learn that core labour rights apply to all workers without discrimination and that workers can be treated differently based on their residence status only in certain circumstances.

1. Migrant workers in the EU

Numbers

A significant number of migrant workers live and work in the EU. Many are EU nationals who moved to another Member State. Millions come from outside the EU.



According to the European Commission, at the end of 2023, some 27.3 million non-EU citizens were living in the EU, some who had been doing so for a long period of time and others, such as seasonal workers, for shorter periods of time. Almost 10 million were employed in the EU labour market.



For further details, see European Commission, '[Statistics on migration to Europe](#)', European Commission website, 11 April 2024.

In addition, some migrants are staying in the EU in an irregular manner, many of whom are pursuing some form of employment.



An estimated 2.1–2.6 million irregular migrants were residing in the EU in 2017.

Source: Connor, P. and Passel, J. S., [Europe's unauthorized immigrant population peaks in 2016, then levels off](#), Appendix C, Pew Research Centre, Washington DC (data exclude the United Kingdom but include Iceland, Liechtenstein, Norway and Switzerland).

Economic sectors

The economic sectors that rely on migrant workers are often at a higher risk of exploitation. These include, in particular, labour-intensive sectors, such as agriculture, construction, food services, domestic work, cleaning, meat processing, transport and forestry (Table 1).

Table 1: Employment of regularly residing third-country nationals by economic sector, 2022

EMPLOYMENT SECTOR	NUMBER OF THIRD-COUNTRY WORKERS (THOUSANDS)
Manufacturing	1 318
Wholesale and retail trade and repair of vehicles and motorcycles	1 135
Accommodation and food service activities	1 054
Construction	855
Human health and social work activities	766
Administrative and support service activities	706
Activities of households as employers, producing activities of households for own use	560
Transportation and storage	558
Other sectors	2 067

NB: Sectors with fewer than 500 000 individuals have been aggregated as 'Other sectors'.

Source: European Commission, EU Labour Force Survey, custom extraction and calculations, 2023.

2. Why some workers are more vulnerable to exploitation

Migrant workers commonly experience the following circumstances that make them vulnerable to labour exploitation and trafficking in human beings.

Poverty

Poverty in migrant workers' country of origin and in the country of work is an important push factor for their migration and makes them more vulnerable to exploitative practices in the country of employment. The lack of alternatives coupled with migrant workers' urgent need to make a living, as well as their responsibility to sustain their families, puts them in a situation of vulnerability that exacerbates their risk of exploitation. Debts accrued to pay for the travel to the country of work further increase migrant workers' vulnerability to exploitation.



Evidence: poverty is also a reality for migrants in the EU. The at-risk-of-poverty rate among non-EU citizens living in the EU amounted to 37.2 % in 2022, compared with 19.3 % among EU citizens living in their own country.

Source: Eurostat, '[Migrant integration statistics – At risk of poverty and social exclusion](#)', Eurostat Statistics Explained, 23 October 2023.

Irregular or precarious residence

Migrant workers in an irregular situation are employed in undeclared work.

They are typically fearful of authorities. They fear that interaction with authorities could lead to them

losing their job, income and home and could expose them to detention and deportation. They might often avoid inspections and might be employed in the most remote and hidden working sites with small chances of being detected.



Evidence: based on interviews with 237 exploited workers, a 2019 FRA study found vulnerability linked to residence status to be a key risk factor of exploitation.

Source: FRA, '[Protecting Migrant Workers from Exploitation in the EU – Workers' perspectives](#)', Publications Office of the European Union, Luxembourg, 2019, p. 67.

Certain types of work arrangements, such as seasonal work, bogus self-employment or posted work, can add to the risk of workers being exploited. For example, seasonal workers may not receive their final salary payment when their residence permits are about to expire. There is evidence that bureaucratic failure to process residence permits in a timely manner might result in irregular migration (1).

Dependence on the employer

Regularly residing migrant workers are dependent on their employer when their residence permit does not allow them to change employer. For example, in only some Member States are migrant seasonal workers entitled to change employers (2). Where changing employers is not possible, workers may remain with abusive employers because leaving the job would result in losing their residence permit.

Migrant workers in an irregular situation may benefit from regularisation programmes, but they often require employers to countersign the application for the permit. Workers may have to spend a set amount of time with an employer, which – even if unintended –

increases their dependence on the employer and heightens their vulnerability.



Evidence: FRA has documented how employers in various Member States charge illegal fees or require unpaid work in exchange for providing a contract or verifying the requisite time spent in employment.

Source: FRA, [Protecting Migrant Workers from Exploitation in the EU – Workers' perspectives](#), Publications Office of the European Union, Luxembourg, 2019, p. 69.

Migrant workers are further deterred from filing a complaint or demanding just working conditions, compensation or unpaid wages because complaining would result in them losing their job and, sometimes, employer-provided accommodation.

Lack of knowledge of working conditions and rights

Migrant workers are typically unfamiliar with rules in the country of employment, including their rights as workers, the protection schemes that may be available to them or even the standards of treatment that are permissible under EU and national law.

Workplace inspectors can contribute to preventing and detecting labour exploitation by informing workers of their rights (see [Module 3](#)).

Language and cultural barriers

Language barriers increase the risk of exploitation in various ways. They reduce the chances of migrant workers obtaining information about their rights and the possibility of them obtaining support. They also make it unlikely that migrant workers will understand the legal or institutional landscape – or even understand their employment contract.

Language barriers can also reduce the variety of jobs accessible to migrant workers, often pushing them into the unskilled labour sectors, where the overall risk of labour exploitation is high. They also pose significant challenges for inspectors and other support providers who need to communicate with workers directly to identify situations of exploitation and follow up.

Cultural differences can also be a barrier to communication (see [Module 2](#)).

Subcontracting and involvement of recruitment agencies

In some sectors that are at high risk of labour exploitation, subcontracting and the use of private recruitment agencies are common. Employment

through recruitment agencies or a subcontractor might create complex legal situations in which it is unclear which labour laws apply, whom to address in situations of labour law violations or what remedies are available to workers ⁽³⁾.

Workers may be hired by one party, supervised by another and paid by a third. Workers often do not know the identity of their actual employer. Therefore, they are unable to assert their employment rights.

The increasing trend towards hiring workers through third parties, as opposed to direct employment, is an important enabling factor of labour exploitation. In addition, it is more difficult for labour inspectors to monitor employers in the case of subcontracting, as there is often a lack of transparency along the supply chain ⁽⁴⁾.

Ineffective workplace inspections

A functioning institutional framework to respond adequately to complaints and to proactively monitor working conditions is essential to reduce the risks of labour exploitation. The more unchecked workplace conditions are, the more vulnerable workers are to exploitation.

Workplace inspectors should know how to identify criminal forms of labour exploitation and refer workers who are victims (see [Module 5](#)). They must also support workers whose salary has not been paid to help them to claim their due wages.

Inspections focusing on awareness raising among at-risk migrant workers and the employers employing them are an important tool for prevention. Migrant workers may, at times, not be in favour of inspections due to a fear of losing their only income or, in the case of migrant workers in an irregular situation, of being deported. The experience of ineffective inspections that fail to identify exploitation, that do not punish abusive employers and that do not help exploited workers to access justice are perceived as legitimising exploitative practices.

Migrants' additional vulnerabilities

While migrants are not inherently vulnerable, they are often in vulnerable situations.

Migration itself also usually entails a degree of **isolation**, which makes migrant workers more vulnerable to exploitation. In the country of employment, they are often without family networks and the social structures of their country of origin. Migrants, often seasonal workers, working in the agricultural sector work and live in rural areas, which contributes to their isolation.

The 'invisibility' of some sectors compounds this issue. Workers can have little contact with people from outside the company (e.g. in domestic work, fisheries, agriculture and horticulture). This is an important risk factor for labour exploitation. In the absence of effective social control, the power imbalance between employers and workers is unimpeded.



The ILO [Domestic Workers Convention, 2011 \(No 189\)](#), requires safe and healthy working environments for domestic workers, as well as access to effective and accessible complaint mechanisms.

Women are at a heightened risk of exploitation due to their increased presence in sectors, such as domestic work, where labour inspections are virtually non-existent. Moreover, female migrant workers are often at a greater risk of experiencing violence, including sexual and gender-based violence.



For further information, see UN Women, [From Evidence to Action – Tackling gender-based violence against migrant women and girls](#), policy brief, New York, 2021.

Experiences of racism and multiple and intersecting forms of discrimination, inequality and unfavourable social dynamics in the EU can exacerbate vulnerability.



For further information, see United Nations Human Rights Office of the High Commissioner (OHCHR) and Global Migration Group, [Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations](#), Geneva, 2018; European Commission against Racism and Intolerance, [ECRI general policy recommendation No 14 on combating racism and racial discrimination in employment](#), Strasbourg, 2012.

3. Categories of migrant workers

Migrant workers enjoy different rights and are subject to different rules depending on the law regulating their authorisation to stay and work in their country of employment. The key categories of migrant workers are:

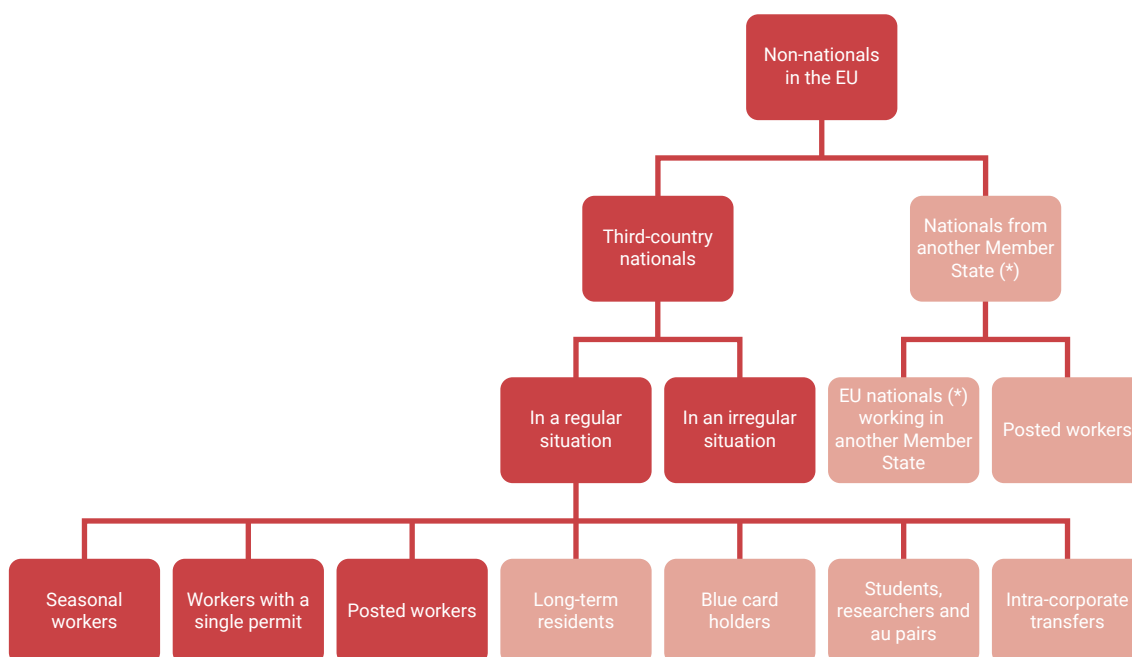
- **EU nationals** and those from Iceland, Liechtenstein, Norway and Switzerland, who enjoy the right of free movement and the right to work in another Member State;
- **third-country nationals**, who, in most cases, need a residence permit and a work permit – these two permits are sometimes combined.

Figure 1 shows the key categories of non-EU nationals. Third-country workers may hold different types of residence permits. Most permits are subject to rules set in EU law. It is important for workplace inspectors to be aware of the different types of residence permits. For this manual, the most important rules are those regulating:

- seasonal work permits, as regulated by the seasonal workers directive;
- other national work permits, which must respect the [single permit directive](#);
- authorisations to work granted to asylum applicants during the examination of their application, as regulated by the reception conditions directive⁽⁵⁾.

Some permits are not covered by EU law: Member States may decide not to apply the standards of the single permit directive to workers who stay for less than 6 months. To such workers, national labour law and international law continue to apply.

Figure 1: Categories of non-nationals under EU law



NB: This manual covers only those categories in red.
 (*) Or those from Iceland, Liechtenstein, Norway or Switzerland.
 Source: FRA (2024).

EU law also sets out rules on other workers whom this manual does not cover, namely:

- third-country nationals holding **long-term EU resident status**, who have working rights similar to those of nationals under the long-term residents directive;
- those holding an **EU blue card**, which gives highly qualified workers from outside the EU the right to live and work in a Member State (see the blue card directive);
- staff posted to the EU by multinational companies operating outside the EU (see the intra-corporate transfers directive);
- third-country nationals who have the right to live and work in the EU for studies, training or voluntary service (see the students and researchers directive).

Some third-country nationals have a residence permit in one Member State and are **posted for work** in another Member State under the posted workers directive.

Some third-country nationals working in the EU do not have residence papers or a right to stay. Such **migrant workers in an irregular situation** do not enjoy the same rights as those regularly residing in the Member States but nonetheless benefit from a range of protective elements accorded to them under

the ESD and the [Charter of Fundamental Rights of the European Union](#) (the charter).

4. EU legal framework

The EU is founded on a set of shared values that include fundamental rights, democracy and the rule of law. These values are upheld across Member States, creating a society that values pluralism, non-discrimination, tolerance, justice, solidarity and gender equality.

The charter sets out core rights, many of which apply to everyone. The personal scope of the charter extends to third-country nationals unless provisions are explicitly restricted to EU citizens (including, in some cases, their family members).

EU law protecting migrant workers builds on standards and principles developed at the international level.

First, the ILO has developed many legal instruments on the rights of migrant workers. The most relevant are described in the modules of this manual and listed in [Annex 3](#). Under the ILO's [Labour Inspection Convention, 1947 \(No 81\)](#), and [Labour Inspection \(Agriculture\) Convention, 1969 \(No 129\)](#), workforce inspectors must secure legal provisions relating to conditions of work and the protection of workers and inform employers and workers on how to comply with such provisions.

Second, in addition to the ILO instruments, there are several other conventions that may be relevant to the work of labour inspectors. These include:

- the nine core UN human rights treaties, in particular the [International Covenant on Economic, Social and Cultural Rights](#), which all Member States have ratified;
- the UN [Convention against Transnational Organized Crime](#) and its [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children](#), which binds all Member States and the EU;
- relevant Council of Europe conventions, including the [Convention on Action against Trafficking in Human Beings](#), which all Member States have ratified.



For the nine core UN instruments and their monitoring bodies, see OHCHR, '[The core international human rights instruments and their monitoring bodies](#)', OHCHR website.

States must **ratify** international legal instruments for these laws to be applicable. Annex 3 provides a list of selected international instruments that are relevant to this manual and shows the Member States where they apply.



For a full list of ILO convention ratifications, see ILO, '[Ratifications by country](#)', ILO website.

Workplace inspectors should also bear in mind that some international conventions might apply to a limited degree in their country, because of the **reservations and declarations** secured by some countries. No reservations other than those specifically provided for can be made when ratifying ILO conventions.

As regards secondary EU legislation – that is, the legal acts that implement the EU treaties – most protective provisions are set out in directives. Directives require implementation through national law. Member States have a degree of flexibility on how they transpose them, but must ensure that they achieve the objectives set by the directive. Member States may adopt or maintain more favourable provisions.

EU law protecting workers in general

EU labour law instruments contain provisions protecting workers in the EU, including migrant workers, in particular:

- the transparent and predictable working conditions directive ⁽⁶⁾, which lays down the minimum rights that apply to every worker who has an employment relationship;

- the safety and health of workers directive ⁽⁷⁾, which sets out rules to prevent occupational risks, protect safety and health at work and eliminate risk and accident factors;
- the temporary recruitment agencies directive ⁽⁸⁾, which prohibits temporary workers being charged recruitment fees.

Following the CJEU judgment of 5 November 2014, *O. Tümer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen*, [C-311/13](#), core EU employment law safeguards apply to any employee, including migrants in an irregular situation.

Single permit holders

The single permit directive lays down the single application procedure for a combined work and residence permit (a 'single permit'). The directive applies to third-country nationals who apply to reside in or have already been admitted to a Member State for the purpose of work. It also applies to those who are residing in a Member State for purposes other than work but who are allowed to work.

The directive was revised in 2024. Member States must transpose the new provisions by May 2026. The third-country workers who fall under this directive enjoy, among others, the following rights:

- the right to **equal treatment** with EU nationals as regards working conditions, social security, education and vocational training, tax benefits and other areas (Article 12; some aspects will apply only once transposed into national law);
- the right to be informed about their rights (Article 11; to be transposed into national law by May 2026);
- allowing workers to **change employers** (Article 11; Member States may not allow this during the first 6 months);
- allowing for a period of **unemployment** of 3 months if the migrant worker has held a residence permit for less than 2 years (Article 11; this is extended to 6 months if the migrant worker has held a residence permit for more than 2 years);
- effective mechanisms to lodge **complaints** against employers, including with the support of third parties (Article 14; to be transposed into national law by May 2026).

Seasonal workers

The seasonal workers directive regulates seasonal work under EU law and protects seasonal workers through the right to:

- **information** about procedures, rights and duties (Article 11);
- **accommodation** that ensures an adequate standard of living (Article 20);
- effective mechanisms to lodge **complaints** against employers, including with the support of third parties (Article 25);
- options for **changing employer** (Article 15).

Migrants in an irregular situation

The ESD prohibits the employment of irregularly residing third-country nationals and lays down provisions to protect their rights through:

- the right of workers to be informed about specific rights (Article 6(2));
- the liability of the principal contractor in addition to, or instead of, the subcontracting employer (Article 8);
- effective mechanisms to lodge complaints against employers, including with the support of third parties (Article 13);
- the right to **back payments** (Article 6);
 - the possibility to issue **temporary residence permits** (Article 13(4)).

EU asylum instruments

The reception conditions directive (Article 17) states that Member States must ensure that asylum seekers have access to work no later than 6 months from the registration of their asylum application, subject to certain conditions. When they work, they are entitled to equal treatment with nationals as regards:

- terms of employment;
- working conditions;
- safety and health at work;
- education and vocational training;
- recognition of diplomas and access to schemes to recognise applicants' prior learning outcomes and experience.

Regulation (EU) 2024/1347 ⁽⁹⁾ entitles international protection beneficiaries, meaning **refugees** and those granted **subsidiary protection**, to the same right as nationals, namely the right to access to the labour market, and to the same safeguards concerning working conditions (Article 28).

Under the temporary protection directive ⁽¹⁰⁾, people benefiting from **temporary protection** (e.g. displaced people from Ukraine until March 2025) are entitled to work. National laws regarding remuneration, access

to social security systems and other conditions of employment apply to them (Article 12).

EU law on family members of EU nationals living in another country

Under the free movement directive ⁽¹¹⁾ (Article 24), third-country family members of EU citizens who work in a Member State different from their own have the same equal treatment rights as EU nationals. The [Agreement on the European Economic Area](#) extends the same rights to family members of citizens from Iceland, Liechtenstein and Norway who work in the EU. The [EU–Switzerland agreement](#) does this for family members of Swiss citizens, albeit with some restrictions.

Posted workers

The posted workers directive regulates the temporary posting of workers by a company from one Member State to another. The sending company continues to employ the worker. Therefore, the worker remains subject to the law regulating the employment contract. To protect workers, host-country rules, where they are more favourable, apply to aspects such as:

- remuneration, working hours, rest periods, leave, etc.,
- health, safety and hygiene at work (Article 3).

When a company posts third-country-national workers, these workers do not need to have a work permit in the country to which they are temporarily deployed for service (*C-43/93, Vander Elst v Office des Migrations Internationales*, 9 August 1994) but that country may require them to obtain a residence permit (*C-540/22, SN and Others v Staatssecretaris van Justitie en Veiligheid*, 20 June 2024).

The posted workers enforcement directive ⁽¹²⁾ strengthens the practical application of the posted workers directive by addressing issues such as access to information and joint liability in subcontracting chains. Directive (EU) 2020/1057 ⁽¹³⁾ lays down specific rules on the posting of professional drivers in the commercial road transport sector.

Victims of crime

The anti-trafficking directive defines trafficking in human beings and sets out rules to combat and prevent the crime and to assist, support and protect the victims. It requires that officials who are likely to come into contact with victims or potential victims of human trafficking, including workplace inspectors, **receive appropriate training** to effectively identify and assist these individuals.

Under the victims' rights directive, victims of crime, for example victims of criminal forms of labour exploitation, including those in an irregular situation, are entitled to:

- appropriate information about their rights, including protection, compensation and support services, from first contact;
- victim support services;
- make a complaint in a language that they understand (or linguistic assistance).

Applying EU law at the national level

Some Member States have decided not to take part in the adoption of certain directives and, accordingly, are neither bound by them nor subject to their application. This applies only to Denmark and Ireland by virtue of their, respectively, opt-out and opt-in clauses.

Denmark and Ireland do not take part in the ESD, the seasonal workers directive or the single permit directive. Denmark also opted out of the victims' rights directive and the anti-trafficking directive, while Ireland applies them.

The list of EU legal instruments in Annex 1 provides full references to all relevant instruments. Annex 4 contains a summary of the key protective provisions contained therein.

Member States have adopted national legislation by implementing the requirements flowing from EU law. They may have done this in different ways. The Commission's implementation reports and other studies of some of the key directives covered in this manual show differences among Member States in their implementation of the protective provisions of the following three instruments.

- The 2019 implementation report on the single permit directive ⁽¹⁴⁾ shows that, in some Member States, equal treatment provisions are interpreted in a restrictive manner (diplomas are not recognised and access to sickness benefits, unemployment benefits or certain types of family benefits is limited).
- A 2020 European Migration Network (EMN) report on how the rights of seasonal workers are protected in the EU ⁽¹⁵⁾ shows that seasonal workers' right to adequate housing differs across Member States. This is because the Member States use different criteria for establishing an adequate standard of living. In addition, in some Member States, seasonal workers cannot access some social security benefits, such as old-age benefits and pre-retirement benefits, as they depend on the length of stay in the country or the contributory history of the worker.

- The 2021 implementation report on the ESD ⁽¹⁶⁾ shows that a majority of Member States provide only general information on employees' rights and not information targeted to irregular migrant workers. In some Member States, migrants in an irregular situation are not using existing complaint systems and they face barriers in receiving unpaid remunerations.
- The 2024 implementation report on the posted workers directive ⁽¹⁷⁾ shows that long subcontracting chains are one of the main challenges. These may affect the rights of posted workers, especially the possibility of recovering unpaid wages. The report notes that posted third-country nationals are generally more exposed than posted EU nationals to abusive practices, such as fraudulent posting, labour rights violations, precarious working conditions, irregular payment and non-payment of social contributions, lower remuneration, and precarious working and living conditions.

5. Understanding when different treatment becomes discriminatory

Migrant workers have different residence statuses.

Some protective measures apply to all workers, including migrant workers in an irregular situation. For example, all workers, regardless of their legal status, are formally protected against slavery, forced labour and child labour. They also have the right to fair and just working conditions, the right to back pay and the right to lodge a complaint.

National law may recognise further rights for migrant workers in an irregular situation.



For examples, see ILO, *Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration – A compendium*, Geneva, 2022.

Other rights depend on workers' residence status. An example is the right to change employer, described in [Module 7.2](#). EU law allows for different treatment based on the type of residence permit or absence thereof.

To know which right applies to whom, workplace inspectors will need to understand what residence status a migrant worker holds (see [Module 1.3](#)). If the labour inspector does not have the authority to check residence permits, evidence gathered during the inspection, such as employment contracts and other documents, and through interviews with workers and employers gives an indication of workers' legal status.

Different treatment based on workers' residence status is allowed only up to a certain point. International, EU and national law provisions determine when such different treatment becomes discriminatory.

At the international level, several ILO instruments promote equality of treatment and non-discrimination, including for migrant workers. For example:

- the [Migration for Employment Convention \(revised\), 1949 \(No 97\)](#), provides for equal treatment between migrant workers in a regular situation and nationals with respect to conditions of work, social security, trade union rights and access to justice;
- the [Equal Remuneration Convention, 1951 \(No 100\)](#), promotes equal remuneration for men and women workers and covers migrant workers, including those in an irregular situation.

National law may also regulate the matter in clear terms.

Promising practice: legal provision on equal treatment in France

The French Labour Code explicitly grants general labour rights to migrant workers in an irregular situation. It states that such workers should be treated in the same way as regular workers regarding pre- and postnatal protection, breastfeeding, working hours, rest periods and paid holidays, and health and safety at work, and for the calculation of seniority in a company. Workers can therefore request that the competent authorities enforce their labour rights.

Source: France, Labour Code (Code du Travail), [Article L8252-1](#).

Migrant workers are often vulnerable to discrimination or non-compliance with applicable working conditions or social security legislation. Migrant workers may be assigned the most difficult and dangerous tasks or may not be provided with work equipment, and their working conditions in terms of pay, working hours and break periods may be unfair.

Workplace inspectors should exercise due diligence in monitoring the behaviour of employers towards migrant workers, keeping in mind that only some differences in treatment are lawful.



Example: in the Netherlands, workplace inspectors have a positive duty to protect all migrant workers against discrimination.

Source: Butter T., Verhagen, M. and de Lange, T., [Exploitative labour relations and legal consciousness of irregular migrant](#)

[workers in the Netherlands](#), University of Amsterdam, Amsterdam, 2011, pp. 24–25.

Promising practice: special expert inspections to combat discrimination in Belgium

Belgium trains and deploys expert inspectors in the field of combating discrimination (*experts en matière de lutte contre les discriminations*). According to the Federal Public Service for Employment (SPF Emploi), this enables them to carry out their duties more effectively. It allows them to detect discrimination even without a complaint from the victim. This in turn allows workplace inspectors to proceed to putting an end to the discrimination, consulting the employers and possibly sanctioning them.

Source: Delatour, D., '[La formation des inspecteurs du travail dans la promotion des principes d'égalité au travail et de justice sociale](#)', CLS, Anderlecht, Belgium, 2012, slide No 18.

Monitoring compliance with certain rights, such as equal treatment regarding social security benefits and tax benefits, may be outside the mandate of workplace inspectors. In such a case, workplace inspectors should refer suspected violations to the national bodies responsible for ensuring respect for these rights.

The charter explicitly provides that:

- everyone is equal before the law (Article 20);
- any discrimination on grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation is prohibited; the EU treaties may, however, allow different treatment based on nationality (Article 21);
- migrant workers who are authorised to work in the territory of the Member States are entitled to working conditions equivalent to those of EU citizens (Article 15).

EU legal instruments on specific categories of migrant workers envisage equal treatment with workers of the Member State in several areas.

- For **migrant workers** under the single permit directive (Article 12) and **seasonal workers** (seasonal workers directive, Article 23), EU law lists the following specific areas to which the right to equal treatment extends:
 - terms of employment,
 - working conditions, including pay, working time and dismissal,

- health and safety at the workplace,
- freedom of association and membership of trade unions,
- education and vocational training,
- recognition of diplomas, certificates and other professional qualifications,
- types of social security benefits and tax benefits,
- access to goods and services,
- employment offices' advice services.

Migrant workers under the single permit directive also enjoy equal treatment regarding procedures for obtaining access to public and private housing.

Member States may limit equal treatment in some areas, for example family and unemployment benefits, public housing and study grants. The rights that can be limited differ between regular and seasonal migrant workers.

- For **posted workers**, Article 3(1) and (1a) of the posted workers directive contains general rules depending on the length of posting:
 - all posted workers are entitled to equal treatment as regards core terms and conditions of employment, such as:
 - remuneration and allowances, work and minimum rest periods,
 - occupational health and safety,
 - workers' accommodation,
 - protection of pregnant women, young people and other categories,
 - non-discrimination provisions and equality between men and women;
 - workers posted for more than 12 months are entitled to equal treatment for the full range of terms and conditions of employment in the Member State where the work is carried out, with some exceptions.

Posted workers are entitled to have travel, board and lodging expenses covered on top of the remuneration.



For more details, see European Commission: Directorate-General for Employment, Social Affairs and Inclusion, [Practical Guide on Posting](#), Publications Office of the European Union, Luxembourg, 2019.

- For **asylum seekers**, under Article 17 of the reception conditions directive, equal treatment with nationals extends to:
 - terms of employment, including the minimum working age,

- working conditions, including pay and dismissal, working hours, leave and holidays,
- health and safety at work,
- freedom of association and membership of trade unions,
- education and vocational training,
- recognition of qualifications.

Recital 53 of the reception conditions directive recalls that Member States should use their best endeavours to avoid exploitation of applicants or any form of discrimination against them in the workplace by means of undeclared work practices and other forms of severe labour exploitation.

Core labour law rights protect **migrant workers in an irregular situation** in the same way as any other worker. This also applies when these rights are not expressly provided for in specific EU legal instruments.



The CJEU grants core rights to migrant workers in an irregular situation.

Council Directive 80/987/EEC ⁽¹⁸⁾ protected workers in the event of the insolvency of their employer. The wording of the directive limited the protection to legally residing workers. The CJEU clarified that the directive must also apply to workers who are in an irregular situation (CJEU judgment of 5 November 2014, *O. Tümer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen*, [C-311/13](#)).

The [ILO Declaration on Fundamental Principles and Rights at Work](#) recognises that there are five categories of labour standards, expressed in eight conventions (the 'core conventions'), that should be considered as fundamental because they protect workers' basic rights. These are (1) freedom of association and the effective recognition of the right to collective bargaining, (2) the abolition of forced labour, (3) the elimination of child labour, (4) non-discrimination and equality of treatment in employment and occupation and (5) a safe and healthy working environment. They apply to all people in the world of work.

Key takeaways

- Labour inspectors can play an important role in reducing labour exploitation of migrant workers across the EU.
- Migrant workers working in certain sectors are at an increased risk of labour exploitation due to them being in situations of vulnerability. This vulnerability is related to their irregular or precarious residence status, their dependence on their employer, their lack of knowledge of their

rights and of the language of the country of work, and ineffective inspections (i.e. inspections that fail to identify exploitation).

- All workers have rights, regardless of their residence or migration status. Some situations (e.g. trafficking) may give rise to additional rights.
- EU law protects different categories of migrant workers depending on the residence status they hold.
- In addition to safeguards in applicable EU law, migrant workers need to be guaranteed the protection set out in applicable international and national law.
- Workplace inspectors should exercise due diligence in monitoring the behaviour of

employers towards migrant workers, especially if such workers are treated less favourably than EU citizens.

Further reading

- ELA, [*Successful cooperation approaches between labour inspectorates and social partners*](#), Bratislava, 2021.
- FRA, [*Protecting Migrant Workers from Exploitation in the EU – Workers' perspectives*](#), Publications Office of the European Union, Luxembourg, 2019.
- HEUNI, [*Uncovering Labour Trafficking – Investigation tool for law enforcement and checklist for labour inspectors*](#), Helsinki, 2020.

ENDNOTES

- (¹) International Labour Organization, *Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration – A compendium*, Geneva, 2022, p. 4.
- (²) Rasnača, Z. and Bogoeski, V., *Interaction between Labour Law and Immigration Regimes – The case of short-term third-country national workers in the EU and the EEA*, European Trade Union Institute, Brussels, 2023, p. 203.
- (³) Council of Europe, *Preventing and combating trafficking in human beings for the purpose of labour exploitation*, Recommendation CM/Rec(2022)21 adopted by the Committee of Ministers of the Council of Europe on 27 September 2022 at the 1444th meeting of the Ministers' Deputies, Strasbourg, 2022, p. 16.
- (⁴) ELA, *Tackling Undeclared Work in Supply Chains*, learning resource paper, Bratislava, 2022.
- (⁵) [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).
- (⁶) [Directive \(EU\) 2019/1152](#) of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).
- (⁷) [Council Directive 89/391/EEC](#) of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).
- (⁸) [Directive 2008/104/EC](#) of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).
- (⁹) [Regulation \(EU\) 2024/1347](#) of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024).
- (¹⁰) [Council Directive 2001/55/EC](#) of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).
- (¹¹) [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).
- (¹²) [Directive 2014/67/EU](#) of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI regulation') (OJ L 159, 28.5.2014, p. 11).
- (¹³) [Directive \(EU\) 2020/1057](#) of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ L 249, 31.7.2020, p. 49).
- (¹⁴) European Commission, Commission report on Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State ([COM\(2019\) 160 final](#)), Brussels, 29 March 2019.
- (¹⁵) EMN, *Attracting and protecting the rights of seasonal workers in the EU and United Kingdom – Synthesis report for the EMN study*, Brussels, 2020.
- (¹⁶) European Commission, Commission communication on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals ([COM\(2021\) 592 final](#)), Brussels, 29 September 2021.
- (¹⁷) European Commission, Commission report on the application and implementation of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services ([COM\(2024\) 320 final](#)), Brussels, 30 April 2024.
- (¹⁸) Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.1980, p. 23) replaced by Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36).



MODULE 2: SPEAKING WITH MIGRANT WORKERS DURING INSPECTIONS

Through this module, workplace inspectors will:

1. understand how to build trust with migrant workers and address language barriers;
2. familiarise themselves with the trauma-informed and victim-centred approach;
3. learn the basics of intercultural communication methods.

1. Engaging with migrant workers and building trust

Migrant workers have specific vulnerabilities. Workplace inspectors must pay special attention to these and use strategies to gain these workers' trust and to detect labour exploitation. Direct communication with migrant workers is the first step to ensure that these workers can report on their experiences, including on exploitative labour practices.

Workplace inspectors should speak to workers **individually**, that is, separately from employers and other workers, as employers or other workers could play a role in the labour exploitation of the worker.

Other workers with language skills should not be employed as interpreters, as they may be gangmasters and/or report to the employer.

Workplace inspectors should conduct **unannounced inspections**. If the inspection is announced, the employer might ask the worker not to come on the day of the inspection, hide the worker or instruct the worker on what to tell inspectors.

Before engaging with migrant workers, workplace inspectors must be aware of the position of authority they are in. Migrant workers may not trust them. They might fear them, especially when their function is linked with checking the workers' documents.

In particular, those workers who are in an irregular situation will be concerned that a labour inspection may result in their removal from the territory, especially when inspections are carried out jointly with the police.

Workplace inspectors should **try to distinguish themselves from the police** and explain to migrant workers that their role is primarily to sanction the employer and to support the worker. They should explain to workers that they are there to safeguard their rights.

Even when the police are not present, migrant workers in an irregular situation fear that inspectors would inform immigration law enforcement authorities that they do not have residence papers. These are legitimate concerns.

During the first contact, focus on providing workers with information. Explain what their rights are and what can be done to enforce them. Be transparent about any reporting obligation of the workplace inspector to police or immigration authorities. If possible, check employers' records and not workers' papers.

Be aware that employers may generate mistrust of public authorities among workers or associate negative consequences with inspections (e.g. working longer to catch up on work missed due to an inspection).

2. How to overcome language barriers

Many migrant workers have no or limited knowledge of the national language. At the same time, workplace inspectors should not assume that migrant workers are unable to speak the national language. Speak to workers using simple sentences in a different language, if possible, to decide if you need an interpreter.

The following practical measures help workplace inspectors to overcome language and cultural barriers during inspections.

- Use **cultural mediators**. They build trust and establish a two-way communication channel. Cultural mediators reach out to migrant worker communities before inspections, assist with translation and communication during inspections and follow up afterwards. They contribute to better information gathering from workers and, therefore, to more effective criminal proceedings (see ‘Promising practice: using cultural mediators’).
- Hire workplace **inspectors who can speak the language** of migrant workers. This helps to bridge both language and cultural barriers. It also inspires trust in the authority.



Example: in Belgium and Finland, trade unions employ staff of immigrant origin to more easily communicate with migrant workers.

Source: Cukut Krilić, S., Toplak, K. and Vah Jevšnik, M., [Posting of Third Country Nationals – A comparative study](#), ZRC SAZU, Ljubljana, 2020, p. 61.

- If cultural mediators are not available, the use of **interpreters** facilitates communication and helps migrant workers to explain correctly their situation.
- Translate **questionnaires** you use for interviews with workers.
- Explore interpretation and translation by phone, by videoconference or through mobile apps.



Example: in Portugal, labour inspectors may use the [Telephone Translation Service](#) of the High Commissioner for Migration (Alto Comissariado para as Migrações) to speak to migrant workers. The service covers 69 languages.

Source: Information provided by the Portuguese labour inspectorate during consultations for the preparation of this manual.

- Prepare the inspection and gather evidence, if possible, of the worker’s nationality so you know

which interpreters might be needed and what language the questionnaire needs to be in.

Promising practice: using cultural mediators

In **Italy**, two national programmes (the Su.Pr. Eme. project and A.L.T. Caporalato D.U.E.) aim to detect cases of labour exploitation early. At the first contact with a potential victim, cultural mediators help labour inspectors to establish a person-to-person dialogue and provide information on labour rights and protection mechanisms for victims of labour exploitation. Only as a second step do the workplace inspectors follow up.

Source: Italy, IOM, [A.L.T. Caporalato D.U.E.: Azioni per la Legalità e la Tutela del lavoro – Dignità, Uguaglianza ed Equità](#), Rome, 2023.

Promising practice: on-site interpretation and pre-translated questionnaires

In **Finland**, during multi-agency inspections of farms employing more than 300 seasonal workers from eastern Europe in 2019, the police and workplace inspectors used Russian-speaking interpreters, telephone interpretation and pre-translated questionnaires.

Source: HEUNI, [Uncovering Labour Trafficking – Investigation tool for law enforcement and checklist for workplace inspectors](#), Helsinki, 2020, p. 18.

3. Adopting a trauma-informed and victim-centred approach

To detect exploitative practices, an inspection should be centred on the safety and well-being of migrant workers. Be aware that the worker may have experienced trauma.

A **trauma-informed approach** is an established concept in the field of healthcare for victims of trafficking in human beings, according to the IOM. The IOM’s guidance states that people working with potential victims should explicitly acknowledge and consider that trauma and violence may have occurred and that it may be affecting people’s current physical and psychological state. Providers should be informed about, and sensitive to, trauma-related issues (!).

The workplace inspectors must also be prepared to engage with potential victims in an appropriate manner and be conscious of the stress and anxiety that may stem from the labour inspection itself. Once

the workplace inspector detects signs of exploitation, expanding to a **victim-centred approach** facilitates the identification of victims (see [Module 5](#)).

A victim-centred approach builds trust and an open two-way communication channel with potential victims ⁽²⁾. The victim's safety is the first consideration. This approach also reduces risks of re-victimising workers who endured exploitation when institutions and their staff engage with them. For example, victims should not be repeatedly asked questions about the same facts. For victims, it is vital that they are listened to in an empathic manner and that they are believed and understood.

Adopting a victim-centred approach is particularly important for suspected victims of forced labour or trafficking, as well as in relation to specific crimes, such as gender-based violence.



For more information, consult FRA, [Victims' Rights as Standards of Criminal Justice – Justice for victims of violent crime – Part I](#), Publications Office of the European Union, Luxembourg, 2019.

Training, or even brief awareness-raising sessions, on how to use these two approaches facilitates their application in practice.

Additionally, be aware that victims have a right to medical and psychosocial support services and possibly also to legal assistance.

The following points may help workplace inspectors to be aware of possible trauma and to remain victim-centred:

- ask about immediate needs before posing questions;
- always communicate with the workers directly;
- ascertain the workers' emotional state and adjust your behaviour accordingly, showing empathy while remaining objective;
- explain your role and the objectives of the inspection in a simple, practical way;
- explain to workers any reporting duty you may have;
- if you must check the validity of migrant workers' authorisations, check the information held on file by the employer rather than asking workers;
- communicate in an area that is private and safe, to the extent possible, and in all cases without having the employer around;
- anticipate signs of trauma, such as anxiety, confused behaviour and inconsistent replies;
- do not be surprised if a worker denies being a victim or is fearful, angry or concerned.



When the conditions are provided to allow you to conduct in-depth interviews on-site, you could use the checklist on migrant-sensitive interview techniques available in IOM, [Strengthening the Effectiveness of Inspectorates – Empowering and protecting migrant workers in the inspection process](#), Geneva, 2023, p. 23.

When workplace inspectors suspect that exploitation may have taken place but are unable to gather enough information during the inspections, they may invite a worker to a **follow-up interview** after the inspection.

Workplace inspectors should **always leave their contact details** with the worker so that the worker can contact them later. Workers need to be assured that the inspection does not represent a 'now or never' opportunity for exploitation to be uncovered.

4. How to communicate effectively

Interviewing migrant workers entails communication with people of different cultures.

Culture is a complex frame of reference that consists of patterns of traditions, beliefs, values, norms and meanings that interacting members of a community share to varying degrees. Effective intercultural communication promotes a common understanding during the interaction, despite differences not only in language but often also in culture more broadly.



For more information, see AMSSA (Affiliation of Multicultural Societies and Service Agencies), [Intercultural communication creating safer spaces for migrant workers](#) 8 October 2020.

Promising practice: intercultural communication training for inspectors in Belgium

In Belgium, the [Pacific Links Foundation](#) delivered a 2-day training course to labour inspectors specifically on intercultural communication with Vietnamese workers, who were regularly found in exploitative working conditions. The training included tips and recommendations to overcome intercultural barriers.

Source: Information received from the Belgian authorities during the validation phase of the manual, September 2023.

Tips for intercultural communication

Workplace inspectors should implement the following:

- acknowledge cultural differences and the role they play in interacting with migrant workers;
- be aware of differences in verbal and non-verbal communication (gestures, personal distance, etc.);
- when speaking with migrant workers, do not automatically assume that you have understood correctly or that they have understood you correctly;
- consider factors such as age, gender, religion, view of authority, etc.; in some cultures, women might not be comfortable speaking freely in front of men, particularly if they have experienced inappropriate contact or comments at work of a sexual nature.
- If you are expecting to interview workers of a specific nationality during an inspection, it can be useful to learn more about that country and culture beforehand.



You can do that by consulting the [Cultural Atlas](#), a resource providing information on the cultural background of Australia's migrant populations. The atlas contains specific themes such as 'greetings', 'dos and do nots' on how to sensitively interact and explanations of verbal and non-verbal forms of communication.

Tips for verbal communication

The following are some tips on how to communicate with migrant workers effectively:

- use simple language, speak slowly and with frequent breaks and continuously seek feedback on whether any clarification is needed;
- listen carefully by giving your full attention and avoid interrupting or looking at your phone or computer or anything else that could distract you from the interaction;
- ask only one question at a time and allow time for the worker to think about the answer;
- paraphrase or summarise after each part of the discussion to make sure that you both understand what was said: 'I understand that you are fearful because ...';
- respond by giving information and avoid providing advice or promises – throughout, make sure that you do not come across as judgemental and course-correct your approach, as needed, based on how the interviewee receives it.



See Office of the United Nations High Commissioner for Refugees (UNHCR), [Effective and Respectful Communication in Forced Displacement](#), Geneva, 2016, p. 10. The tips presented also apply to migrant workers who experience exploitation.

Tips for non-verbal communication

Non-verbal communication makes up most of our communication. It includes eye contact, facial expressions, gestures, posture, body language, etc., as well as related perceptions. It plays an even bigger role in situations where verbal communication is limited, for instance when there are language barriers, as could be the case in interactions with migrant workers.

The tips in Table 2, which have been developed to communicate respectfully and effectively with displaced people, may also be useful when interacting with migrant workers.

Table 2: Overcoming intercultural communication barriers

RECOMMENDED	NOT RECOMMENDED
Facial expressions	
<ul style="list-style-type: none"> • Culturally appropriate use of eye contact • Warmth and concern reflected in facial expression • Eyes at the same level as the person's face • Appropriately varied, animated facial expressions • Mouth relaxed, occasional smiles 	<ul style="list-style-type: none"> • Avoidance of eye contact • Staring at the person or at an object • Raising eyebrows critically • Eye level higher or lower than the person's face • Nodding head excessively • Frozen or rigid facial expression • Inappropriate smile

RECOMMENDED	NOT RECOMMENDED
Body language	
<ul style="list-style-type: none"> Open, non-threatening arm position and calm hand movements Appropriate gestures Body leaning slightly forward, conveying attentiveness, but relaxed Physically on the same level 	<ul style="list-style-type: none"> Rigid body position (crossed arms or legs, hands on hips) Arms tightly folded/crossed Body turned at an angle Fidgeting with hands, squirming Slouching or putting feet on desk Hand/fingers over mouth
Speech	
<ul style="list-style-type: none"> Clearly audible but not loud speech Warmth in tone of voice Tone of voice varied to reflect nuances of feeling and emotional tone of the message Moderate pace of speech 	<ul style="list-style-type: none"> Speaking inaudibly or mumbling Voice only in one tone or very loud Overly informal language Alienating language (e.g. 'you people' or 'your people') Prolonged silences Excessively rapid or animated speech Nervous laughter
Physical space	
<ul style="list-style-type: none"> Half a metre between chairs 	<ul style="list-style-type: none"> Excessive closeness or distance Talking across desk or other barrier such as a computer

Source: Adapted from UNHCR, *Effective and Respectful Communication in Forced Displacement*, Geneva, 2016, p. 10.

Key takeaways

- Workplace inspectors should engage with migrant workers, speaking to them individually, that is, separately from employers or other workers.
- Workplace inspectors should address language barriers proactively when preparing for and carrying out inspections.
- Workplace inspectors should be aware that migrant workers may have experienced trauma and may be victims of crime and should adjust the way they interact with them accordingly.
- Effective intercultural communication is a prerequisite for sharing and receiving relevant information from workers.
- Workplace inspectors should be aware of their non-verbal communication.

Further reading

- Environmental Justice Foundation, *Conducting Interview with Migrant Workers – An EJF guide to conducting interviews at PIPO centres – 2020 edition*, London, 2020.

- FRA, *Protecting Migrant Workers from Exploitation in the EU – Boosting workplace inspections*, Publications Office of the European Union, Luxembourg, 2018.
- ILO, *ILO curriculum on building modern and effective labour inspection systems – Module 17 – Use of soft skills in labour inspectors' work*, Geneva, 2022.
- IOM, *Mapping risks to migrant workers in supply chains in Europe – Case studies and best practices from the agriculture, food-processing, manufacturing and hospitality sectors*, Geneva, 2022.
- IOM, *Strengthening the Effectiveness of Inspectorates – Empowering and protecting migrant workers in the inspection process*, Geneva, 2023.
- Responsible Sourcing Tool, *Tool 10 – Conducting migrant worker interviews – Protections against trafficking in persons*.
- Scottish Government, *Trauma-informed Practice – A toolkit for Scotland*, Edinburgh, 2021.
- UNHCR, *Effective and Respectful Communication in Forced Displacement*, Geneva, 2016.

ENDNOTES

- (¹) IOM, *Caring for Trafficked Persons – Guidance for health providers – Training – Facilitators’ guide*, Geneva, 2012, p. 52.
- (²) EIGE, ‘Risk assessment and risk management by police: Principle 2: Adopting a victim-centred approach’; FRA, *Victims’ Rights as Standards of Criminal Justice – Justice for victims of violent crime – Part I*, Publications Office of the European Union, Luxembourg, 2019.

MODULE 3:

PROVIDING INFORMATION

Through this module, workplace inspectors will:

1. understand their role in providing information to migrant workers;
2. become familiar with the rules under EU law concerning the provision of information to migrant workers;
3. learn how best to provide such information during and outside workplace inspections.

1. Addressing limited rights awareness

Migrant workers are often **less aware** of their rights than their national colleagues, due to language and cultural barriers, hard-to-find information, their short period of residence in the country or other reasons.

Information is essential to prevent exploitation and help migrant workers access justice.



Article 21(2) of the ILO [Migrant Workers Recommendation, 1975 \(No 151\)](#), notes that helping migrant workers to obtain information and advice from appropriate bodies on the rights applicable to them, how to complain in the case of labour law violations and how to make full use of support services is essential to prevent labour exploitation and to ensure remedies and support in the case of abuse.

Different authorities may provide information to migrant workers, including social services, law enforcement, social partners and non-governmental organisations (NGOs) through migration pre-departure programmes, worker advice centres, etc. Workplace inspectors are particularly well positioned to inform migrant workers about their rights.



Under the ILO [Labour Inspection Convention, 1947 \(No 81\)](#), one of the main functions of the labour inspectorates is to inform and advise workers on the most

effective means of complying with the legal provisions.

Such information should also be provided to **employers**.



For more information, see ILO, [Guidelines on General Principles of Labour Inspection](#), Geneva, 2022, Section 1.2.1(ii).

The key protective elements on which workers need to receive information include:

- the rights that they are entitled to on an equal footing with national workers;
- the rights that are specific to their legal status;
- how to request back pay and compensation;
- how to access justice and file complaints;
- how to access support services.

Providing contact details of organisations or social partners helps migrant workers claim their rights.

Migrant workers may be interested in a variety of other issues not covered in this manual, such as education, vocational and language training, health services, social security, housing and transport.

2. What EU law requires

Under EU law, employers must inform all workers about all essential aspects of the employment relationship. This information must be in writing and provided in a timely manner.



For the detailed legal provisions, see the [transparent and predictable working conditions directive](#).

Additional information requirements protect specific categories of migrant workers.

- **Migrant workers** under the single permit directive must be informed about their rights, obligations and procedural safeguards (Article 9; to be transposed into national law by May 2026). This includes the right to equal treatment with nationals as regards, for example, working conditions, such as pay and dismissal, and health and safety at the workplace – as covered in the single permit directive, Article 11 (to be transposed into national law by May 2026) – and the right to legal redress and information on workers' organisations.
- **Posted workers** have a right to information about:
 - the main labour conditions,
 - procedures to lodge complaints,
 - labour and social conditions, including occupational health and safety.

Member States must have a 'single official national website' with terms and conditions of work for **posted workers**. They should also have summary leaflets on labour conditions in relevant languages (posted workers enforcement directive, Article 5).



For more information, see Your Europe, '[Posted workers](#)'.

- **Seasonal workers** must have easy access to information – which should also be provided in writing – on their stay and related rights, obligations and procedural safeguards (seasonal workers directive, Article 11). In practice, this includes information on:
 - equal treatment with nationals as regards, for example, working conditions and health and safety at the workplace;
 - the right to decent accommodation;
 - the right to back pay of any outstanding salaries;
 - how to file a complaint against exploitative employers.
- **Migrant workers in an irregular situation**, also if engaged in undeclared work, have the right to be systematically and objectively informed

about their rights in relation to back pay and the facilitation of complaints, before the enforcement of any return decision (employers sanctions directive, Article 6(2)). This right to information applies to all migrant workers found in an irregular situation, not only to specific categories, such as victims of human trafficking.

- **Asylum seekers** must be informed of their rights and obligations linked to the reception conditions, including as regards employment (reception conditions directive, Article 5).

Except for posted workers, EU law does not specify how this information should be provided.

3 Aspects of your national law to focus on



Evidence: a 2021 FRA report showed that, in approximately two thirds of Member States, labour inspectorates are under a general obligation to inform workers of their rights. Nevertheless, workplace inspectorates indicated that, in several Member States, the provision of information takes place through a website with few translations and is not systematically provided to workers in practice.

Source: FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021, p. 25.

Good knowledge of national labour legislation and policy is necessary to understand the full extent of the right to information applicable to migrant workers. Some Member States simply restate the obligation provided in EU law, while others formulate specific operational obligations for different parties, such as competent ministries, labour inspectorates and other workplace inspection bodies.

Guiding questions to understand how EU law applies in your country

The following questions may help trainers and labour inspectors to identify the national legislation implementing the information obligation and to understand the extent of this obligation in a particular Member State.

- What are the specific national legal obligations to inform workers about their rights?
- Is there an obligation on specific actors to provide information, such as workplace inspectors or employers?

- Are there different obligations for different categories of migrant workers?
- What information should be provided? What information is mandatory? Is there a legal obligation to translate certain information?
- Is there a specific format in which the information should be provided (e.g. via a website or through information campaigns), a duty to inform in writing or a duty to provide information on workplace inspections?



Example: in Portugal, the labour inspectorate Authority for Working Conditions (ACT) is mandated by law to promote awareness-raising actions and provide information clarifying labour relations and to disseminate information on the safety and health of workers.

Source: Portugal, Organic Law of the Authority for Working Conditions ([Lei orgânica da Autoridade para as Condições do Trabalho](#)).

4. How to give information effectively to migrant workers

Labour inspectors can take several measures to promote effective information sharing. This section lists measures that can be taken outside workplace inspections. The next section describes ways to provide information during inspections.

Mapping what is already there

As a first step, labour inspectors should be aware of how information is provided in practice in their own country.

Mapping national practices

The following questions may help to map what is already being done in your country.

- Has a website been set up? What kind of information does this contain? Is the information translated?
- Have other materials been prepared, such as leaflets, an anonymous hotline or social media campaigns?
- Who provides the information in a particular Member State: national authorities, trade unions or NGOs? Are there differences between the competent authorities?
- Are other practices implemented in a systematic manner (e.g. checklists or guidance for interviewing migrant workers during inspections)?

Providing information as early as possible

The earlier that information is provided, the more workers can make informed decisions about whether to take up an employment offer in the first place.

Providing adequate and comprehensive information to workers in their home countries prior to departure can prevent them from finding themselves in situations in the country of employment that increase their risk of labour exploitation.

This could be done by means of cooperation with the workplace inspectorates in the home countries. In addition, it could be undertaken in an even more monitored way for those arriving in the EU under bilateral agreements or other organised labour schemes.

Informing employers and key actors

Ensuring that campaigns also cover employers is important for enhancing fair and just working conditions and to prevent labour exploitation.

Information campaigns can be a helpful way to raise awareness of labour standards, which, in turn, can create an environment in which substandard treatment is better identified.

Workplace inspectors should also consider the possibility of holding specific **information sessions with key local actors** working with migrant workers (e.g. centres for asylum seekers, employment centres, social services and language schools). These sessions would allow them to work on prevention and raise awareness about the role and work of the inspectorate.

Promising practice: multi-agency information sharing in Estonia

The Estonian Police and Border Guard Board organises sessions for the employers of migrant workers, including posted workers, to inform them about the applicable rules and regulations. Labour inspectors can cooperate and coordinate with other entities and stakeholders to ensure that relevant information is provided to migrant workers at the different stages of their entry and stay.

Source: Cukut Krilić, S., Toplak, K. and Vah Jevšnik, M., [Posting of Third-Country Nationals – A comparative study](#), ZRC SAZU, Ljubljana, 2020, p. 50.

Making information accessible

Information should be provided in workers' mother tongue or, if this is not possible, in another language they are familiar with.

The means by which such information is provided could include the following:

- multilingual websites;
- **one-stop-shops** (i.e. information centres for migrant workers that help to disseminate information in a face-to-face setting and orally, also reaching illiterate migrant workers). Labour inspectors could inform migrant workers about the existence of one-stop-shops during inspections.



Example: in Slovenia, an information point for migrant workers was opened in 2019 and serves to provide information, advice, education, training and pre-integration measures for migrant workers.

Source: Government of the Republic of Slovenia, '[Official opening of info point for foreigners](#)', 6 November 2019.

- national helplines;



Example: Bulgaria has a network of offices for labour and social affairs in four EU countries: Austria, Germany, Greece and Spain. The so-called labour attachés that head these offices provide labour and social affairs services to Bulgarian citizens. They provide information through the offices' websites. People often call the embassy to check whether a certain job offer meets the legal requirements and to find out what it is reasonable to expect and require from their employer.

Source: FRA, [Severe Labour Exploitation – Workers moving within or into the European Union – States' obligations and victims' rights](#), Publications Office of the European Union, Luxembourg, 2015, p. 69.

- information leaflets;



Example: in Germany, the Service Centre against Labour Exploitation, Forced Labour and Human Trafficking publishes an [information leaflet](#) on the rights of those affected by exploitation. It is published in eight languages in addition to German to ensure that the most at-risk groups of migrant workers can access information in their native languages (Arabic, Bulgarian, English, Polish, Romanian, Russian, Ukrainian and Vietnamese). These information leaflets could be distributed during inspections.

Source: Servicestelle gegen Zwangsarbeit, '[About us](#)'.

- online platforms, billboards, posters, social and digital media, and video material.

Diversification of resources and of stakeholders increases the likelihood that information campaigns will reach migrant workers.

Promising practice: social media communication campaign in Norway

In 2020, the Norwegian labour inspectorate, in cooperation with inspectorates from Bulgaria, Estonia, Lithuania and Romania, launched the '[Know your rights](#)' campaign targeting migrant workers. Using social and digital media, the campaign reached 350 000 migrant workers. The aim was to provide information on their basic rights in their own language to empower them to prevent social dumping and work-related crime.

Source: Information received by the Norwegian labour inspectorate during the validation phase, September 2023.

Promising practice: multiple forms of information sharing in Portugal

In Portugal, information on labour rights is provided through different media, such as a dedicated phone line, a face-to-face service, at the request of the worker, via email, by post or through Facebook. The reach of these information provision platforms is wide. The authority's home page is available in four languages, and there are over 150 000 followers of the Facebook page alone.

Source: [Autoridade para as Condições do Trabalho Facebook page](#).

5. How to give information during workplace inspections

Information provision is more effective if workplace inspectors **prepare** for inspections.

When labour inspectors know migrant workers' possible nationality and language spoken prior to an inspection, they can prepare better. They can bring along the right cultural mediators and interpreters, translated leaflets, and videos and other materials in the language(s) needed. Inspectors should, however, also bring some information materials in languages different from those expected.

Providing information through mediators and interpreters is the most effective strategy.

If these are not available, workplace inspectors could use leaflets, telephone translations, mobile apps, etc., to provide basic information. In such cases, however, it is advisable to refer migrant workers to relevant organisations (authorities, trade unions or NGOs) that can provide them with further information.

Workplace inspections may not be the ideal setting to make the worker feel comfortable to speak (i.e. because of the risk of control by the employer, co-workers or gangmasters). Workplace inspectors must try to **build trust** and explain to migrant workers that their mandate is to inform them of their rights, not to punish them. This is particularly important in case of joint inspections, when workplace inspectors are accompanied by law enforcement authorities (see [Module 2](#)).

Labour inspectors should leave the worker with their contact details so that they can be contacted later.

Promising practice: sharing direct contacts in Finland and France

In **Finland**, workplace inspectors provide information on salary scales from collective agreements (as migrant workers in particular may not be aware of the salaries they can reasonably expect), give out information leaflets and leave their contact details.

Source: HEUNI, 'The route to a successful investigation of labour exploitation: notes from the CCPCJ', 28 May 2021.

In **France**, labour inspectors distribute information cards showing migrant workers' main labour rights, contact details of relevant national authorities and organisations and a QR code that workers can scan for more information.

Source: Information received by the French labour inspectorate during the validation phase.

Information should be practical and concrete so that the workers can act upon it. Inspectors should be aware that the worker's residence status (e.g. posted workers or seasonal workers) and the circumstances of the case (e.g. trafficking) give rise to different rights.

Labour rights of **migrant workers in an irregular situation** are typically not explicitly mentioned in national rules; instead, they derive implicitly from the rights of workers in general.



Example: in Slovenia, the authorities reported that migrant workers in an irregular situation who are found during an inspection are informed of their rights through the inspection report, which includes a document with information on how to claim back wages.

Source: FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021, p. 27.



Example: in Portugal, a face-to-face information centre, open three times a week, is available for seasonal workers located in Odemira, Alentejo, a region of intensive agriculture.

Source: Information provided by the Portuguese labour inspector, September 2023.

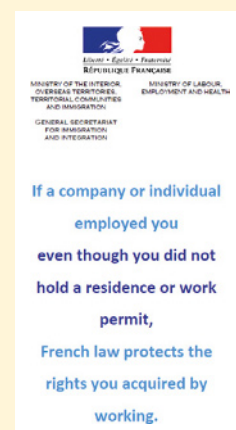
Some Member States have developed special leaflets, usually pre-translated into several foreign languages, containing information on the rights of third-country nationals in an irregular situation and contact details of support organisations.

Promising practice: information leaflets for migrant workers in an irregular situation in Italy and France

In **Italy**, the national labour inspectorate gives workers a leaflet containing information on their rights, the employer's obligation to pay outstanding wages, pension and social security contributions and how to enforce workers' rights against the employer. Workers are also given information on how to report to the police and seek redress. This leaflet is available in several foreign languages.

Source: For Italy, see FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021, p. 27.

In **France**, labour inspectors are obliged to inform third-country nationals in an irregular situation of their rights, for example in relation to salary, compensation, the right to a pay slip and documents at the end of the contract, the right to back pay and the right to file complaints. There is an easy-to-distribute leaflet (see picture) that labour inspectors can give to third-country nationals during an inspection, which is available in several languages (Arabic, Chinese, English, Portuguese, Russian and Spanish).



Source: For France, see [Ministere de l'Interieur et des Outre-mer](#).

Inspectors should also find ways to deliver information effectively in high-risk sectors and in specific locations where workers are at heightened risk of exploitation. Sectors viewed as particularly prone to labour exploitation include agriculture, construction, domestic work and the cleaning sector, tourism and catering.

Labour inspectors should provide clear information on potential remedies against abusive employers and the proof required for legal proceedings.

Promising practice: flash inspections in high-risk sectors in Belgium

The Belgian inspection services carry out pre-announced 'flash inspections' in sectors of concern for the posting of third-country nationals. These include road transport, construction, the catering industry, the agricultural sector and the meat-processing industry. For a period of 1 month, each sector is subject to increased inspections to detect non-compliance with the posting rules and to inform employers and workers about the applicable rules. In the transport sector, road-side checks are especially important. These checks are co-organised with the competent police officials.

Source: Sociale Inlichtingen- en Opsporingsdienst (SIOD), [Actieplan Sociale Fraudebestrijding, 2022](#), Brussels, 2022, p. 72.

Key takeaways

Workplace inspectors are well placed to provide migrant workers with information on their labour rights and available remedies. To this end, they should:

- provide information on labour rights as early and proactively as possible;
- provide information through awareness-raising campaigns that target both workers and employers during inspections;
- provide information through cooperation with third parties that migrant worker communities trust, such as trade unions and relevant civil-society organisations;
- provide workers with practical and concrete information about their rights and give information leaflets and their contact details to workers they meet during inspections;
- as a minimum, provide workers with information about their right to equal pay and back pay (payment of due salaries), how to claim it and contact details of organisations that can support them;
- follow up with workers after the inspection directly, if possible;
- be aware of language barriers and provide at least the most important information in several languages;
- use a variety of information channels, such as multilingual websites, one-stop-shops, hotlines, online platforms, posters or billboards, social and digital media, videos and leaflets.

Further reading

- FRA, [Severe Labour Exploitation – Workers moving within or into the European Union – States' obligations and victims' rights](#), Publications Office of the European Union, Luxembourg, 2015.
- FRA, [Protecting Migrant Workers from Exploitation in the EU – Boosting workplace inspections](#), Publications Office of the European Union, Luxembourg, 2018.
- FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021.
- Group of Experts on Action against Trafficking in Human Beings (GRETA), [Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation](#), Strasbourg, 2020.
- GRETA, [Guidance note on preventing and combating human trafficking for the purpose of labour exploitation](#), Strasbourg, 2020.
- ILO, [Migrant Workers Recommendation, 1975 \(No 151\)](#).
- ILO, [How to facilitate the recognition of skills of migrant workers – Guide for employment services providers](#), Geneva, 2020.
- ILO, [Guidelines on General Principles of Labour Inspection](#), Geneva, 2022.
- ILO, [Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration – A compendium](#), Geneva, 2022.

MODULE 4:

ACCESS TO JUSTICE AND FACILITATION OF COMPLAINTS

Through this module, workplace inspectors will:

1. become familiar with the rules under EU law concerning access to justice;
2. learn how to help workers access justice and how to facilitate complaints;
3. understand how to inform workers effectively about complaint mechanisms;
4. explore how to address barriers to reporting and the role of social partners and civil society;
5. get advice on how to deal with workplace inspectors' dual role of sanctioning the employment of migrants in an irregular situation while at the same time supporting these migrants and enforcing their labour rights.

1. Fighting impunity

In practice, migrant workers face obstacles in accessing justice.



Evidence: very few migrant workers file complaints and even fewer recover the wages they are owed.

Source: Farbenblum, B. and Berg, L., *Migrant Workers' Access to Justice for Wage Theft – A global study of promising initiatives*, Migrant Justice Institute, Sydney, 2021, p. 18.

Some workers might not feel comfortable speaking about or lodging complaints during a workplace inspection. Several structural and individual barriers may prevent migrant workers from lodging complaints. Workplace inspectors should be aware of them. These are:

- a lack of awareness of national laws and of how to make a claim or get legal aid;
- the risk of losing their job or other forms of retaliation by the employer or the gangmaster;
- the duty to report the worker's residence status to immigration authorities;
- practical barriers, such as the time and effort required to pursue a claim, language difficulties and the risk of leaving the country before the procedure is completed;
- economic barriers, such as the high costs and long duration of legal actions and the membership fees for trade unions that assist members only;
- an inability to collect sufficient evidence to prove the employment relationship or the rights violated, especially when working without a contract;
- a lack of incentives to come forward, such as a lack of confidence in the fairness of proceedings and no realistic prospect of getting a temporary residence permit for migrants in an irregular situation;
- social and cultural issues;
- institutional barriers, such as long and inefficient proceedings, a lack of legal aid and an inability to enforce a decision;
- legal barriers (e.g. burden-of-proof issues and statutes of limitation);
- difficulties in getting the statements of workers who might have left the country.

Judicial proceedings can last for several years. Workers may need to cover costs for legal representation and court costs, which are often reimbursed only if the claim is successful.



Evidence: whereas most Member States grant the right to ask for compensation during criminal proceedings, compensation claims attached to criminal proceedings are still rare and, where they are submitted, they are often transferred to civil courts.

Source: European Commission, [Report from the European Commission to the European Parliament and the Council on the on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA](#), (COM(2020) 188 final), Brussels, 11 May 2020, p. 5.; FRA, [Severe Labour Exploitation: Workers moving within or into the European Union. States' obligations and victims' rights](#), Publications Office of the European Union, Luxembourg, 2015, p. 82.

Seasonal workers, due to the temporary nature of their stay, make limited use of complaint mechanisms. Irregular migrant workers are unlikely to seek redress.



Evidence: for migrant workers in an irregular situation, reporting abuse comes with the risk of heavy fines for breaching immigration rules, criminalisation, potential detention and deportation.

Source: European Parliament: Policy Department for Citizens' Rights and Constitutional Affairs, [The fundamental rights of irregular migrant workers in the EU – Understanding and reducing protection gaps](#), Brussels, 2022, pp. 31–37.

Promising practice: free access to courts in Germany

All of the labour courts in Germany have an office where plaintiffs can file a complaint for free, called *Rechtsantragstelle*. An official of the court accepts and registers the complaint. Germany is also developing the possibility of filing complaints digitally.

Source: German Ministry of Justice, [Development of a digital legal application centre](#), 2 September 2024.

Trade unions may provide legal and other support.



Example: in Germany, the construction and agriculture trade union IG Bauen-Agrar-Umwelt offers special short-term membership for migrant workers in agriculture, which includes free advice and

information, as well as legal support and court representation for a reduced membership fee.

Source: IG Bauen-Agrar-Umwelt, [Annual membership for migrant workers](#), July 2023.

2. What EU law requires

Article 47 of the charter grants everyone whose rights and freedoms guaranteed by EU law are violated the right to an effective remedy before a tribunal, the right to a fair trial and the right to legal aid.

The following two EU legal instruments support victims' access to justice.

1. When the negative treatment of workers amounts to a crime under national law, all **victims of crime** – which includes all workers who suffered a crime, regardless of their residence status – have specific rights under the victims' rights directive. Article 5 sets out the rights of victims of crime when making a complaint. It includes the right to:
 - receive a formal acknowledgement of the complaint;
 - make a complaint in a language they understand or to receive linguistic assistance.
2. **Victims of trafficking in human beings** are entitled to different assistance and support measures under Article 11 of the anti-trafficking directive.

For specific categories of migrant workers, EU law lays down different but comparable obligations on access to justice:

- there must be effective mechanisms whereby **migrant workers** under the single permit directive (Article 14; to be transposed into national law by May 2026) – as well as **seasonal workers** under the seasonal workers directive (Article 25) – can lodge complaints against employers:
 - workers must be able to lodge complaints either directly through competent authorities or through third parties (e.g. unions) that are considered to have a legitimate interest, for example in protecting workers or combating labour exploitation;
 - these third parties may assist a migrant worker in any administrative or civil proceedings, excluding obtaining visas for seasonal work;
 - workers are protected against dismissal or other adverse treatment by the employer as a reaction to a complaint they made, just like other workers in a similar position;

- **posted workers** must have effective mechanisms to lodge complaints against their employers:
 - they are entitled to institute judicial proceedings in the Member State in whose territory they are or were posted (posted workers enforcement directive, Article 11);
 - third parties (e.g. unions) that are considered to have a legitimate interest may assist them in such proceedings;
 - workers bringing judicial or administrative action must be protected against any unfavourable treatment by the employer;
- for **migrant workers in an irregular situation**, there must be effective mechanisms to lodge complaints against their employers (employers sanctions directive, Article 13):
 - they must be able to lodge complaints either directly through competent authorities or through designated third parties, such as trade unions or other associations;
 - these third parties may assist the worker in any administrative or civil proceedings;
 - when third parties provide such assistance, they may not be punished for facilitation of unauthorised entry, transit and residence;
 - Member States may grant temporary residence permits if the migrant workers in question are victims of particularly exploitative working conditions (see [Module 5.4](#)).

EU asylum law does not contain express provisions on the facilitation of complaints against abusive employers.

The right to claim back pay and compensation is discussed in detail in [Module 6](#).

3. Aspects of your national law to focus on

Good knowledge of national labour legislation and policy is necessary to understand the full extent of the right to complain that is applicable to migrant workers.

Guiding questions to understand how EU law on access to justice applies in your country

The following questions may help trainers and workplace inspectors to familiarise themselves with the right of access to justice and to facilitation of complaints in their Member State. They will also help workplace inspectors to inform migrant workers accordingly.

- Which labour authority can receive complaints from workers for labour rights issues? Can migrant workers equally file a complaint to this authority?
- Are there any specific measures to facilitate complaints and promote access to remedy for specific groups of migrant workers, such as seasonal workers or domestic workers?
- Are labour authorities obliged to report third-country nationals in an irregular situation who are identified during labour inspections and/or who submit a complaint?
- Are there any safeguards or practices in place that allow complaints to be made confidentially, directly or through third parties?
- Which are the specific third parties that can act in support and on behalf of migrant workers, in particular seasonal workers and/or undocumented workers?
- Are there residence permits that can be issued due to experiences of labour rights violations or linked to legal proceedings?
- Is anything done to facilitate the lodging of complaints when the worker has left the country?

4. How to support access to justice

Informing workers of the complaints mechanism

Migrant workers should be informed of the available national complaints mechanisms and the contact information of support organisations. [Module 3](#) describes actions that workplace inspectors may take in this regard.

It is good practice for workplace inspectors to provide migrant workers with at least the following information:

- the different national means of enforcing their rights (judicial and non-judicial);
- how to lodge a complaint with the labour inspectorate or the relevant institution regulating labour matters, giving contact details of these bodies;
- how to lodge a complaint through third parties (NGOs, trade unions, etc.) and the contact details of key third parties assisting migrant workers;
- the national rules on statutory time limits for submitting a complaint.

Migrant workers should be able to submit complaints during inspections and independently of inspections.

Workplace inspectors should make workers aware that they always have a possibility to complain at a later stage. To this end, workplace inspectors may distribute cards or leaflets with their contact details.

Facilitating the lodging of complaints

Enabling victims of labour exploitation to lodge complaints against abusive employers and to access justice is key to fight impunity.

A complaint may be lodged to a court and/or to administrative authorities, such as labour inspectorates. This depends on the nature of the claim and the national legal system.

Most Member States enable workers to make a complaint with the authority that conducts workplace inspections, either directly or through third parties, such as social partners or NGOs.



The Platform for International Cooperation on Undocumented Migrants (PICUM) reviewed 15 Member States and found that

13 of them allow migrant workers to make a complaint for back pay to inspection bodies.

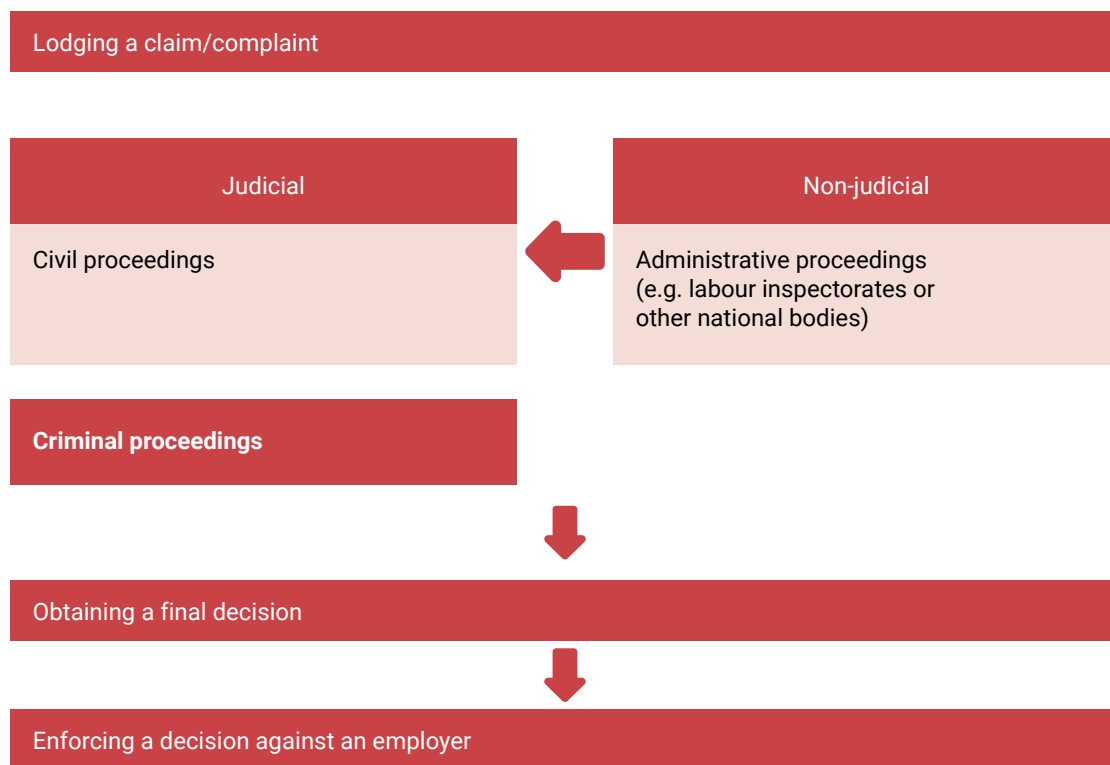
Source: PICUM, *A Worker Is a Worker – How to ensure that undocumented migrant workers can access justice*, Brussels, 2020, p. 32.

Complaints mechanisms before workplace inspectorates tend to be more effective than court proceedings. They are usually quicker and less costly and do not require legal representation.

Where workplace inspectors have the power to decide on workers' claims, for example on the amount of back pay, such decisions would still have to be enforced through judicial ways.

Figure 2 illustrates the **three-stage process** available in several Member States. At the end of the complaint procedure, in front of either workplace inspectorates or courts, migrant workers must receive a final decision on their claim, which must then be enforced through the courts.

Figure 2: Overview of enforcement of complaints



Source: FRA (2024).

Some workplace inspection authorities also have a mandate to mediate between the employer and the worker to resolve disputes. Labour dispute resolution, according to some of the labour inspectorates consulted when drafting this manual, protects the

complainer from retaliation from the employer. Unresolved disputes go to the courts.



Example: in Greece, the labour inspectorate may resolve disputes and impose penalties

on the employer for any labour violations found. If no agreement is reached, the labour inspectorate submits the case to the prosecutor for criminal investigation. This procedure is cost-free for the workers, who preserve their right to initiate civil court proceedings. Workers may ask trade unions for legal advice, and trade unions can represent the workers during the dispute.

Source: Information received from the Greek labour inspector during the validation phase.

Workers should have **multiple channels** to submit complaints, for example by mail, via email, online, through dedicated apps or over the telephone.



Example: The Spanish Ministry for Work and Social Economy has an online service via which workers can alert the labour inspectorate of a violation of their rights. This form can then lead to an inspection.

Source: Ministry for Work and Social Economy (Ministerio de Trabajo y Economía Social), [Servicio Web ITSS de Información al ciudadano](#), Madrid, 2022.

Some labour inspectorates also take into consideration **anonymous complaints**.



Example: in Slovenia, for example, relevant inspection and supervisory bodies (including the labour inspectorate and the Slovenian Financial Administration) are required by law to also consider anonymous complaints.

Source: Slovenia, Slovenian Financial Administration, March 2024.

Overcoming language barriers

Workplace inspectors should pay particular attention to overcoming language barriers to facilitate migrant workers' access to the complaint system (see also [Module 2](#)).

It is good practice to allow migrant workers to lodge complaints in their own language without incurring translation costs and to provide translated complaints forms.



Example: in Poland, Ukrainian citizens can lodge complaints with the state labour inspectorate in Ukrainian or Russian.

Source: Information received from the Polish labour inspector during the validation phase.

Promising practice: translated complaints forms in Italy and the Netherlands

The **Italian** labour inspectorate has developed a multilingual complaints form, which is available in Arabic, Bengali, Chinese, English, French, Panjabi, Romanian and Ukrainian.

Source: Information received from the Italian labour inspector during the validation phase.

The **Dutch** labour authority provides complaints forms for posted workers in several languages (e.g. Bulgarian, Czech, English, Polish, Portuguese, Romanian and Spanish). This makes the complaint mechanism more accessible for the most at-risk groups of migrant workers.

Source: Netherlands Labour Authority, '[Reporting unfair, unsafe, unhealthy working conditions or labour exploitation](#)', accessed 5 December 2023.

Prioritising the protection of migrant workers in an irregular situation

A clear division of services between labour rights protection and immigration law enforcement mechanisms – the latter are commonly referred to as 'firewalls', which guarantee that personal data will not be shared with immigration authorities – is likely to increase reporting.



European Parliament: Policy Department for Citizens' Rights and Constitutional Affairs, [The fundamental rights of irregular migrant workers in the EU – Understanding and reducing protection gaps](#), Brussels, 2022, pp. 74–75.

Practices vary greatly among labour inspectorates on the reporting of migrant workers in an irregular situation to immigration authorities.



Evidence: a FRA report from 2021 shows that, in 20 of the 25 Member States bound by the employers sanctions directive, labour inspectorates reported migrant workers in an irregular situation identified during inspections to the immigration authorities. In 2022, this was still the case for 17 Member States. In some cases, reporting is based on law; in other cases it stems from cooperation agreements or practice.

Source: FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021.

When migrant workers in an irregular situation submit complaints outside labour inspections, there may be no obligation to report to immigration law enforcement.



Example: in Belgium the labour inspectorate is duty-bound to share with immigration authorities the data of migrant workers in an irregular situation who are identified during an inspection. However, this reporting duty is not in place when workers file a complaint with the labour inspectorate, for example via email or in person.

Source: PICUM, *A Worker Is a Worker – How to ensure that undocumented migrant workers can access justice*, Brussels, 2020, p. 34.

If irregular migrant workers trust that their personal data will not be passed on to immigration law enforcement, they will be more likely to seek justice for labour rights violations.

Promising practice: not revealing irregular residence of workers in France and Ireland

In **France**, labour inspectors are tasked with checking work permits during inspections; however, they do not share related information with the immigration authorities.

In **Ireland**, the Workplace Relations Commission's inspection services are tasked with checking work permits during inspections; however, they do not share related information with the immigration authorities.

Sources: PICUM, *A Worker Is a Worker – How to ensure that undocumented migrant workers can access justice*, Brussels, 2020; Ireland, information shared by national authorities, March 2024.

In some Member States, it is obligatory under national law to report migrants in an irregular situation detected during workplace inspections. In such countries, informal arrangements that allow irregular third-country nationals to report a criminal offence confidentially, through third-party representatives, allow labour exploitation to come to the surface and be identified.

In situations where a joint inspection is conducted with police or migration authorities, inspectors must be aware of how the national reporting system works and inform workers if they are under an obligation to report workers to migration authorities.

Facilitating victims' access to temporary residence permits

Workplace inspectors should be aware of the main temporary residence permits available to victims identified during inspections or following a complaint.

They should refer migrant workers to counselling services that can provide advice (see [Module 5.3](#)).

Collecting evidence to support claims

Workplace inspectors play a key role in collecting and preserving evidence so that migrant workers can later substantiate their claim.

A good practice is to include all evidence that could be used to support the migrant worker's claims in the official inspection report and to share the report with migrant workers.

Possible evidence that labour inspectors may collect includes:

- documentary evidence (e.g. contracts, pay slips, working time and attendance records),
- communication (emails, telephone and voice messages, and conversations on social media),
- photographs,
- video recordings,
- witness statements,
- statements and other materials obtained from trade unions, NGOs, etc.

Source: FRA, based on input provided by national labour inspectorates during the pilot meetings held in July and September 2023.

Providing access to free legal assistance

Legal assistance is crucial to accessing justice. Without free legal aid, many migrant workers, particularly those in an irregular situation and seasonal workers, are unable to file complaints.

Entitlements to legal advice and to free legal aid are regulated in national law.



Example: the state labour inspectorate in Poland has set up a special hotline (three numbers) through which employers and workers, including third-country migrant workers, can obtain free legal advice in Russian and Ukrainian. In addition, free legal advice is also provided in person at the 16 district labour inspectorates and the 43 branches of the state labour inspectorate.

Source: Information provided by a Polish labour inspector, 2023.



Example: in Germany, trade union organisations, such as [Arbeit und Leben](#), provide legal aid on labour rights free of charge, confidentially and in many languages.

Source: Information received by a representative of Arbeit und Leben.



Example: in Portugal, the High Commissioner for Migration (Alto Comissariado para as Migrações) has [local branches](#) that can provide information and legal orientation on certain aspects of the law, such as fiscal, social security, labour and foreigners law.

Source: Portugal, Portuguese labour inspectorate, September 2023.

Workplace inspectors are encouraged to check which categories of migrant workers are entitled to legal aid in their country and inform them accordingly.

Trade unions usually provide legal assistance, but many of them only to their members. Despite this, several promising practices exist.

Promising practice: trade unions and non-governmental organisations offering assistance to migrant workers in an irregular situation in Austria

In **Austria**, the Chamber of Labour (Arbeiterkammer), which represents the interests of all workers, is increasingly supporting migrant workers in an irregular situation by providing them with information, advice or assistance with legal procedures. The Contact Point for Trade Union Assistance for Undocumented Workers (UNDOK) writes to employers on behalf of irregular third-country nationals claiming back pay. If unsuccessful, UNDOK refers the migrant workers to trade unions or to the Chamber of Labour, which may represent their interests before the labour courts.

Source: UNDOK, *Work without Papers, but not without Rights (Arbeit ohne Papiere, aber nicht ohne Rechte)*, Vienna, 2020, p. 17.

Cooperating with social partners and non-governmental organisations

Third parties such as trade unions, NGOs promoting the rights of migrant workers and victim support organisations facilitate access to justice:

- they act independently of the national authorities and there is no risk of being subjected to return procedures and detention as a result of engaging with them;
- migrant workers usually trust them and feel safe to lodge a complaint with them;

- through their work in the field, they have regular contact with migrant workers, can inform them of their rights and about the complaint mechanism, and can support workers to gather evidence;
- they are often better placed to talk to migrant workers because they deploy translators, psychologists and other experts;
- they can often act either on behalf of or in support of the worker in judicial and administrative proceedings and can lodge complaints.



Evidence: in some Member States (e.g. Austria, Greece and Spain), social partners can also be present during inspections. In Slovenia, trade unions take part in the Joint Action Days, namely an intelligence-led initiative by Member States, coordinated by the European Union Agency for Law Enforcement Cooperation (Europol) and the European Border and Coast Guard Agency (Frontex), to raise awareness.

Sources: ELA, [Successful cooperation approaches between labour inspectorates and social partners](#), Bratislava, 2021, p. 8; SPLIN, [Exploring Co-enforcement in the Construction Sector](#), 2020, p. 2; Slovenia, information provided by the labour inspectorate, March 2024.

Workplace inspectors are encouraged to inform migrant workers of the existence of national trade unions, NGOs and victim support services that are active in the field of migrant workers' rights and to provide their contact details. Workplace inspectors should invest efforts in building trust and rapport with social partners and NGOs.

Partnerships with trade unions and NGOs can range from institutionalised cooperation to informal arrangements. At the minimum, labour inspectorates should establish regular communication channels with such third parties to exchange information on possible cases of labour exploitation.

Promising practice: cooperation between labour inspectorates, social partners and non-governmental organisations in Greece

In **Greece**, the labour inspectorate cooperates with an NGO supporting migrant workers. The collaboration is formalised through a cooperation agreement, which also covers the training of inspectors on labour exploitation. In cases of suspected trafficking or in cases in which a migrant worker does not speak Greek, a labour inspector can approach the NGO for translations through their [hotline](#), which is available 24/7.

Source: Information received by the Greek labour inspectorate during the validation phase.

Enhancing transnational cooperation

Access to justice can benefit from transnational cooperation between national authorities and NGOs.

Promising practice: transnational cooperation with civil society in Germany and Poland

Before workers come to work in **German** farms, the organisation [Arbeit und Leben](#) informs Moldovan seasonal workers that they can join messenger groups (Viber), which the Moldovan Employment Agency is a part of. Through such channels, seasonal workers can submit complaints about working conditions. In response, the German Employment Agency may provide alternative employment at another farm.

The **Polish** labour inspectorate and the **German** NGO [Arbeit und Leben](#) cooperate to protect workers posted from Poland to Germany. Polish workers sometimes contact the Polish labour inspectors to address labour law abuses experienced in Germany. The Polish labour inspectorate contacts Arbeit und Leben, which is able to collect evidence on the employment in the country of destination to support workers to successfully enforce their labour rights.

Source: Arbeit und Leben, October 2023.

Key takeaways

Labour inspectors can play a key role in facilitating access to justice for migrant workers. To this end, workplace inspectors should:

- inform workers about the right to complain and about how to file a complaint with the labour inspectorate or a third party;
- address language barriers, for example by providing forms to submit complaints in different languages;
- map which third parties, such as trade unions or other associations, can support migrant workers in filing a complaint and should share the names and contact details of these organisations with workers;
- establish structured partnerships with trade unions and civil-society organisations;
- inform migrant workers in an irregular situation of any duty that labour inspectors have to report them to immigration law enforcement and suggest safe ways to file a complaint;
- secure the necessary evidence to support a complaint, such as employment contracts, pay slips, working time and attendance records, and evidence on substandard accommodation;
- verify if exploited workers who are in an irregular situation may be entitled to a temporary residence or work permit, informing workers of the availability and limitations of such permits and, if part of the workplace inspector's mandate, facilitating access to such permits.

Further reading

- ELA, [Successful cooperation approaches between labour inspectorates and social partners](#), Bratislava, 2021.
- FRA, [Legal Aid for Returnees Deprived of Liberty](#), Publications Office of the European Union, Luxembourg, 2021.
- FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021.
- PICUM, [A Worker Is a Worker – How to ensure that undocumented migrant workers can access justice](#), Brussels, 2020.
- PICUM, [Data Protection and the Firewall – Advancing safe reporting for people in an irregular situation](#), Brussels, 2020.

MODULE 5: IDENTIFICATION AND REFERRAL OF EXPLOITED WORKERS

Through this module, workplace inspectors will:

1. learn the different forms of labour exploitation;
2. learn how to identify exploited workers;
3. understand the importance of referring victims to support services;
4. learn about the existence of different types of resident permits for victims.

1. Recognising labour exploitation

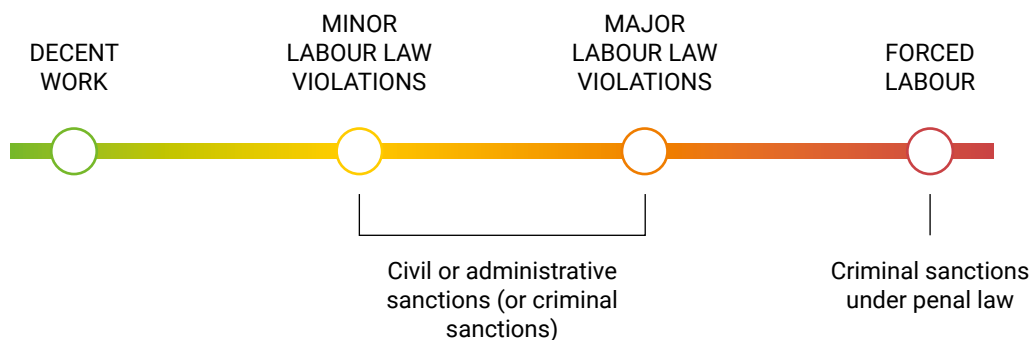
Labour exploitation has no legal definition in EU or international law. It can take a variety of forms, with varying severity.

Labour exploitation is a continuum ranging from milder labour law violations, which may entail administrative or civil sanctions, to more severe violations, which can entail criminal sanctions or even amount to forced labour (Figure 3).

Labour law violations can potentially deteriorate into other forms of exploitation. For instance, overtime work imposed beyond the limits of national law constitutes a labour law violation. However, if it is excessive and is performed under the threat of dismissal, this could constitute forced labour.

The dividing line between these categories is not always clear. Each constitutes a deviation from decent work and must be identified so that appropriate steps can be taken to sanction the exploiter and to provide support services to those subjected to exploitation.

Figure 3: The continuum of exploitation



Source: Council of Europe, 'Trafficking for the purpose of labour exploitation: new HELP online training module', 9 November 2021, based on Skrivankova, K., *Between Decent Work and Forced Labour – Examining the continuum of exploitation*, Joseph Rowntree Foundation, York, 2010, p. 19.

Examples of criminal forms of labour exploitation are forced labour, slavery, trafficking for labour exploitation and 'particularly exploitative labour conditions', as defined in the employers sanctions directive.

Forced labour

Article 5 of the charter prohibits both forced labour and slavery.

When coercion is involved, labour exploitation becomes forced labour. According to the ILO, forced labour cannot be equated simply with low wages or poor working conditions.



Article 2 of the ILO [Forced Labour Convention, 1930 \(No 29\)](#), defines forced labour as follows: 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.

[Protocol of 2014 to the Forced Labour Convention, 1930](#), provides for assistance, protection, reintegration and remedy for victims of forced or compulsory labour. The [Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No 203\)](#), has non-binding practical guidance on prevention, the protection of victims, access to justice and remedies.

Trafficking in human beings

Article 5 of the charter prohibits trafficking in human beings.

An offence of trafficking in human beings is established when three constitutive elements are present: acts (recruitment, transport, transfer, harbouring or reception of people), means (use of threat, force and other forms of coercion; abuse of a person's position of vulnerability) and the purpose of exploiting the victim.



Article 2 of the anti-trafficking directive defines trafficking in human beings as follows: 'The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'

This definition is consistent with those in Article 3(a) of the [Palermo Protocol](#) supplementing the [United Nations Convention against Transnational Organized](#)

[Crime](#) and Article 4 of the [Council of Europe Convention on Action against Trafficking in Human Beings](#).

Under Article 2 of the anti-trafficking directive, the consent of the victim is irrelevant if one of the means of coercion (use of threat, force and other forms of coercion; abuse of a person's position of vulnerability) are used. A **position of vulnerability** means a situation in which the person has no other choice than to be subject to the abuse.

In the European Court of Human Rights (ECtHR) judgment of 30 June 2017, [Chowdury and Others v Greece](#) (21884/15), which concerned the working conditions of Bangladeshi workers in Greece, the ECtHR found that Greece had violated Article 4(2) of the European Convention on Human Rights. This violation was the result of Greece failing to fulfil its obligations to prevent the situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking. The ECtHR considered different circumstances, including:

- the workers' particularly harsh living and working conditions (working in greenhouses from 07:00 to 19:00 every day, picking strawberries under the supervision of armed guards hired by their employer; living in makeshift shacks without toilets or running water);
- that employers did not pay workers and threatened them – when workers demanded their due wages, an armed guard opened fire on them, injuring at least 35 workers;
- workers were in a situation of vulnerability, being irregular migrants without resources, and at risk of being deported.

The ECtHR considers that a restriction on freedom of movement is not a condition *sine qua non* for establishing a situation as forced labour or human trafficking because a trafficking situation could exist in spite of the victim's freedom of movement.

For more ECtHR case-law on Article 4 of the European Convention on Human Rights (prohibition of slavery and forced labour), see ECtHR judgments of 7 January 2022, [Zoletic and Others v Azerbaijan](#) (20116/12); of 25 June 2020, [S. M. v Croatia](#) (60561/14); and of 18 October 2019, [T. I. and Others v Greece](#) (40311/10).

Particularly exploitative working conditions

Article 9 of the employers sanctions directive makes it mandatory for Member States to criminalise the employment – along with the intentional aiding, inciting or abetting of such employment – of third-country workers in an irregular situation in cases when:

- it is committed in a continued manner or is repeated persistently;
- it concerns the simultaneous employment of a significant number of third-country nationals in an irregular situation;
- such employment is accompanied by particularly exploitative working conditions;
- the employer uses work or services exacted from a migrant worker in an irregular situation knowing that he or she is a human trafficking victim.



Article 2(i) of the employers sanctions directive defines particularly exploitative working conditions as follows: “Particularly exploitative working conditions” mean working conditions, including those resulting from gender-based or other discrimination, where there is a striking disproportion compared with the terms of employment of regularly employed workers which, for example, affects workers’ health and safety, and which offends against human dignity.’

The above list is open-ended. Conditions that may qualify as particularly exploitative are not restricted to those mentioned above but must be assessed on a case-by-case basis in the light of the standards of the working conditions as a whole.

Forced labour and trafficking in human beings have stringent legal standards, which do not need to be met for other criminal forms of labour exploitation, such as particularly exploitative working conditions.

The criminalisation of employment under particularly exploitative working conditions differs from that of trafficking in human beings for labour exploitation. An offence of trafficking in human beings requires the presence of all three constitutive elements (acts, means and the purpose of exploiting the victim). To conclude that a worker was subject to particularly exploitative working conditions, it is sufficient to establish that there has been **an act of exploitation of a certain gravity**. There is no need to prove the employer’s purpose to exploit the victim.

Under EU law, particularly exploitative labour conditions are criminalised only in the context of migrant workers in an irregular situation. This may be different in national law.

2. How to identify victims of labour exploitation

Identification procedures

Identification is a precondition for providing victims with protection and assistance. Timely identification is key to getting the victims to safety and to preventing

labour law violations from turning into more serious abuses.

Identification procedures are usually formalised for suspected victims of trafficking in human beings, but not necessarily for other crimes. Practices across the Member States vary:

- **formal identification** of potential victims is usually assigned to law enforcement officials, public prosecutors or health and social services providing victim support and, in a few cases, to labour inspectors;
- **informal identification** is assigned to many actors, including workplace inspectors, who as frontline workers are often best placed to detect labour exploitation.



Example: in Italy, according to guidelines on the identification and referral of victims of labour exploitation in agriculture, when identifying a potential victim of labour exploitation, labour inspectors should inform the public prosecutors and provide the evidence required during the investigation.

Source: Italy, Ministero del Lavoro e delle Politiche Sociali, [Accordo, ai sensi dell'articolo 9, comma 2, lett. c\), del decreto legislativo 28 agosto 1997, n. 281, sulle "Linee-Guida nazionali in materia di identificazione, protezione e assistenza alle vittime di sfruttamento lavorativo in agricoltura"](#), 2021.

Labour inspectors should understand what role they play at the national level in relation to the identification of victims of labour exploitation.

Promising practice: interview guidelines with exploitation-specific indicators in Italy

Italy has developed guidelines to interview presumed victims. This includes general indicators for the identification of victims of trafficking and specific indicators related to different forms of exploitation, such as sexual exploitation, labour exploitation, domestic servitude and begging.

Source: ILO, [Protection and Assistance of Victims of Labour Exploitation – A comparative analysis](#), Rome, 2020, p. 11.

The role of NGOs in the identification process is important in all Member States, as they are likely to get in touch with migrant workers who approach them for more general assistance. In some Member States, NGOs are formally part of the identification process.

Indicators of labour exploitation

The ILO has developed [indicators](#) for labour exploitation (see [Annex 7](#)). The first set of indicators covers deceptive and coercive recruitment and recruitment by abuse of vulnerability, for example when the worker was recruited by abusing his or her irregular status.

Abusive recruitment is one of the key risk factors for labour exploitation. Examples of practices that do not meet fair and ethical recruitment include:

- charging workers recruitment fees and costs;
- deploying migrant workers to jobs or employers other than those applied for;
- substituting agreed employment contracts with inferior contracts;
- exploiting migrant workers through loans at exorbitant interest rates.

Labour inspectorates can play a critical enforcement role in promoting fair recruitment through the monitoring of private recruitment and placement agencies, the detection of abusive recruitment practices, the processing of complaints and the application of sanctions.



For more details, see ILO, [Labour inspection and monitoring of recruitment of migrant workers](#), technical brief, Geneva, 2022.

Tools that can help in the implementation of fair and ethical recruitment include:



the [IOM's IRIS standard](#),



the [ILO's fair recruitment initiative](#),



the [ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#),



the [UN guiding principles of business and human rights](#),



the [Montreal recommendations on recruitment](#).

The second set of [ILO indicators](#) for labour exploitation covers exploitation, coercion and abuse of vulnerability at work. Examples of such indicators are:

- bad living and working conditions, such as overcrowded or unsanitary living conditions;
- excessive working times;

- low or no salary, for example being paid less than the minimum wage or in kind;
- no respect of labour laws;
- no social protection, for example being denied sick leave;
- wage manipulation, for example paying workers' wages to a middleman or excessive deductions for food and accommodation;
- confiscation of documents;
- threats of violence or denunciation;
- dependency on exploiters for daily life, movement and contacts with the outside.

Labour inspectors should familiarise themselves with these indicators and apply them in order to recognise situations of labour exploitation.

When considering the indicators, it is essential to assess the overall situation of the workers and consider the cumulative weight of the various indicators.

Indicators for labour exploitation have also been developed at the national level, for example in Greece, Portugal and Spain (as noted by labour inspectors during the drafting of this manual). In Italy, the legislation includes indicators of unlawful labour intermediation and labour exploitation.

Promising practice: defining labour exploitation by law in Italy

Italy criminalises the offence of 'unlawful labour intermediation and labour exploitation'. Under Article 603 bis of Italy's Penal Code, the indicators of exploitation are one or more of the following circumstances:

- repeated payment of wages lower than the minimum remuneration established by collective agreements or not proportionate to the work performed;
- repeated violations of the rules related to hours of work and rest periods;
- violations of workplace health and safety regulations that expose workers to a danger to their health, safety or personal security.

Source: Italy, Penal Code, [Article 603 bis](#).

Labour inspectors should also familiarise themselves with indicators specific to trafficking in human beings and forced labour.



Forced labour indicators. The 11 [ILO Indicators of Forced Labour](#) capture key

elements of the forced labour definition, focusing on the involuntariness of the work performed.



Trafficking in human beings indicators.

The [ILO operational indicators of trafficking in human beings](#) cover deceptive and coercive recruitment, recruitment by abuse of vulnerability, exploitative conditions of work, coercion and abuse of vulnerability at the destination.

3. How to refer victims to support services

Victims of crime, including victims of criminal forms of labour exploitation, have a right to support services. Access to victim support services cannot be made dependent on making a formal complaint.



Under the victims' rights directive, anyone who has suffered harm, including physical, mental or emotional harm or economic loss, that was directly caused by a criminal offence (including criminal forms of labour exploitation) has the right to access victim support services. The anti-trafficking directive has specific provisions on support for victims of trafficking in human beings.

For victims of human trafficking, many countries have a national referral mechanism. This is a national framework that coordinates the efforts and identifies the responsibilities of the different actors (national authorities, civil-society organisations and the private sector) involved in assisting and protecting victims of trafficking (!).

National referral mechanisms have been used in the context of human trafficking extensively. They have the potential to be expanded to all victims of labour exploitation, but this is not a requirement under EU law currently. However, the Commission proposed in its amendment to the anti-trafficking directive that it be made mandatory for Member States to establish formal national referral mechanisms and to appoint a national focal point for the referral of victims.

Promising practice: non-governmental organisation support services for victims of labour exploitation in the Netherlands

In the **Netherlands**, CoMensha is the NGO mandated to coordinate support for victims of trafficking. It recently opened a shelter for seriously disadvantaged people who are exploited but do not meet the definition of victims of trafficking.

Source: Information provided by a representative of CoMensha, November 2023.

Victim support services must be available only to victims of crime, under EU law. They must be free and confidential and in the interests of the victims before, during and for an appropriate time after criminal proceedings. Such services must be made available to the family members of the victims as well, in accordance with their needs and the degree of the harm suffered.

Under Article 9 of the victims' rights directive, support services must at a minimum include:

- information, advice and support relevant to the rights of victims, including on access to national compensation schemes for criminal injuries and on their role in criminal proceedings, including preparation to attend a trial;
- information about or direct referral to any relevant specialist support services;
- emotional and, where available, psychological support;
- advice relating to financial and practical issues arising from the crime;
- unless otherwise provided by other public or private services, advice concerning the risk and prevention of secondary and repeat victimisation, intimidation and retaliation.

Member States have a duty to facilitate the referral of victims to victim support services.

To be able to connect potential victims with support services, workplace inspectors should proactively:

- **identify** the potential victims of labour exploitation;
- **map** available support services, including the relevant national actors providing such services, the eligibility of potential victims for the various services, contact information and, where possible, contact people;
- **inform** potential victims of the available support mechanism;
- **refer** victims, upon their consent, to support services when receiving complaints or when there is a reasonable ground to believe that the person is a potential victim of labour exploitation.



Article 9(3) of the victims' rights directive refers to specialised support services. It notes that, in addition to general support services, specialised support services should provide:

- temporary accommodation in cases of an imminent risk of secondary and repeat victimisation, intimidation and retaliation;
- targeted support for victims with specific needs, such as victims of violence.

Workplace inspectors should also pay specific attention to the immediate needs of potential victims of labour exploitation, such as access to healthcare, including psychological care. Inspectors should keep in mind that emergency medical care is accessible regardless of immigration status, although migrants in an irregular situation may fear that going to a hospital may lead to their deportation. Cooperating with NGOs that facilitate access may help overcome such fears.

Promising practice: integrated services for victims in Czechia

In **Czechia**, under a state-funded programme for victims of trafficking in human beings, the civil-society organisation La Strada provides integrated support services. La Strada is the single point of entry for all of the services necessary for victims, including social assistance, psychological and social counselling, translation and interpretation services, emergency and basic healthcare, requalification courses, legal representation and safe accommodation, including two shelters where victims can stay for up to 1 year.

Source: GRETA, [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic – First evaluation round](#), Strasbourg, 2020.



The non-punishment principle is defined under Article 8 of the anti-trafficking directive and Article 26 of the [Council of Europe Convention on Action against Trafficking in Human Beings](#). The principle states that victims of trafficking should not be prosecuted for their involvement in unlawful activities that they were compelled to commit. This could be, for example, trafficked workers compelled to cultivate cannabis.

As soon as they identify signs of trafficking for labour exploitation, workplace inspectors should not apply sanctions against workers for offences they were compelled to commit, including administrative and immigration-related offences.

4. How to help workers access temporary residence permits

Migrant workers in an irregular situation fear contact with any authority that may trigger procedures obliging them to leave the EU.

Access to residence permits is, in practice, a critical first step to ensure that they can benefit from the protective elements available to them under EU and

national law. This includes their right to file complaints against abusive employers.

Your role to counter labour exploitation

Workplace inspectors should be aware of the residence permits available to potential victims of labour exploitation in their Member State.

Workplace inspectors may play an essential role in facilitating access to these permits. They can do so, for example, by informing workers of the existence of such permits, collecting the evidence needed on labour law violations or recommending that the inspection issues a permit in relation to an investigation.

Workplace inspectors should not refer workers to immigration authorities for a permit when they are not eligible and might face immigration enforcement. Support organisations are a key partner in understanding the extent to which such permits might be an option for workers.

There are three different options for temporary residence permits:

1. permits for victims of trafficking in human beings;
2. permits for victims of particularly exploitative working conditions;
3. humanitarian or other permits based on national law.

EU law regulates the first two permits.

Permits for victims of trafficking in human beings



Based on Directive 2004/81/EC (?), Member States can issue temporary residence permits for victims of trafficking in human beings who cooperate in the fight against trafficking. They must fulfil certain conditions, such as having severed all relations with the traffickers.

National law may be less strict and also issue temporary permits to victims who do not participate in criminal proceedings against the trafficker. Labour inspectors should be aware of which requirements need to be met.

Potential victims of trafficking in human beings are entitled to a reflection period to make an informed decision on whether to cooperate with the justice system in procedures against traffickers.



Article 6 of Directive 2004/81/EC sets out a recovery and reflection period for potential

victims of trafficking. Victims of trafficking in human beings must be provided with a reflection period allowing them to recover and escape the influence of the perpetrators of the offences. This gives them the opportunity to make an informed decision on whether to cooperate with the competent authorities.

The [Council of Europe Convention on Action against Trafficking in Human Beings](#) requires a recovery and reflection period of at least 30 days for potential victims. During this time, the victims cannot be deported (Article 13). The convention also covers the issuing of a residence permit to victims of trafficking (Article 14).



Evidence: in all Member States, except for Austria, Bulgaria, Ireland and Italy, victims are provided with a period of reflection ranging from 30 to 90 days from the date that they were identified.

Source: ILO, [Protection and Assistance of Victims of Labour Exploitation – A comparative analysis](#), Rome, 2020, p. 14.

Permits for victims of particularly exploitative working conditions

For migrant workers in an irregular situation who are victims of particularly exploitative working conditions, EU law allows states to grant a residence permit but does not oblige them to do so.



Under Article 13(4) of the employers sanctions directive, in the case of 'particularly exploitative working conditions' or illegal employment of a child, Member States can, although do not have to, grant temporary residence permits on a case-by-case basis. Such permits must be temporary in nature and linked to the length of the relevant national proceedings the workers are involved in. Under Article 6(5), such permits should be extendable until the victim has received back payment.



Evidence: in 2020, only half of the Member States bound by the employers sanctions directive had specific residence permits in place for victims of labour exploitation (Bulgaria, Cyprus, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Poland, Portugal, Slovakia, Slovenia and Spain).

Source: FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021.

Permits under national law

Some Member States have residence permits for other victims of crime, for humanitarian reasons and

for workers who worked with a valid residence permit and experienced labour rights violations or otherwise lost that permit through no fault of their own.



Evidence: several Member States allow people to regularise their status based on employment, years of residence and other criteria.

Source: Organization for Security and Co-operation in Europe (OSCE): Office for Democratic Institutions and Human Rights (ODIHR), [Regularization of migrants in an irregular situation in the OSCE region](#), Warsaw, 2021.

Whereas, in most cases, the resident permit is issued following a request by the public prosecutor or by victim support centres or NGOs accommodating victims, in a few countries the labour inspector can play a role in making the request for a permit.

5. Aspects of your national law to focus on

The following questions may help workplace inspectors to understand how identification of victims of labour exploitation happens in their country, what temporary residence permits may be available to victims and how referral to victim support services works in practice.

Guiding questions to understand how EU law applies in your country

Identification and referral of victims

- Is there a specific entity responsible for identifying victims of labour exploitation, such as the police, or is the responsibility shared across different entities?
- What is the role of your institution? Does it have a responsibility for screening and preliminary identification and/or for formal identification of victims?
- Is there a national referral system and to whom does it apply? Is there room to include labour exploitation victims in the existing referral mechanisms?
- Does your country have official indicators for the identification of victims? Are the indicators specific to victims of labour exploitation?

Temporary residence permits

- What temporary residence permits are available to victims of labour exploitation in your country?

- Does your institution play a role in facilitating the issuance of such permits?

Support services

- Which organisations provide support services to victims of labour exploitation?
- What types of services do these organisations provide? What are the criteria to access such services? Are they limited to victims of trafficking only?
- Are there specialised support services for victims of violence and, if so, by whom are they provided?
- What is the role and responsibility of your institution in facilitating access to these services?
- How can your labour inspectorate best refer potential victims of labour exploitation to the support service providers in practice?

enforcement actions. During inspections, enforcement authorities can come across workers of different nationalities, including third-country nationals. Although third-country nationals are not explicitly included in ELA's mandate, concerted and joint inspections target all workers.

One such inspection was carried out in close cooperation with the European Union Agency for Criminal Justice Cooperation (Eurojust) and Europol and led by Belgian and Portuguese authorities. It concerned Portuguese companies that allegedly had no significant activities in Portugal that had been posting hundreds of workers to Belgium. Many of these workers were third-country nationals from Brazil. The inspection triggered further checks into the status of the Brazilian workers and their working and living conditions in Belgium.

Source: ELA, December 2023.

6. Enhancing cross-border cooperation

Cross-border cooperation among labour inspectors and other enforcement agencies is key to fighting labour exploitation and to identifying victims.

There are several collaborative initiatives in the EU, for example:

- ELA's [posting 360 programme](#);
- the [European Platform Tackling Undeclared Work](#), coordinated by ELA;
- European Multidisciplinary Platform against Criminal Threats (Empact) analytical meetings, such as the [meeting on labour exploitation in May 2024](#).

Joint inspections involving authorities from different countries help to prevent exploitation. They can do so by checking that the posting of workers is correct, without circumventing the working conditions in either the home or the destination country.

Cooperation is essential to overseeing cross-border companies within the EU, which is a crucial action for effectively identifying labour exploitation.

Promising practice: concerted and joint inspections

Concerted and joint inspections are initiated at the request of a Member State or by ELA and require the prior agreement of all participating Member States. Since its establishment in 2019, ELA has supported more than 100 joint

Key takeaways

As frontline workers, workplace inspectors are best placed to identify labour exploitation victims. To that end, they are encouraged to:

- undergo training on the various types of crimes that involve labour exploitation and training on the relevant indicators to identify victims;
- use existing checklists to help identify victims of labour exploitation;
- speak directly to workers to identify signs of labour exploitation;
- map victim support services and specialist support services to which victims may be referred;
- be aware of the residence permits that can be issued to migrant workers in an irregular situation who experience labour rights violations and inform exploited workers accordingly;
- refer exploited workers, with their consent, to relevant organisations that provide victim support services and may be able to help them request temporary residence permits;
- cooperate with partners across borders, for example through concerted or joint inspections.

Further reading

- Eurojust, [Prosecuting THB for the Purpose of Labour Exploitation](#), The Hague, 2015.
- FRA, [Severe Labour Exploitation – Workers moving within or into the European Union – Annexes on](#)

- criminal law provisions and inspection authorities*, Publications Office of the European Union, Luxembourg, 2015.
- FRA, *Severe Labour Exploitation – Workers moving within or into the European Union – States’ obligations and victims’ rights*, Publications Office of the European Union, Luxembourg, 2015.
 - FRA, *Protecting Migrant Workers from Exploitation in the EU – Workers’ perspectives*, Publications Office of the European Union, Luxembourg, 2019.
 - FRA, *Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive*, Publications Office of the European Union, Luxembourg, 2021.
 - ILO, *Details of Indicators for Labour Exploitation*.
 - ILO, *Protection and Assistance of Victims of Labour Exploitation – A comparative analysis*, Rome, 2020.

ENDNOTES

- (¹) OSCE-ODIHR, *National Referral Mechanisms – Joining efforts to protect the rights of trafficked persons*, 2nd edition, Warsaw, 2022, p. 26.
- (²) [Council Directive 2004/81/EC](#) of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

MODULE 6:

RIGHT TO BACK PAY AND COMPENSATION

Through this module, workplace inspectors will:

1. understand why back pay and compensation are priorities for migrant workers;
2. become familiar with EU law on back pay and compensation for migrant workers;
3. understand that different procedures may be available for workers to claim back pay and compensation;
4. understand how you can support migrant workers to claim their rights.

1. Understanding the importance of back pay and compensation

The right to back pay and/or compensation is one of the key provisions to protect migrant workers, including those in an irregular situation, from the risk of exploitation and abuse.

Migrant workers are particularly vulnerable to wage abuses. They may experience delayed payment, underpayment, the withholding of wages and the unlawful deduction of wages, the non-payment of wages and repatriation without receiving full wages.

Abuse is more common in sectors that lack wage regulation or that generally lack labour inspections, such as domestic work, agriculture and the informal economy, as well as in sectors with subcontracting (e.g. construction).



For more information, see ILO, [Guidance Note – Wage protection for migrant workers](#), Geneva, 2023.

Very few migrant workers make a wage claim, and even fewer recover all of the wages that they are owed.

The right to claim back outstanding payments applies to all workers, including migrant workers who are in an irregular situation.

Several international legal instruments guarantee the right to claim due wages.

- The ILO [Protection of Wages Convention, 1949 \(No 95\)](#), ensures the regular payment of wages directly to the worker, without undue deductions, and the freedom of workers to dispose of their wages without limitations.
- The ILO [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No 143\)](#), provides that irregularly employed migrant workers enjoy equal treatment with migrant workers in a regular situation. This regards rights arising from past employment in respect of remuneration, social security and other benefits, trade union membership and the exercise of trade union rights, as well as access to justice to claim those rights. The related ILO [Migrant Workers Recommendation, 1975 \(No 151\)](#), further specifies that migrant workers, regardless of their status, who leave the country of employment should be entitled to:
 - any outstanding remuneration for work performed, including severance payments normally due;
 - benefits for employment injuries suffered;

- compensation in lieu of any holiday entitlement acquired but not used (in accordance with national practice);
- reimbursement of certain social security contributions.
- The ILO [Protection of Workers' Claims \(Employer's Insolvency\) Convention, 1992 \(No 173\)](#), provides that, in the event of the employer's insolvency, workers' claims are paid out of the assets of the insolvent employer before other creditors can be paid their share.
- Under the Council of Europe, Article 15 of the [Convention on Action against Trafficking in Human Beings](#) provides for the right to compensation for victims of trafficking.
- Under Article 11(6) of the posted workers enforcement directive, there must be mechanisms for **posted workers** to receive:
 - any outstanding net remuneration;
 - any back payments or a refund of taxes or contributions unduly withheld;
 - a refund of excessive costs (e.g. for accommodation that the employer provided);
 - the employer's contributions due to common funds or institutions of social partners that were unduly withheld from their salaries.
- For **migrant workers in an irregular situation**, EU law articulates the right to back pay in detail in Article 6 of the employers sanctions directive. The employer must pay:
 - any outstanding remuneration, with the following provisions:
 - if the wage agreed cannot be proven, remuneration is presumed to correspond to the minimum wage;
 - if the duration of employment cannot be proven, it is presumed that the worker was not paid for at least 3 months;
 - taxes and social security contributions that the employer would have had to pay if the worker had been regularly employed, including penalty payments for delays and relevant administrative fines;
 - any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

2. What EU law requires

EU law sets out provisions on the rights of workers who are victims of crime to claim back pay and compensation. These provisions apply to all categories of workers, including those in an irregular situation.

- Under Article 16 of the victims' rights directive, exploited workers who are **victims of crime** have the right to obtain compensation for damages from the offender. This right applies to all victims, regardless of their status. Compensation can be claimed during the criminal proceedings against the perpetrator.
- **Victims of trafficking in human beings** are entitled to schemes of compensation that exist for victims of violent crimes (Article 17 of the anti-trafficking directive).
- Migrant workers who are at heightened risk of exploitation benefit from additional and more specific protection under EU law. Seasonal workers are entitled to:
 - back pay and outstanding remuneration, provided this right exists for national workers in the Member State in which they work (seasonal workers directive, Article 23(1)(c));
 - compensation, if the employer is sanctioned – for example for undeclared work, illegal employment or fraud – and the authorisation for seasonal work is withdrawn (seasonal workers directive, Article 23(1)(c)).
 - If the employer is a subcontractor, the duty to pay back pay and compensation also extends to the principal contractor and any intermediate subcontractor, if they have not acted under due diligence (employers sanctions directive, Article 17(3)(c)).

The principal contractors are also liable, in addition to, or instead of, the subcontracting employer, for any back payments if they were aware of the illegal employment (Article 8(1) of the employers sanctions directive).

Article 6(2) of the employers sanctions directive requires Member States to set up national mechanisms that:

- subject to national limitation periods, allow migrant workers to claim back payments against their (former) employer and enforce a related judgement;
- if envisaged by national law, allow national authorities (labour inspectors) to start a procedure for back pay, without the need for a claim from the worker.

Workers must also be able to receive any back payment when they are no longer present in the host

country, under Article 6(4) of the employers sanctions directive. Temporary residence permits can be extended until back payment is received, under Article 6(5) of the employers sanctions directive.

For **asylum seekers** and for **migrant workers**, under the single permit directive, there are no additional provisions in EU law to facilitate the claiming of compensation and back pay.

These EU legal provisions on back pay and compensation make the gathering of evidence even more important. Workplace inspectors should focus their inspections on documenting the duration of employment and the amount of remuneration received, and these aspects should be carefully documented in their reports.

As described in [Module 3](#), workplace inspectors should also inform victims of their rights.

3. Aspects of your national law to focus on

Workplace inspectors should familiarise themselves with how the right to back pay and compensation is regulated in their country and how national mechanisms work in practice. For this, they may use the following questions.

Guiding questions to understand how EU law applies in your country

Back pay and compensation

- Which categories of workers can claim back pay and compensation in your country (e.g. every exploited worker or migrant workers in an irregular situation)?
- What does the right to back pay include (e.g. outstanding remuneration, taxes and social security contributions, delay interests and/or other costs)?
- If the worker cannot prove the amount of outstanding remuneration, what presumptions apply? If there is no national statutory minimum wage, how is remuneration calculated?
- If the worker cannot prove the duration of the employment relationship, what presumptions apply? Is full-time work presumed?
- Does the right to compensation also include moral damages?
- What are the national rules on chain responsibility?
- What evidence is needed to support a court case for the payment of wages due and what

role can your institution play in collecting or preserving this?

Enforcement mechanisms

- What is the judicial procedure for claiming and enforcing back pay or obtaining compensation?
- Are there also non-judicial procedures?
- Are enforcement mechanisms available to migrant workers who have left the country?
- Is a complaint by the worker required or can the authorities start a procedure on their own initiative?
- What is the role of the labour inspectorate in enforcement mechanisms?
- Can workplace inspectors' reports be used as evidence in proceedings? If so, are there any specific requirements for such reports to be admitted as evidence?
- Is there a compensation fund in place in your Member State? If yes, what are the conditions for migrant workers to obtain compensation from such funds?

4. How to overcome obstacles in claiming back pay and/or compensation

[Module 3](#) on the provision of information sets out what workplace inspectors can do to inform workers systematically and objectively about their rights. This section provides guidance on what other measures they can take.

Understanding national rules

Workplace inspectors should be familiar with the applicable rules, including legal presumptions and burden-of-proof rules on collecting relevant evidence.

The burden of proof in civil cases is generally on the worker. Especially when employment is irregular, the worker may not have the necessary evidence. For migrant workers in an irregular situation, if the duration of employment cannot be proven, it is presumed that it lasted for at least for 3 months. Some Member States have extended this presumption.



Example: in the Netherlands, an employment relationship with a migrant worker in an irregular situation is presumed to have lasted 6 months, in the absence of other evidence.

Source: The Netherlands, Article 23, Law on the Labour of Aliens (*Wet arbeid vreemdelingen*).

Reversing the burden of proof may also help to establish that the worker was employed full time.

Promising practice: reversing the burden of proof for working time in Belgium

In **Belgium**, in the absence of a working time registration system, the burden of proof for working time is on the employer.

Source: Labour Court of Appeal Brussels, [Case No 2018/AB/424](#), 22 May 2020.

Some Member States limit the action of the state labour inspectorate.



Example: in Portugal, the national labour inspectorate can initiate procedures to claim back wages (only) when there is still a labour relationship. Workers should be informed about this in advance.

Source: Portugal, information provided by the state labour inspectorate in writing, September 2023.

Gathering and preserving evidence

A lack of evidence can prevent workers from claiming back pay and/or compensation or can lead to a case failing in court. Workplace inspectors can play a pivotal role in gathering the evidence needed to ensure that workers can enforce their rights, particularly during inspections. Evidence to secure includes:

- documentary evidence (contracts, pay slips, etc.),
- communications such as emails, telephone calls, and voice and written messages,
- photographs,
- working time and attendance records,
- witness statements,
- declarations from trade unions and NGOs.

It is important to inform migrant workers about the evidence collected, for example in the form of an inspection report, through NGOs and trade unions.

Technological systems that generate evidence of non-payment or underpayment are an emerging good practice. These may allow for digital documentation of pay slips and employment contracts, the obligation for employers to provide wages electronically, and government bodies automatically sending notifications of non-payment of social security

contributions and/or taxes and the underpayment of wages.



Example: national legislation in Malta requires employers to issue monthly pay slips to employees or they risk being fined. Such pay slips must include at least the number of hours worked, the number of overtime hours worked and their rate, and information on any leave taken.

Source: GRETA, [Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation](#), Strasbourg, 2020, p. 19.

Investigation and adjudication of migrant workers' claims

Workplace inspectors are best placed to address and enforce the right to back pay and/or compensation.

How they do this will depend on their mandate and whether they can directly lodge complaints or if the worker needs to go to court. In the latter cases, inspectors should inform workers about how to file a complaint and should focus on securing evidence (see [Module 4.4](#)). In a few Member States, however, labour inspectors have extensive powers and can resolve the migrant worker's claim for back pay by issuing an order to the employer, such as in Greece, Italy and Poland.

Promising practice: issuance of payment orders in Greece, Italy and Poland

In **Greece**, when the labour inspectorate receives a claim for payment of due wages, at the request of the worker, it will start a dispute resolution procedure. It will ask the employer to provide evidence of payment to the bank account of the workers. If no evidence is found, it will ask the employer to pay the worker and impose a fine on the employer. If the employer does not pay the due wages, the case goes to the prosecutor, who can request from the labour inspectors clarifications on the evidence provided. The worker does not need to file the claim to the court.

In **Italy**, there are two possible measures to protect the workers and reduce the number of disputes over back pay. First, following a labour inspection, the labour inspectorate can issue an order to the employer to claim unpaid wages on behalf of workers. This order is immediately enforceable. Second, labour inspectors can activate conciliation procedures to speed up the settlement of disputes related to workers' property rights, such as wage-related claims.

In **Poland**, as part of their inspection activities, labour inspectors have the right to issue administrative decisions (payment orders) to the employer demanding payment of overdue wages.

Source: Information received from the Greek, Italian and Polish labour inspectors, 2023.

Even in Member States where the inspectorate does not have the power to demand wages from the employer, some good practices emerge.



Example: in Belgium, labour inspectors can ask the employer to comply with the rules on payment of wages to avoid or reduce a fine for an infringement of non-payment rules. This soft measure has proved to be quite effective.

Source: Belgium labour inspector, information received during the validation phase.

Facilitating enforcement

Often, separate legal procedures are needed to enforce a final decision on wages issued by either the workplace inspectorate or the courts. Abusive employers may try to evade payment, be insolvent, disappear, move their assets or otherwise refuse to pay.

To facilitate enforcement, labour inspectors are encouraged to:

- include key findings on non-payment or underpayment of wages in the **inspection reports**;
- **collect contact details and bank account numbers** of migrant workers, so that the wages can be later deposited and the worker informed;
- consider initiating or facilitating the freezing and/or seizing of employers' assets to facilitate payment of due wages.

Knowledge of national rules on asset recovery is also important, as the freezing and confiscation of employers' assets in the context of criminal and/or civil proceedings can prevent wage theft.

Promising practice: requesting the freezing of assets in France

In **France**, labour inspectors are not entitled to initiate a procedure to seize employers' assets themselves, but can take supportive measures. The inspector may request the company's social security declarations and bank accounts, compare them with amounts

declared and actually paid to workers, and send the findings to the French social security agency, which quantifies the damage. In accordance with [Article 40 of Law 86-845 of 17 July 1986](#), inspectors send their findings and the quantified damage to the public prosecutors, suggesting that the company's financial assets be seized. The magistrate may authorise the seizure the same or next day, which must be validated within 10 days by judicial order.

Source: Information provided in writing by French labour inspectors, November 2023.

Promising practice: blocking employers' bank accounts in Croatia

In **Croatia**, in the case of the non-payment of wages to workers, labour inspectors issue decisions on temporary measures that they send to the financial agency. The agency blocks the employer's bank account(s) for the amount due until the employer provides the labour inspectors with the evidence that the salaries have been paid.

Source: Information provided in writing by Croatian labour inspectors, April 2024.

State compensation funds also improve enforcement.



Evidence: according to a 2021 FRA report, 10 Member States have put in place state compensation funds: Belgium, Czechia, Finland, France, Germany, Malta, the Netherlands, Portugal, Romania and Spain. However, in some countries, such funds are reserved for victims of crimes or are not available to migrants in an irregular situation.

Source: FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021, p. 21



Example: in Belgium, if the competent national institution, the Directorate-General for Control on Social Legislation (Direction générale Contrôle des lois sociales), finds that a wage or part of a wage has not been paid in full, and if the address and bank data of a migrant worker are unknown, the employer must deposit the outstanding amount into the Federal Deposit and Consignment Fund (La Caisse des Depots et Consignations).

Sources: European Commission, Commission communication on the application of Directive 2009/52/EC of 18 June 2009

providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (COM(2021) 592 final), Brussels, 29 September 2021, p. 12; GRETA, *Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation*, Strasbourg, 2020, p. 39.

Enforcement is especially problematic when **migrant workers have left the country**.



Evidence: no Member State has set up effective national mechanisms to facilitate this right.

Source: FRA, *Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive*, Publications Office of the European Union, Luxembourg, 2021, p. 22.

Workplace inspectors should, nevertheless, inform migrant workers about their right to back pay and the possible ways to enforce it, with the help of third parties, such as trade unions and NGOs.

In addition, some practical obstacles in the process of enforcement exist, such as overcoming obstacles to opening bank accounts and the mandatory presence of workers in proceedings.

Promising practice: assisting workers in claiming wages before deportation in France

When labour inspectors in **France** identify migrant workers in an irregular situation, they have an obligation to inform them about the right to back pay and redress mechanisms. The French Office for Immigration and Integration (Office Français de l'Immigration et de l'Intégration, OFII) begins the procedure to recover unpaid wages, even if the migrant is no longer in France. The OFII is also in charge of reimbursing the worker from the deposited wages. In 2021, the OFII initiated 117 procedures of the recovery of wages.

Sources: Farbenblum, B. and Berg, L., *Migrant Workers' Access to Justice for Wage Theft*, Migrant Justice Institute, Sydney, 2021, pp. 27–28; OFII, *Rapport 2021*, 2021.

Involving trade unions and non-governmental organisations

Trade unions can also play an important role in the implementation and enforcement of outstanding back pay and compensation.

They may engage in a dialogue with the employer and can represent migrant workers in judicial or non-judicial proceedings, including mediation or different types of collective actions.

Similarly, NGOs in both the country of employment and the home country can make migrant workers aware of their right to request back pay.

Promising practice: support by trade unions and/or non-governmental organisations in Belgium

Although in **Belgium** the employer is obliged to pay outstanding wages into the Federal Deposit and Consignment Fund, no government body has been assigned the task of informing the workers concerned or reimbursing them. A case from 2017, in which the wages for 31 Polish workers totalling EUR 61 739.08 were deposited in the fund, shows that this can be overcome through cooperation with NGOs. Through the joint efforts of workplace inspectors, Fairwork Belgium and the Association for Legal Intervention (SIP) in Poland, 25 workers were located and EUR 57 527 in wages due were returned, representing 93.18 % of the total amount.

Source: PICUM, *PICUM inputs to DG Home consultation on implementation of the employers sanctions' directive*, Brussels, 2021 (updated June 2021), p. 8.

Key takeaways

Workplace inspectors should proactively:

- inform workers about their right to claim back pay and compensation and what it includes (e.g. outstanding remuneration, taxes and social security contributions, delay interests, administrative fines and other costs);
- facilitate the implementation of migrant workers' right to back pay and compensation;
- inform workers about existing non-judicial and judicial procedures to claim and enforce back pay and/or obtain compensation;
- inform workers about how to make a complaint with the labour inspectorate or other competent authority;
- be aware of the evidence needed to support migrant workers' claims for back pay and help collect and preserve the evidence;
- facilitate enforcement and the freezing and/or seizing of employers' assets to guarantee the payment of due wages, where allowed in national law;
- cooperate with trade unions and relevant civil-society organisations that can contact migrant workers whose wages have not been paid, especially if they have returned to the country of origin.

Further reading

- European Commission, Commission communication on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals ([COM\(2021\) 592 final](#)), Brussels, 29 September 2021.
- Farbenblum, B. and Berg, L., [Migrant Workers' Access to Justice for Wage Theft](#), Migrant Justice Institute, Sydney, 2021.
- FRA, [Protecting migrants in an irregular situation from labour exploitation – Role of the employers sanctions directive](#), Publications Office of the European Union, Luxembourg, 2021.
- ILO, [Guidance Note – Wage protection for migrant workers](#), Geneva, 2023.

MODULE 7:

DECENT HOUSING AND CHANGING EMPLOYER

Through this module, workplace inspectors will:

1. understand the right of seasonal workers to decent accommodation and of posted workers to the same conditions of accommodation provided to other workers away from home;
2. understand the right of certain categories of migrant workers to change employers.

Some categories of workers may be exposed to specific risks, for which EU law has express safeguards. For example, the employer often houses seasonal workers. EU law also has express safeguards for decent accommodation.

1. How to promote adequate accommodation

For seasonal work, the employer often provides housing. When the employer provides or facilitates the provision of accommodation, the accommodation must meet adequate living standards.



Article 6 of the seasonal workers directive covers the provision of evidence of adequate housing. When applying for the admission of seasonal workers, the employer needs to show that the seasonal workers will be provided with adequate accommodation.

Usually, Member States have set criteria or standards to determine what is adequate. These may include a minimum living space in square metres per worker, sanitation, safety, access to drinking water, electricity and heating, the provision of basic facilities (e.g. for food preparation), access to public transport and separate space for men and women.



For more details on how Member States determine adequate housing for seasonal workers, see EMN, [Attracting and protecting](#)

[the rights of seasonal workers in the EU and the United Kingdom – Synthesis report for the EMN study](#), Brussels, 2020, pp. 23–25.

National provisions setting out criteria for adequate living conditions may apply to other workers beyond seasonal workers.

Depending on their competences and investigative powers, labour inspectorates or other national authorities monitor compliance with national legislation and/or practice on adequate living standards.



Article 20 of the seasonal workers directive covers safeguards for seasonal workers. When the employer provides or facilitates the provision of accommodation, the rent should not be excessive and should not be automatically deducted from the salary. The employer should provide a rental contract and ensure that the accommodation meets health and safety standards.

Promising practice: separation of employment and accommodation in the Netherlands

In the **Netherlands**, following a sustained campaign by trade unions and recommendations from a special parliamentary committee set up to address the abuse of migrant workers, a new law was passed in 2023 establishing that landlords must provide a rental agreement separately from the employment contract and provide

information to tenants in writing in a language that they understand.

Source: Netherlands, Good Landlordship Act ([Wet goed verhuurderschap](#)), Article 2(3), 1 July 2023.

The housing provided for migrant workers may be located in remote areas. When carrying out inspections, workplace inspectors should consider the distance and accessibility of housing.

Third parties, such as **social partners and NGOs**, can play an important role in reaching migrant workers in remote areas by informing them of their rights and by informing workplace inspectors of inadequate living and working conditions.

Promising practice: joint actions to uphold accommodation standards in Austria

In **Austria**, the joint information campaign [Sezonieri](#) – organised by the trade union PRO-GE in cooperation with the NGO UNDOK, the Austrian Trade Union Federation (ÖGB) and other civil-society organisations – informs seasonal agricultural workers about their rights, including their right to decent accommodation. As part of the campaign, trade union representatives visited agricultural sites. This targeted campaign has played an important role in encouraging workers to report their working conditions and, as a result, in improving housing standards.

Source: GRETA, [Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation](#), Strasbourg, 2020, p. 20.

Workplace inspectors are in a good position to check if accommodation provided is suitable for seasonal workers.



Evidence: in most Member States, workplace inspectorates are responsible for inspecting the accommodation allocated to seasonal workers. In some Member States, other authorities, such as the police or fire brigade, health authorities, border guards, immigration authorities, trade unions or tax authorities, may also carry out inspections of accommodation.

Source: EMN, [Attracting and protecting the rights of seasonal workers in the EU and United Kingdom – Synthesis report for the EMN study](#), Brussels, 2020, p. 25.

When other authorities are responsible, workplace inspectors should either inform them about inadequate accommodation observed or conduct joint inspections with such authorities. Inspections could also be conducted with the help of third parties.

Migrant workers sleeping in squats or in other inappropriate and uninhabitable places may be an indication of possible labour exploitation.

When they detect that workers are placed in inadequate housing, workplace inspectors should provide workers with information on their rights and how to assert them. They may refer them to relevant NGOs and trade unions that could assist them in future proceedings.



For posted workers, Member States must ensure that the conditions of their accommodation are in line with those of workers away from their regular place of work when the employer provides the accommodation (posted workers directive, Article 3(h)).



Evidence: the Commission notes that there are some concerns related to substandard conditions of accommodation that may affect posted workers.

Source: European Commission, Commission report on the application and implementation of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services ([COM\(2024\) 320 final](#)), Brussels, 30 April 2024, p. 6.

Promising practice: checking accommodation through third parties in Spain

In **Spain**, third parties receive public funding to monitor if workers' accommodation meets the national standards. These are usually civil-society organisations that support workers' rights. They can deploy cultural mediators to increase trust.

Source: Information received from the Spanish labour inspector during the validation phase.

One of the main barriers to monitoring accommodation standards is the lack of authority of workplace inspectors to enter private property to check the accommodation provided. This may be circumvented by obtaining consent from the workers and/or employers.

2. How to enable workers to change employer

The possibility to change employers reduces the risk of exploitation, as it gives the worker the option to leave an abusive employer without running the risk of having no income.



EU law has some provisions on changing employer, but allows Member States to limit this possibility.

- **Workers under the single permit directive** will be allowed to change employers (Article 11(2) and (3)) once the revised directive is transposed into national legislation (by May 2026). National law may bar this possibility during the first 6 months after receiving the residence permit, and other conditions may need to be fulfilled (e.g. notification of the change of employer to the national authorities and the possibility for the authorities to request a labour market check to approve a change of employer). If the employer seriously breaches the terms and conditions of the employment relationship, the worker is allowed to change employer before the expiration of the 6 months.
- **Seasonal workers** (seasonal workers directive, Article 15) are entitled to change employers at least once within the authorised period of stay. Changing employer is possible only when extending the seasonal work permit. Member States may have more favourable rules and allow them to change employer more than once.

In addition, workers under the single permit directive, once this directive is transposed into national law, will be allowed up to 3 months of unemployment during the period of validity of the single permit (extended to 6 months if the worker had a single permit for more than 2 years).

Workplace inspectors should inform migrant workers under the single permit directive (once transposed) and seasonal workers of the possibility of changing employers and the related procedure. They should also inform workers under the single permit directive, once transposed, that they are entitled to a period of unemployment, especially when signs of labour exploitation are detected during an inspection or identified in a complaint.

Promising practice: laws allowing a change of employer in Spain and Finland

Legislation in **Spain** regulates the collective management of recruitment in the country of origin for 2023. Seasonal workers receive a 4-year contract with the obligation to be recalled in the following seasons if the workers return home after the end of each work season. The work authorisation is for a single employer but includes the possibility of changing employer in Spain.

Source: Spain, [Order ISM/1302/2022](#) (GECCO Order), 29 December 2022.

In June 2021, an amendment to the **Finnish Seasonal Workers Act** made it easier for third-country national seasonal workers to switch employers. Finnish seasonal workers can work for a new employer during the validity period of their seasonal work permit and return to work for their previous employer with less administrative burden.

Source: Finnish Immigration Service, '[Working for a new employer while your seasonal work permit is valid](#)', accessed 5 December 2023.

3. Aspects of your national law to focus on

Under EU law, Member States have a certain degree of flexibility in determining labour and social rights entitlements for migrant workers. The following questions may help you to understand your national situation.

Guiding questions to understand how EU law applies in your country

Decent accommodation

- To what extent are different groups of migrant workers legally entitled to, or in practice protected by, the right to adequate accommodation throughout their stay?
- What national rules define the adequacy of accommodation for migrant workers, in particular seasonal workers?
- What are the minimum hygienic and living standards imposed on employers?
- How is the adequacy of the accommodation for migrant workers checked, monitored and evaluated?
- Does your institution have a mandate to check the adequacy of housing?
- If not, who does this and how does your institution cooperate with them?

Right to change employer

- Do migrant workers have the right to change employers? Does this apply to all categories of migrant workers, including seasonal workers?
- Under what conditions can migrant workers change their employer within the maximum period of validity of their permit? Can they change the sector of employment?

Key takeaways

As frontline workers, workplace inspectors can play an important role in enforcing the right to decent housing and the right to change employer. To this end, workplace inspectors are encouraged to:

- undergo training to recognise signs of inadequate accommodation for seasonal workers and posted workers;
- monitor compliance with adequate living standards in practice when this falls under their mandate;
- inform the responsible authorities of suspected substandard living conditions, if monitoring compliance is not within their mandate;
- provide workers with information on their right to adequate accommodation and how to assert this right, for example with the help of trade unions or civil-society organisations;
- collect evidence of substandard living conditions;
- inform seasonal workers and workers under the single permit directive of the possibility of changing employers and explain the relevant

procedure, once the single permit directive is transposed into national legislation;

- inform workers under the single permit directive that they are entitled to a period of unemployment;
- proactively provide information on options for changing employer and unemployment options (where applicable for third-country workers under the single permit directive), especially when signs of labour exploitation are detected during an inspection or identified in a complaint.

Further reading

EMN, [*Attracting and protecting the rights of seasonal workers in the EU and United Kingdom – Synthesis report for the EMN study*](#), Brussels, 2020.

European Commission: Directorate-General for Employment, Social Affairs and Inclusion, [*Study supporting the monitoring of the posting of workers directive 2018/957/EU and of the enforcement directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains*](#), Publications Office of the European Union, Luxembourg, 2024.

ANNEXES

ANNEX 1: EU LEGAL INSTRUMENTS AND AGREEMENTS

Annex 1 lists the EU legal instruments and agreements that this manual refers to. For each instrument or agreement, it provides a short name followed by a full reference.

Note: hyperlinks embedded in the number of the instrument lead to the original directive and those embedded on 'consolidated version' lead to the consolidated version as of August 2024.

EU treaties and Charter of Fundamental Rights

Charter

[Charter of Fundamental Rights of the European Union](#) (OJ C 326, 26.10.2012, p. 391).

Treaty on the Functioning of the European Union (TFEU)

Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47) ([consolidated version](#)).

Immigration

Long-term residents directive

[Council Directive 2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44) ([consolidated version](#)).

Single permit directive

[Directive \(EU\) 2024/1233](#) of the European Parliament and of the Council of 24 April 2024 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L, 2024/1233, 30.4.2024) (to be transposed by May 2026; until then [Directive 2011/98/EU](#) applies).

Seasonal workers directive

[Directive 2014/36/EU](#) of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (OJ L 94, 28.3.2014, p. 375).

ESD

[Directive 2009/52/EC](#) of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24) ([consolidated version](#)).

Intra-corporate transfer directive

[Directive 2014/66/EU](#) of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

Blue card directive

[Directive \(EU\) 2021/1883](#) of the European Parliament and of the Council of 20 October 2021 on the conditions

of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC (OJ L 382, 28.10.2021, p. 1).

Asylum

Reception conditions directive

[Directive \(EU\) 2024/1346](#) of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (OJ L, 2024/1346, 22.5.2024) (applicable as of June 2026; until then, [Directive 2013/33/EU](#) applies).

Regulation (EU) 2024/1347

[Regulation \(EU\) 2024/1347](#) of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024).

Temporary protection directive

[Council Directive 2001/55/EC](#) of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

Victims of crime

Anti-trafficking directive

[Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1) ([consolidated version](#)), as amended by [Directive \(EU\) 2024/1712](#) (OJ L, 2024/1712, 24.6.2024).

Directive 2004/81/EC

[Council Directive 2004/81/EC](#) of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

Victims' rights directive

[Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and

protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

Posted workers

Posted workers directive

[Directive 96/71/EC](#) of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1) ([consolidated version](#)).

Posted workers enforcement directive

[Directive 2014/67/EU](#) of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI regulation') (OJ L 159, 28.5.2014, p. 11).

Safety and health, working conditions and temporary recruitment agencies

Safety and health of workers directive

[Council Directive 89/391/EEC](#) of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1) ([consolidated text](#)).

Transparent and predictable working conditions directive

[Directive \(EU\) 2019/1152](#) of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

Temporary recruitment agencies directive

[Directive 2008/104/EC](#) of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

Transport workers

Directive (EU) 2020/1057

[Directive \(EU\) 2020/1057](#) of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ L 249, 31.7.2020, p. 49).

Directive 2002/15/EC

[Directive 2002/15/EC](#) of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

Directive 2006/22/EC

[Directive 2006/22/EC](#) of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35) ([consolidated text](#)).

Regulation (EC) No 561/2006

[Regulation \(EC\) No 561/2006](#) of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

Free movement

Free movement directive

[Directive 2004/38/EC](#) of the European Parliament and of the Council of 29 April 2004 on the right of citizens

of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77) ([consolidated text](#)).

Agreement on the European Economic Area

[Agreement on the European Economic Area](#) – Final Act – Joint Declarations – Declarations by the Governments of the Member States of the Community and the EFTA States – Arrangements – Agreed Minutes – Declarations by one or several of the Contracting Parties of the Agreement on the European Economic Area (OJ L 1, 3.1.1994, p. 3).

EU–Switzerland agreement

[Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation](#), of the other, on the free movement of persons – Final Act – Joint Declarations – Information relating to the entry into force of the seven Agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products (OJ L 353, 31.12.2009, p. 71).

ANNEX 2: CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

There follows a list of CJEU cases that are relevant to the topics that this manual covers.

- Judgment of 5 February 1963, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*, [C-26-62](#).
- Judgment of 15 July 1964, *Flaminio Costa v ENEL*, [C-6/64](#).
- Judgment of 4 December 1974, *Yvonne van Duyn v Home Office*, [C-41/74](#).
- Judgment of 26 February 1986, *M. H. Marshall v Southampton and South-West Hampshire Area Health Authority (Teaching)*, [C-152/84](#).
- Judgment of 19 November 1991, *Andrea Francovich and Danila Bonifaci and others v Italian Republic*, [C-6/90](#).
- Judgment of 9 August 1994, *Raymond Vander Elst v Office des Migrations Internationales*, [C-43/93](#).
- Judgment of 5 November 2014, *O. Tümer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen*, [C-311/13](#).

ANNEX 3: APPLICABILITY OF RELEVANT INTERNATIONAL LEGAL INSTRUMENTS TO MEMBER STATES

This annex shows whether the instruments listed apply to a specific Member State ('X' represents 'applies'). ILO **recommendations** are not legally

binding and thus not subject to ratification. They are submitted to national authorities (usually parliament) for consideration and signature.

CODE	MEMBER STATE	INSTRUMENT																	
		ICESCR	UNTOC	UN TIP	COE THB	C081	C095	C097	R086	C100	C111	R111	C129	C143	R151	C173	C189	P029	R203
AT	Austria	X	X	X	X	X	X		X	X	X	X			X	X		X	X
BE	Belgium	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
BG	Bulgaria	X	X	X	X	X	X		X	X	X	X			X	X			X
CY	Cyprus	X	X	X	X	X	X	X		X	X			X	X			X	X
CZ	Czechia	X	X	X	X	X	X		X	X	X	X	X		X			X	X
DE	Germany	X	X	X	X	X		X		X	X	X	X		X		X	X	X
DK	Denmark	X	X	X	X	X			X	X	X	X	X		X			X	X
EE	Estonia	X	X	X	X	X				X	X		X					X	X
EL	Greece	X	X	X	X	X			X	X	X	X			X				X
ES	Spain	X	X	X	X	X	X	X		X	X	X	X		X	X		X	X
FI	Finland	X	X	X	X	X			X	X	X	X	X		X	X	X	X	X
FR	France	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X
HR	Croatia	X	X	X	X	X				X	X		X						X
HU	Hungary	X	X	X	X	X	X		X	X	X	X	X		X				
IE	Ireland	X	X	X	X	X		X	X	X	X	X			X		X	X	X
IT	Italy	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X		X
LT	Lithuania	X	X	X	X	X				X	X					X		X	X
LU	Luxembourg	X	X	X	X	X			X	X	X	X	X		X			X	X
LV	Latvia	X	X	X	X	X				X	X		X			X		X	X
MT	Malta	X	X	X	X	X	X			X	X		X		X		X	X	
NL	Netherlands	X	X	X	X	X	X	X	X	X	X	X	X		X			X	X
PL	Poland	X	X	X	X	X	X		X	X	X	X	X		X			X	X
PT	Portugal	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
RO	Romania	X	X	X	X	X	X			X	X	X	X			X			X
SE	Sweden	X	X	X	X	X			X	X	X	X	X	X	X		X	X	X
SI	Slovenia	X	X	X	X	X	X	X		X	X		X	X		X			X
SK	Slovakia	X	X	X	X	X	X			X	X		X			X			X

NB: Information updated to 30 August 2024.

Abbreviations:

ICESCR – [International Covenant on Economic, Social and Cultural Rights](#), United Nations Treaty Series (UNTS), Vol. 993, 1966, p. 3.

UNTOC – [United Nations Convention against Transnational Organized Crime](#), UNTS, Vol. 2225, 2000, p. 209.

UN TIP – [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children](#), UNTS, Vol. 2237, p. 319.

CoE THB – [Council of Europe Convention on Action against Trafficking in Human Beings](#), CETS No 197, 2005.

C081 – ILO, [Labour Inspection Convention](#) (No 81), 1947.

C095 – ILO, [Protection of Wages Convention](#) (No 95), 1949.

C097 – ILO, [Migration for Employment Convention](#) (No 97), 1949.

R086 – ILO, [Migration for Employment Recommendation](#) (No 86), 1949.

C100 – ILO, [Equal Remuneration Convention](#) (No 100), 1951.
C111 – ILO, [Discrimination \(Employment and Occupation\) Convention](#) (No 111), 1958.
R111 – ILO, [Discrimination \(Employment and Occupation\) Recommendation](#) (No 111), 1958.
C129 – ILO, [Labour Inspection \(Agriculture\) Convention](#) (No 129), 1969.
C143 – ILO, [Migrant Workers \(Supplementary Provisions\) Convention](#) (No 143), 1975.
R151 – ILO, [Migrant Workers Recommendation](#) (No 151), 1975.
C173 – ILO, [Protection of Workers' Claims \(Employer's Insolvency\) Convention](#) (No 173), 1992.
C189 – ILO, [Domestic Workers Convention](#) (No 189), 2011.
P029 – ILO, [Protocol of 2014 to the Forced Labour Convention, 1930](#) (No 29), 2014.
R203 – ILO, [Forced Labour \(Supplementary Measures\) Recommendation](#) (No 203), 2014.

ANNEX 4: SELECTED PROTECTIVE PROVISIONS UNDER SIX EU LEGAL INSTRUMENTS

This annex provides an overview of the protective elements included in six EU legal instruments. For each of the seven areas covered, it provides a summary of the legal requirement and a reference to the related legal provision, where the reader can find the full text.

AREA	ESD	SINGLE PERMIT DIRECTIVE	POSTED WORKERS DIRECTIVE	SEASONAL WORKERS DIRECTIVE	VICTIMS' RIGHTS DIRECTIVE	ANTI-TRAFFICKING DIRECTIVE
Duty to inform workers and applicants	Article 6(3) requires workers to be informed about back pay and the facilitation of complaints, before the enforcement of any return decisions	Article 9(b) (to be transposed by May 2026) requires that workers be informed about their rights and obligations and of those of their family members	Article 4(3) requires that workers be informed about the terms and conditions of employment	Article 11 requires workers to be informed about their rights and obligations, including on equal treatment regarding working conditions	Article 9 regulates the provision of information on victim support services	Article 11(5–6) regulates counselling for and information provision to victims on assistance and support
Right to equal working conditions	Not regulated. After the CJEU judgment in case C-311/13 , core EU employment law safeguards apply to any employee, including migrants in an irregular situation	Article 12 lists areas in which workers must be treated like nationals (e.g. working conditions, including pay and dismissal; health and safety at work; and freedom of association) and possible limitations. Article 12 was partly changed in 2024. New provisions must be transposed by May 2026	Article 3(1) and (1a) entitles short-term posted workers to equal treatment in core terms and conditions of employment (e.g. remuneration, rest periods, health and safety at work, adequate housing); long-term posted workers are entitled to equal treatment for a full range of terms and conditions of employment	Article 23(1) lists areas in which workers must be treated like nationals (e.g. working conditions, such as pay and dismissal; health and safety at work; the right to strike and the freedom of association; and back payments)	No specific provisions	No specific provisions

AREA	ESD	SINGLE PERMIT DIRECTIVE	POSTED WORKERS DIRECTIVE	SEASONAL WORKERS DIRECTIVE	VICTIMS' RIGHTS DIRECTIVE	ANTI-TRAFFICKING DIRECTIVE
Right to back payment	Article 6 requires that employers pay any outstanding remuneration to the worker, which includes taxes and social security contributions, as well as potential costs. Member States need to enact mechanisms to recover and receive outstanding wages	No specific provisions	No specific provisions	Articles 17(3) (c) and 23(1)(c) entitle workers to back payments of any outstanding remuneration. Liability extends to subcontractors	Articles 9 and 16 entitle workers who are victims of crime to compensation schemes and to compensation of damages by the offender	Article 17 entitles workers who are victims of trafficking in human beings to the compensation schemes available to victims of violent crimes
Effective complaints mechanisms	Article 13 requires that there be effective mechanisms in place for workers in irregular employment to lodge complaints against their employers	Article 14 (to be transposed by May 2026) requires that there be effective mechanisms in place for workers to lodge complaints against their employers	No specific provisions	Article 25 requires that there be effective mechanisms in place through which seasonal workers may lodge complaints against their employers. Workers must receive information on complaint procedures (Article 11)	Article 5 lists the rights of victims when making a complaint (e.g. to receive written acknowledgement and free-of-charge translation)	Article 12(2) entitles victims of trafficking in human beings to legal counselling and representation
Right to special residence permits	Article 13(4) allows Member States to issue temporary residence permits for the length of proceedings to workers in an irregular situation who are victims of particularly exploitative working conditions	No specific provisions	No specific provisions	No specific provisions	No specific provisions	No specific provision in the anti-trafficking directive. However, Article 8 of Directive 2004/81/EC entitles victims of trafficking in human beings who cooperate in fighting trafficking to a temporary residence permit, if they fulfil certain conditions

AREA	ESD	SINGLE PERMIT DIRECTIVE	POSTED WORKERS DIRECTIVE	SEASONAL WORKERS DIRECTIVE	VICTIMS' RIGHTS DIRECTIVE	ANTI-TRAFFICKING DIRECTIVE
Right to change employer	No specific provisions	Article 11(2) (to be transposed by May 2026) allows workers to change employers, but Member States may not allow it during the first 6 months (unless the employer seriously breaches the employment contract) and may require that other conditions be met	No specific provisions	Article 15 entitles workers to change employers at least once within the authorised period of stay. Changing employers is possible only when extending the seasonal work permit	Not relevant	Not relevant
Right to decent housing	No specific provisions	No specific provisions	No specific provisions	Article 20 requires that, when the employer provides housing, the rent should not be excessive and should not be automatically deducted from the salary; the employer should provide a rental contract and ensure that the accommodation meets health and safety standards	Article 9(3) clarifies that specialised support services should include interim housing for victims in need of a safe place	Article 11(5) entitles victims to safe housing, respecting specific standards (these standards are set out in Article 11(5a), which must be transposed by July 2026)

ANNEX 5: GLOSSARY

Third-country national. A third-country national is anyone who is not a citizen of a Member State, a Schengen-associated country (Iceland, Liechtenstein, Norway or Switzerland) or Andorra, Monaco or San Marino.

Official definition: ‘Any person who is not a citizen of the Union within the meaning of [Article 20 of the TFEU] and who is not a person enjoying the Community right of free movement, as defined by Article 2(5) of the [Schengen Borders Code](#)’ (Article 3(1) of [Directive 2008/115/EC](#)).

Migrant. A migrant is anyone who is not in their country of citizenship or residence for at least 3 months.

Official definition: ‘a person who is outside the territory of the State of which they are nationals or citizens and who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate’ (European Commission: Migration and Home Affairs, [‘Migrant’](#)). For long-term migrants, a period of at least 12 months’ residence in the country is required, while a requirement of 3 months but less than 12 months’ duration of stay is used for short-term migrants ([UN Task Force on key concepts and definitions related to international migration](#)).

Migrant worker. For the purposes of the manual, a migrant worker is anyone who works outside of his or her country of origin, regardless of residence status.

Official definition: ‘The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national’ (Article 2 of the [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#)).

Migrant in an irregular situation. This manual uses the term ‘migrant in an irregular situation’ instead of the term ‘illegally staying third-country nationals’. The term ‘irregular’ is preferable to ‘illegal’ because the latter carries a criminal connotation. Furthermore, juridically and ethically, an act can be legal or illegal, but a person cannot. Thus, more and more, the term ‘migrant in an irregular situation’ or ‘migrant with irregular status’ is preferred (European Commission: Migration and Home Affairs, [‘Irregular migrant’](#)).

Official definition: The ESD defines ‘illegally staying third-country national’ as a third-country national present on the territory of a Member State who does not fulfil, or no longer fulfils, the

conditions for stay or residence in that Member State (Article 2(b)).

Asylum seeker. An asylum seeker is any person who is seeking protection as a refugee but whose claim has not been finally determined. Under the EU asylum *acquis*, international protection means either refugee status or subsidiary protection. The relevant legal instruments refer to asylum seekers mainly as ‘applicants’.

Official definition: ‘A third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken’ (Article 3(8) of [Regulation \(EU\) 2024/1347](#)).

Seasonal worker. Seasonal workers engage in seasonal work, which is a form of legal temporary employment linked to specific periods of the year and to specific sectors (e.g. fruit pickers and cleaners in holiday resorts).

Official definition: ‘A third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State’ (Article 3(b) of the [seasonal workers directive](#)).

Posted worker. A posted worker is an employee who is sent by his or her employer to carry out a service in another Member State on a temporary basis.

Official definition: ‘A worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works’ (Article 2 of the [posted workers directive](#)).

Worker with a single permit. With a single permit, eligible third-country nationals can be admitted to work in a Member State legally and temporarily through a single application procedure for a combined work and residence permit.

Official definition: “Single permit” means a residence permit issued by the authorities of a Member State allowing a third-country national to reside legally in its territory for the purpose of work’. Seasonal workers and posted workers are excluded from the directive (Article 2(3) of the [single permit directive](#)).

Trafficking in human beings. Human trafficking is a complex crime that has three elements (HEUNI, [Uncovering Labour Trafficking – Investigation tool for law enforcement and checklist for workplace inspectors](#), Helsinki, 2020):

1. the act (recruitment, transportation, etc.),
2. the means (threat or use of force, abduction, etc.),
3. the purpose (sexual exploitation, labour exploitation, etc.).

Official definition: ‘The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’ (Article 2(1) of the [anti-trafficking directive](#)).

Forced or compulsory labour. Such labour is when the worker must perform work that he or she has not freely consented to.

Official definition: ‘All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’ (Article 2 of the [ILO Forced Labour Convention, 1930](#)).

Labour exploitation. Labour exploitation can take different forms with varying severity, which, on a continuum, range from slavery, servitude, forced or compulsory labour to severe labour exploitation to relatively less serious non-criminalised forms of exploitation.

Official definition: There is no official definition of labour exploitation.

Particularly exploitative working conditions.

Official definition: “Particularly exploitative working conditions” means working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers’ health and safety, and which offends against human dignity’ (Article 2(i) of the [ESD](#)).

ANNEX 6: MIGRANT-SENSITIVE INTERVIEW TECHNIQUES

The following checklist is an excerpt from IOM, [*Strengthening the Effectiveness of Inspectorates – Empowering and protecting migrant workers in the inspection process*](#), Geneva, 2023, p. 23.

Interview conditions

Where possible, ensure that the interview takes place in a closed private space where others cannot overhear or interrupt.

The only persons allowed to be present should be the migrant worker, the interviewer(s), an interpreter (where necessary) and a qualified support person where appropriate. Employers, recruiters, or their agents should not be present.

If there is any doubt as to the ability of the worker to understand the language of the interview, every possible effort must be made to secure the services of an interpreter.

Mobile phones or other electronic devices should be turned off unless the worker agrees to a confidential recording.

If a closed space is available, a 'do not disturb' or similar sign should be placed on the door to prevent interruptions.

If no closed and private space is available, the interviewer should endeavour to find as private a place as possible where the interview cannot be overheard.

Avoid adopting a judgemental or interrogative style of interviewing.

Try to establish a rapport with the worker that makes them feel respected and that they are someone whose views should be believed.

Introduction

The interviewer should introduce themselves to the worker and describe their role in the inspectorate.

Ascertain that the worker feels secure and comfortable.

Ascertain whether they need to use the bathroom or require some refreshments.

Explanation

Give a brief explanation of the role of the inspectorate, the objective of the inspection, and the purpose of the interview that is about to begin.

Explain how the information provided will be used and of all potential consequences of their participation. Inform the worker about relevant privacy rules and specify what will happen with the information provided and how and with whom it may be shared and to what results it may lead.

Explain to the worker that the interview may include questions about their employment and recruitment experience, and that it is possible some of the topics may be upsetting, painful to recall and may bring back difficult memories.

Tell the worker that they can take time in answering the questions and may take a break at any time if necessary.

Ensure that the worker understands that the interview is voluntary, and that they are not required to answer any questions.

Explain that if the worker would like to contact the inspectorate at a later time to share other information, that they can do so. A card with contact information details should be offered. Ensure principles of confidentiality with respect to such calls.

Explain to the worker that they can ask questions at any time or seek clarification or repetition of what has been explained or stated at any time.

Final points before beginning the interview

Ascertain that the worker has clearly understood all of what has been explained.

Ask the worker if they have any questions at this stage.

Ask the worker if they agree to participate in the interview (i.e. obtain consent before proceeding).

ANNEX 7: INDICATORS OF LABOUR EXPLOITATION

The ILO has outlined the indicators of labour exploitation, namely indicators of:

- deceptive recruitment,
- coercive recruitment,
- recruitment by abuse of vulnerability,
- exploitation,
- coercion at destination,
- abuse of vulnerability at destination.

This annex sets out details of the indicators that are most relevant to this manual, namely indicators of exploitation, coercion at destination and abuse of vulnerability at destination.

Indicators of exploitation

INDICATORS	EXPLANATION
Bad living conditions	Exploitation can include exploitation through bad living conditions. This includes being denied the freedom of choice of the location or living conditions, being forced to live in overcrowded conditions or in unhealthy or unsanitary conditions, or being forced to live in conditions where there is limited or no right to privacy. This can also include exploitation through being rendered homeless and being forced to live on the street.
Excessive working days or hours	This indicator focuses on exploitation through being forced to work excessive hours and/or days. This includes the concept of forced overtime, being denied breaks, being denied free time, having to take over the shifts / working hours of colleagues or being on call 24 hours a day, 7 days a week. It also includes heavy/excessive workloads or excessive quotas of productivity vis-à-vis the working hours.
Hazardous work	Being forced to undertake hazardous work is also an indicator of exploitation. Hazardous work relates to the nature of the task to be performed (working in hazardous conditions without protection, being forced to provide sexual services without condoms and being forced to undertake work that is too difficult for the person to undertake or for the minor to undertake), a hazardous working environment (extreme heat or extreme cold) or hazardous travel to the place of work. This can also include degrading work that is humiliating or dirty.
Low or no salary	Low or no salary is a form of exploitation. No salary relates to cases in which the individual is completely denied his or her salary. This also includes cases in which the individual instead receives payment in 'goods' or 'in-kind' payment. Low salary refers to cases in which the individual receives less than the salary agreed upon (i.e. was deceived about wages) or the individual is paid less than the minimum wage.
No access to education	Exploitation can include being denied the right to access education and/or study opportunities.
No respect of labour laws or the contract signed	No respect of / non-compliance with labour laws or no respect of the contract signed is also an indicator of exploitation. This includes cases in which the individual is forced to work without a contract, there is no respect of the contract signed, the contract provided is unlawful or the recruitment of the individual was illegal. It also refers to the nature and conditions of the work, such as deception about the nature of the job, deception about the employer, deception about the possibility of work, deception about the number of working hours (whether excessive or restrictive), deception about the working conditions, or exploitative, precarious or illegal working conditions. Exploitation through no respect of / non-compliance with labour laws or no respect of the contract signed also refers to payment issues, for example in cases in which the individual is paid less than regular employees or the payments are in cash only when other workers are paid in cheques / by bank transfer.
No social protection (contract, social insurance, etc.)	This indicator focuses on exploitation through the denial of the right to access social protection in terms of social insurance, a work contract, etc. This also includes denied sick leave (i.e. being forced to work while sick) and women being forced to work while pregnant or menstruating.

INDICATORS	EXPLANATION
Very bad working conditions	This indicator focuses on exploitation through being forced to accept unacceptable working conditions or being forced to work in permanently changing locations.
Wage manipulation	Exploitation through wage manipulation includes the payment of wages to a middleman, the payment of wages to a family member, the issuance of fines or excessive deductions for food and lodgings. It also includes manipulation of wages in the sense that the individual is not able to exercise control and free disposal over his or her wages.

Indicators of coercion at destination

INDICATORS	EXPLANATION
Forced into illicit/criminal activities	This indicator refers to illicit or criminal activities that the individual is forced to undertake or forced to be involved in at the destination (e.g. begging or stealing).
Forced tasks or clients	This indicator refers to cases in which the individual is, for example, forced to take on duties that he or she did not previously agree to. This includes being forced to care for dependants (e.g. children), being forced to serve others (e.g. older children, parents or clients) or being forced to earn a minimum amount of money per day. In addition, and in the case of sexual exploitation, this includes being forced to provide all types of sexual services or being forced to provide sexual services in locations not agreed upon.
Forced to act against peers	Being forced to undertake activities against one's peers is also an indicator of exploitation. This includes cases in which the individual is forced to use violence against others, to exercise control over others, to threaten others or to witness the punishment of others. It also includes cases in which the individual is forced to recruit other people into the trafficking process, often to take over their own place.
Forced to lie to authorities, family, etc.	Individuals are also forced to lie to the authorities, their family and others at the destination. This includes being forced to change one's identity through a change of name and/or appearance. It also includes being forced to open fraudulent bank accounts in someone else's name.
Confiscation of documents	Confiscation of documents is an indicator of coercion at the destination. This includes the confiscation of any or all of the individual's identity and travel documents (e.g. passport or identity card). Individuals who have their identity and/or travel documents forcibly removed from their person are rendered highly vulnerable.
Debt bondage	Debt bondage at the destination includes debts accrued during recruitment, transfer or transportation; debts from previous trafficking experiences; and any additional debts incurred at the destination. Debts can also be compounded as a result of debt manipulation, including through the enforcement of excessive interest rates or through an unlawful agreement in which a debt is reduced/deducted in exchange for work.
Isolation, confinement or surveillance	Isolation, confinement or surveillance of the individual are indicators of coercive means used to control the individual at the destination. Isolation includes partial or restricted freedom to communicate with others (e.g. through restricted or denied access to telephones), separation from one's family or friends and/or being forced to work or reside in a location with limited public access. Confinement includes holding a person against his or her will (i.e. being held in a locked environment at work, while being transported to work or at the place of residence) and limited freedom of movement. In addition, the individual may also be under constant or partial surveillance.
Threat of denunciation to authorities	Threat of denunciation to the authorities is also a coercive means used at the destination. Traffickers often threaten an individual with denunciation to the authorities because of the individual's irregular/illegal status at the destination due to their lack of legal identity and/or travel documents. Such threats also include deportation with non-payment of wages.
Threat to impose even worse working conditions	This indicator focuses on coercion at the destination through the threat to impose even worse working conditions or a threat to be placed under constant control. This includes threatening to force the victim to undertake activities against his or her will (e.g. being forced to provide sexual services).

INDICATORS	EXPLANATION
Threats of violence against the victim	Threats of violence against the individual at the destination can be viewed as coercive means used to control the individual. This includes the threat of sexual violence, the threat of physical violence, sequestration and the threat of being evicted from the place of residence / accommodation.
Threats to inform family, community or public	Threats to inform the family, community or public through blackmailing the individual are also used as coercive means at the destination.
Under strong influence	Situations of being under the strong influence of a third person often render victims vulnerable and dependent at the destination. This indicator of coercion includes cases in which the individual does not have legal identity and/or travel documents and/or is forced to remain with the same employer, undertake additional activities to increase wages (e.g. prostitution), remain in the same situation due to pressure from family members / relatives, remain in the same situation due to cultural and religious practices and/or endure restrictions on his or her movements. An additional indication of coercion includes dependency due to a lack of information (the individual is not aware that their situation is exploitative) or the receiving of false information (about the attitudes of the authorities, about family visits, etc.).
Violence against family (threatened or actual)	Coercion at the destination can be enacted through violence against the family, whether this is actual or threatened violence. Violence, threatened or actual, includes the abduction or forced adoption of children, physical violence (including the threat of death) and psychological violence.
Violence against victims	Exploitation at the destination often includes violence against the individual, including sexual violence, physical violence, psychological violence (e.g. being forced to witness a group rape or the punishment of others), forced abortion, denial of food and/or drink, denial of the right to access healthcare, being forced to take drugs and/or drink alcohol, torture and being forced to provide sexual services either to the recruiter or through forced prostitution to third people.
Withholding of wages	Exploitation through the withholding of wages can refer to the complete withholding of all wages or to the retention of wages as a means to force the individual to remain working under the same conditions until the exploiter gives the individual their due wages. If payments are instead paid to a family member / relative, this is considered the non-payment of all wages.

Indicators of abuse of vulnerability at destination

INDICATORS	EXPLANATION
Dependency on exploiters	Dependency on exploiters includes dependency for daily life, movement and contacts with the outside. This dependency may be heightened when the exploiter is knowledgeable of the individual's background (e.g. place of residency prior to trafficking, family and friends).
Difficulties in the past	Difficulties in the past, including previous trafficking or sexual abuse, are indicators of exploitation at the destination.
Difficulties in living in an unknown area	This indicator relates to instances in which the individual does not speak the language or has a lack of knowledge or understanding about the social and/or cultural context at the destination, rendering them vulnerable at the destination.
Economic reasons	Economic reasons that may render an individual vulnerable at the destination include being poor, having debts and being responsible for dependants (e.g. family members and relatives).
Family situation	This indicator relates to vulnerabilities at the destination because of the family situation. This includes being accompanied by dependants (e.g. family members and relatives) at the destination, having little or no contact with family members / relatives or coming from a problematic family background (e.g. alcohol abuse or violence).
Personal characteristics	Personal characteristics that might render one vulnerable at the destination include belonging to a group that is discriminated against or does not have equal rights in the place of destination (e.g. women, refugees / asylum seekers, being of a certain ethnicity, having a disability, being an orphan, being homeless or being part of a religious minority).

INDICATORS	EXPLANATION
Relationship with authorities / legal status	This indicator relates to vulnerability at the destination relating to the individual's relationship with the authorities and/or their legal status. This includes cases in which the individual is in an irregular situation without legal documents, is forced to undertake illegal activities or does not go to the authorities to disclose his or her exploitative situation because of a lack of trust in or a fear of the authorities.

Source: Adapted from ILO, [Details of Indicators for Labour Exploitation](#).

ANNEX 8: ADDITIONAL READING

This annex provides a list of recommended further reading for labour inspectors. The list includes reports, training materials and other literature.

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