

JUSTICE



Protecting migrant workers from exploitation in the EU: workers' perspectives



This report addresses matters related to human dignity (Article 1), prohibition of slavery and forced labour (Article 5), respect for private and family life (Article 7), fair and just working conditions (Article 31) and the right to an effective remedy (Article 47), falling under chapters 'Freedom', 'Solidarity' and 'Justice' of the Charter of Fundamental Rights of the European Union.

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Luxembourg: Publications Office of the European Union, 2019

Print: ISBN 978-92-9474-598-9 doi: 10.2811/11344 TK-01-19-328-EN-C

Web: ISBN 978-92-9474-597-2 doi: 10.2811/705015 TK-01-19-328-EN-N

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Protecting migrant workers from exploitation in the EU: workers' perspectives

Foreword

Do you ever think about the people who built the new apartment complex in your neighbourhood, picked the vegetables you enjoyed during a recent meal, washed your car, or made your favourite shirt? Would it surprise you that, in the European Union today, some of these people are being grossly underpaid and overworked, isolated, threatened and beaten, and forced to live in conditions barely fit for animals?

This year marks the centenary of the creation of the International Labour Organization. In its Declaration of Philadelphia, the international community recognised that "labour is not a commodity" to be bargained in the market for the lowest price. It is at the core of everyone's daily life and our human dignity and well-being.

This report, the EU Fundamental Rights Agency's fourth on the topic of severe labour exploitation, is based on interviews with 237 exploited workers – both people who came to the EU, and EU nationals who moved to another EU country. They were active in diverse sectors, and their legal status also varied. But their stories all paint a bleak picture of severe exploitation and abuse.

Respondents were forced to work for endless hours with no or little pay, often in dangerous settings and without minimum safety equipment; sleep in fields or construction sites, without access to toilets or running water; and suffer humiliating sexual harassment. They endured – and rarely reported – these violations out of fear of losing wages owed to them or, for those without a right to stay, of expulsion. As a result, labour inspectorates and law enforcement authorities uncover only few of these misdeeds, and offenders face little risk of being investigated or prosecuted. Impunity looms large.

This report shows how exploitation often starts with false promises and fraud, describes the extreme conditions the exploited workers endure, and identifies the factors that facilitate exploitation. But it also outlines what can be done to help exploited workers access justice.

We hope that our focus on this issue encourages the responsible national authorities, as well as social partners, to recognise the reality of severe labour exploitation, and to take the steps necessary to create a climate of 'zero tolerance'.

Michael O'Flaherty
Director

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Glossary

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| access to justice | This concept, which Article 47 of the EU Charter of Fundamental Rights (the EU Charter) introduced, means that the victim of a rights violation is entitled to an effective remedy and a fair trial. Access to justice must be not theoretical or illusory but practical and effective. The concept covers all forms of legal redress provided by criminal, civil and administrative justice services. In particular, the concept of 'justice' includes compensation from offenders, state compensation and back payments to be made by employers. |
| decent work | This term refers to fair and just working conditions, as protected under Article 31 of the EU Charter of Fundamental Rights. |
| domestic worker | The term is used to refer to a person employed in housekeeping and caring for dependents, such as children, older persons and persons with disabilities, whether the domestic workers live with their employer or have a separate abode. |
| due diligence | For the purposes of this research, this means that, if persons are at a serious risk of being exploited, then the relevant authorities are under an obligation to adopt effective protection measures. |
| forced or compulsory labour | 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 or herself voluntarily (International Labour Organization (ILO), Forced Labour Convention , 1930, Article 2 (1)). |
| gangmaster | A 'labour provider' who provides workers to the following sectors in the United Kingdom: agriculture; forestry; horticulture; shellfish gathering; and food processing and packaging (for a full definition and description, see Gangmasters (Licensing) Act 2004 , Section 4). |
| irregular situation of residence | This term is used to refer to situations where a person resides in an EU Member State in violation of national legislation. |
| particularly exploitative working conditions | 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 the worker's health and safety, and which offends against human dignity (Article 2 (i) of the Employers Sanctions Directive). |
| Palermo Protocol | Protocol to prevent, suppress and punish trafficking in persons, especially women and children (2000), supplementing the United Nations (UN) Convention against Transnational Organized Crime (the EU and all Member States are parties to the protocol). |
| posted worker | "A worker who, for a limited period, carries out his [or her] work in the territory of a Member State other than the state in which he [or she] normally works" (Article 2 of the Posted Workers Directive). |
| recruitment agency | Broadly speaking, an intermediary that supplies migrant workers to employers in destination countries. It can perform additional functions such as arranging visas and making travel arrangements. |
| risk factor | A factor that renders workers more vulnerable to labour exploitation. |
| seasonal worker | 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 of the Seasonal Workers Directive). |

For those EU Member States where the Seasonal Workers Directive had not yet been incorporated into national law at the time of the fieldwork, the term 'national seasonal workers' is used throughout the report.

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| servitude | A particularly serious form of denial of freedom: 'servitude' means an obligation, imposed by the use of coercion, to provide one's services. The notion includes, in addition to the obligation to perform certain services for others, the obligation for the victim to live on another person's property and the impossibility of altering his or her condition by stopping work or leaving the premises (see European Court of Human Rights (ECtHR), <i>Siliadin v. France</i> , No. 73316/01, 26 July 2005, paragraphs 123–124). |
| severe labour exploitation | Work situations that deviate significantly from standard working conditions as defined by legislation or other binding legal instruments, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment, and which are criminal under the legislation of the EU Member State where the exploitation occurs. Hence, severe labour exploitation includes as a minimum coercive forms of exploitation, such as slavery, servitude, forced or compulsory labour, and trafficking prohibited by Article 5 of the EU Charter, as well as severe exploitation within the framework of an employment relationship, as covered by Article 9 (1) of the Employers Sanctions Directive. |
| slavery | "The status or condition of a person over whom any or all of the powers of the right of ownership are exercised" (Article 1 (1) of the 1926 Slavery Convention). Article 5 of the EU Charter of Fundamental Rights explicitly prohibits slavery and forced labour. |
| smuggling of migrants | "[A]ny person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens" or "any person who, for financial gain, intentionally assists a person who is not a national of a Member State, for financial gain, to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens" (Article 1 (1) of Council Directive 2002/90). |
| Sustainable Development Goals | A blueprint that the United Nations adopted in September 2015, designed to achieve a better and more sustainable future for all. They address global challenges, including those related to poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. |
| trafficking | Throughout the report, the term 'trafficking' refers to trafficking in human beings, which is defined as "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 of the EU Anti-Trafficking Directive). |
| victim | A person who claims or could potentially claim that his or her rights protected under criminal law have been violated. In the context of this project, the term relates to victims of all forms of exploitation that are criminal under national legislation or where there is an obligation under EU legislation to criminalise (e.g. under Article 9 of the Employers Sanctions Directive). |
| working conditions | This term covers all essential aspects of the employment relationship, including remuneration and other returns on the employee's work, working hours, paid annual leave, and occupational health and safety. In this broad sense, for example, Article 23 (1) (a) of the Seasonal Workers Directive refers to working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace. |



Key findings and FRA opinions

Across the European Union (EU), workers are being severely exploited for their labour, research by the EU Agency for Fundamental Rights (FRA) shows. This report, covering the second component of FRA's research on severe forms of labour exploitation, is based on interviews with victims. The first report was based on interviews with professionals.

The evidence presented in this report is based on the accounts of 237 adult migrant workers, including third-country nationals as well as EU nationals, who were severely exploited or worked in sectors at high risk of labour exploitation in eight EU Member States (Belgium, France, Germany, Italy, the Netherlands, Poland, Portugal and the United Kingdom). National-level civil society organisations, primarily working in the areas of victim and migrant/refugee support, identified the exploited workers whom FRA interviewed.

The interviews paint a rather bleak picture of exploitation and abuse. They underline a clear violation of human dignity, which raises the question: "Is this the Europe we want?" Unscrupulous employers use the weak position of migrant workers to force them to work for endless hours with no or little pay, often in

dangerous settings, and without the minimum safety equipment required by law. Workers interviewed for this research had slept in fields or on construction sites, without access to sanitary facilities or running water. They endured these conditions out of fear that if they left they would lose the wages owed to them or, in the case of migrants in an irregular situation, because the employer threatened to report them to authorities. In some cases, they spoke about employers who confiscated their documents, restricted their social contacts, or monitored and controlled their movements inside the workplace to stop them from coming into contact with anyone to whom they could complain.

This report also examines practices that employers use to deceive labour inspectorates and law enforcement authorities. As a result, very few of these exploitative employers are effectively reported, investigated or prosecuted. This is the vicious circle that needs to be broken. Even when cases come to the attention of the authorities, in many cases court proceedings do not guarantee criminal sanctions or allow victims to claim back their wages. In this regard, the report highlights the valuable role that victim support services play in providing legal, material and psychological assistance.

Defining severe labour exploitation

In this report, the term 'severe forms of labour exploitation' denotes work situations that deviate significantly from standard working conditions as defined by legislation or other binding legal instruments, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment, and which are criminal violations under the legislation of the EU Member State where the exploitation occurs. Hence, severe labour exploitation includes as a minimum coercive forms of exploitation, such as slavery, servitude, forced or compulsory labour, and trafficking prohibited by Article 5 of the EU Charter of Fundamental Rights, as well as severe exploitation within the framework of an employment relationship, as covered by Article 9 (1) of the Employers Sanctions Directive.

There is no uniform supranational legal framework regulating severe labour exploitation. At the same time, several international, Council of Europe and EU law instruments in the areas of social policy, freedom of movement, migration policy, criminal justice and the rights of victims of crime relate to issues which emerged from the field-work research.

Many of the experiences of labour exploitation recounted in this report are likely to amount to trafficking in human beings as defined in Article 2 of the EU Anti-Trafficking Directive (2011/36/EU).

The real life stories of the exploited and abused people that the reader will find in this report show the consequences of the systemic risk of severe labour exploitation, illustrated in FRA's 2015 report *Severe labour exploitation – Workers moving within or into the*

European Union. That report identified significant gaps in the legal and administrative measures that Member States took to protect all workers from severe forms of labour exploitation.

FRA's work on severe labour exploitation

This report presents the findings of FRA's second project on labour exploitation.

- FRA's first project on labour exploitation was based on 616 interviews with professionals working in the field of labour exploitation, as well as on desktop research. It resulted in the publication *Severe labour exploitation – Workers moving within or into the European Union. States' obligations and victims' rights* (2015), which provides an in-depth analysis of criminal forms of labour exploitation of workers moving within or to the EU.
- FRA's second project on labour exploitation was based on 237 interviews with victims of labour exploitation. It resulted in three reports:
 - *Out of sight – Migrant women exploited in domestic work* (June 2018): this report looks at the situation of migrant women exploited as domestic workers in the EU.
 - *Protecting migrant workers from exploitation in the EU – Boosting workplace inspections* (September 2018): this report looks at the role of labour inspections.
 - *Protecting migrant workers from exploitation in the EU: workers' perspectives* (June 2019): the present report looks at recruitment, working conditions, exploitative employers strategies, risk factors and access to justice for victims of severe forms of labour exploitation. It should be read alongside FRA's 2015 report.

On 17 November 2017, the EU proclaimed the European Pillar of Social Rights. This pillar reiterates the right of workers, regardless of type and duration of employment relationship, to fair and equal treatment regarding working conditions, access to social protection and training. In particular, it stresses that employment relationships that lead to precarious working conditions must be prevented, including by prohibiting abuse of atypical contracts. It also notes that workers have the right to fair wages that provide for a decent standard of living and are set in a transparent and predictable way in accordance with national practices. Finally, it highlights the right of workers to be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including any probation period. While the Pillar of Social Rights is not in itself legally binding on Member States, the rights and principles contained within it are derived from legally binding documents, such as the EU Charter of Fundamental Rights, the European Social Charter of the Council of Europe and International Labour Organization (ILO) conventions. This report provides useful evidence to EU institutions and Member States that allows them to assess the extent to which the provisions set out in the European Pillar of Social Rights, the EU Charter of Fundamental Rights and relevant EU law provisions are respected.

Addressing labour exploitation connected to the recruitment of workers

Preventing labour exploitation by acting on recruitment and employment agencies

Article 5 (1) of the Directive on Temporary Agency Work (2008/104/EC) establishes the principle of equal treatment and equal pay between agency workers and the regular workforce. Article 6 (3) prohibits charging workers fees in exchange for arranging recruitment or for concluding a contract of employment.

ILO Convention No. 181, concerning private employment agencies, dates from 1997 and has been ratified by 13 EU Member States.¹ It establishes the general parameters for regulation of recruitment, placement and employment of workers engaged by private employment agencies, prohibits charging workers a fee and guarantees the protection of fundamental rights at work, such as freedom of association, collective bargaining, equality of opportunity and treatment for migrant workers recruited or placed in host countries, as well as a system of penalties for fraudulent agencies.

The European Commission offers practical guidance in the sector guide relating to employment and recruitment agencies, which implements the UN Guiding

¹ Belgium, Bulgaria, Czechia, Finland, France, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia and Spain.

Principles on Business and Human Rights.² It acknowledges that the lack of effective regulation of employment and recruitment agencies, and low barriers to entry into the business allow unscrupulous companies to proliferate. Such companies range from those that knowingly profit from poor labour practices to criminal organisations involved in human trafficking and other serious human rights abuses.

Several channels led the workers interviewed for this research to end up in situations of severe labour exploitation. The main recruitment channels were the following:

- more than half through personal networks, e.g. through friends, acquaintances, family members and, to a lesser extent, former employers;
- 17 % through recruitment agencies, gangmasters and labour market intermediaries;
- 10 % through their own initiative, e.g. distributing their CVs;
- 6 % through internet searches and social networks;
- 4 % through pick-up spots for recruitment of daily labour;
- 10 % through other means.

Certain trends can be observed across the eight Member States that this research covers. First, the majority of foreign workers used personal contacts, often people with the same ethnic background, to find jobs where they ended up being exploited. Second, there seems to be no clear link between the recruitment channel and the severity of the labour exploitation experienced, in other words similar exploitative labour conditions are experienced when a job is suggested by a friend or by an employer. The only exception is employment obtained through recruitment agencies,

gangmasters and labour market intermediaries, which increases the risk of labour exploitation. While some are legally compliant organisations, others are involved in deceptive recruitment practices and severe forms of labour exploitation.

They were also reported to charge high and illegal recruitment fees. Fighting the practice of levying illegal recruitment fees from migrant workers before they migrate for work is particularly important, as abuse in the workplace is often possible because migrant workers have a heavy debt to reimburse before being able to provide for the well-being of their family. Migrant workers often need to borrow money from family members, but also from loan sharks in their country of origin, in order to pay the illegal recruitment fees and other migration costs.

They also deceive workers by promising either jobs that do not exist or conditions (e.g. legal residence) that are later not fulfilled, and they replace contracts signed in the country of origin with new contracts in the country of work with a lower salary and worse working conditions (called 'contract substitution').

They often operate a complicated system of subcontracting and intermediaries, to the detriment of workers' rights. Recruitment agencies are more active in agriculture and domestic work. Posted and seasonal workers were also commonly recruited via recruitment agencies. The workers' testimonies in this research confirm what professionals told FRA in 2015, that the risks of labour exploitation are further amplified when workers are dependent on recruitment agencies for services including visas, transport, accommodation and information about the nature of the work. Almost two thirds of the interviewees recruited via agencies were later recognised as victims of trafficking in human beings, which further underlines the impact of unscrupulous recruitment agencies on labour exploitation in the EU.

² European Commission, SHIFT and the Institute for Human Rights and Business (2011), *Employment & recruitment agencies sector guide on implementing the UN Guiding Principles on Business on Human Rights*, Brussels, European Commission.

FRA opinion 1

EU Member States should require employment and recruitment agencies and their subcontractors to avoid fraudulent or deceptive recruitment. This should apply to agencies based and operating in the EU, to their branch offices located in third countries and to those agencies based abroad and providing workers to EU Member States. To achieve this, EU Member States should put in place:

- *registration, licensing and, in particular, certification systems for agencies operating in this sector;*
- *clear liability rules when employment and recruitment agencies subcontract part of their activities to other agencies;*
- *a list of licensed temporary and recruitment agencies to EU embassies in the countries of origin of migrant workers;*
- *dissuasive penalties for non-compliance with existing legal standards;*
- *an effective and well-funded monitoring mechanism to oversee the activities of employment and recruitment agencies, in cooperation with trade unions and relevant human rights institutions and civil society. This should focus, in particular, on unlawful or deceptive practices by employment and recruitment agencies, such as:*
 - o *collecting of recruitment fees and other charges from workers, which contravenes Article 6 (3) of the Directive on Temporary Agency Work (2008/104/EC);*
 - o *replacing the worker's contract originally signed prior to travelling for the purposes of obtaining the residence permit with a less favourable contract once the third-country national starts working;*
 - o *confiscating the worker's identity or travel documents;*
 - o *using psychological and physical threats to prevent migrant workers from complaining of abuse.*

Activities of monitoring bodies should prioritise, but not be limited to, the employment sectors where there is evidence of recruitment agencies being more often used, namely domestic and agricultural workers.

EU Member States are encouraged to sign bilateral agreements with third countries of origin of migrant workers, to limit the need for the services of recruitment agencies.

In line with Article 5 (1) of the Directive on Temporary Agency Work (2008/104/EC) establishing the principle of equal treatment and equal pay between agency workers and the regular workforce, EU Member States should make sure that workers employed by temporary agencies enjoy equal basic employment and working conditions.

Preventing online recruitment

Some victims found work through the internet, and they were deceived because working conditions turned out to be different from those advertised. In some areas of serious organised crime, Europol supports Member States with intelligence about suspicious websites. An enhanced use of the capabilities Europol has could help Member States to take measures against persons running deceptive recruitment sites, particularly when there is a suspicion of trafficking in human beings.

FRA opinion 2

Member States' authorities could draw upon the support of Europol to detect the internet sites that traffickers and exploitative employers use.

EU Member States should discuss with social networking sites the implementation of safety features in relation to job offers, encourage website owners to report suspicious advertisements to police, and introduce independent monitoring of internet safety in relation to online recruitment. In this respect, closer cooperation with internet service providers and social media should be established.

Improving working and living conditions

According to Article 31 of the Charter, every worker has the right to working conditions which respect his or her health, safety and dignity, and the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

This report finds that exploitation exists on a continuum ranging from less severe forms of exploitation to forced labour, trafficking and a couple of cases in which interviewees had experienced severe labour exploitation when they were children (teenagers).

Exploitative employers and intermediaries such as recruitment agencies and gangmasters utilised a broad range of practices to exploit workers who had been desperately seeking a job and were in a weak bargaining position. This weak position is aggravated when workers are in an irregular situation, or their residence permit is tied to one specific employer, or they have a heavy debt to reimburse due to illegal recruitment fees. FRA's evidence shows that the majority of the exploited workers interviewed for this research experienced the following types of exploitation:

- very little or no pay for very long working hours;
- working conditions that violate labour standards and compromise (especially irregular) migrant

workers' health and safety, with access to medical care often denied by employers to avoid detection by authorities;

- lack of a contract or a contract provided in a language that the worker did not understand;
- being given tasks that had not been agreed upon initially (e.g. domestic workers being requested to work not only for the employer but also for his or her family members) and were in some cases illegal (e.g. being requested to steal or to cultivate drugs);
- accommodation provided by the employer in unsanitary or degrading conditions.

In line with the views of professionals that FRA interviewed for its 2015 report on severe labour exploitation, to foster the rights awareness of workers and to facilitate monitoring, standards and measures are needed to enhance the transparency and documentation of employment situations.

Improving standards for working conditions for all workers

According to Article 153 of the Treaty on the Functioning of the European Union (TFEU), the EU must support and complement the activities of EU Member States in, among other fields, the improvement of working conditions, in particular the working environment, to protect workers' health and safety, and conditions of "employment for third-country nationals legally residing in Union territory" (Article 153 (1) (g) of the TFEU).

In 2014, in *Tümer*, the Court of Justice of the European Union (CJEU) clarified that safeguards established by EU law apply to all workers, including third-country nationals in an irregular situation.³ The rights of workers are an expression of societies' solidarity and the resolve to grant decent working conditions to every individual employed on EU territory. The worker's residence status does not affect them. It is particularly important that, for the purpose of implementing labour and health and safety standards, migrant workers be considered 'workers', whatever residence status they may have or lack. Immigration considerations should never interfere with the equal treatment of all workers for the

purpose of implementing labour law. Only when this has been made absolutely clear in law and practice will abused migrant workers be empowered to use complaint mechanisms and other official channels against abusive employers or recruiters, without fear of such action triggering consequences for their residence status (or lack thereof).

Under EU secondary law, Article 12 (1) (a) of the Single Permit Directive (2011/98/EU) grants third-country workers equal treatment with nationals of the Member State in which they reside with regard to working conditions, including pay and dismissal as well as health and safety in the workplace. A similar provision can be found in Article 23 of the Seasonal Workers Directive (2014/36/EU), which guarantees seasonal workers the right to equal treatment concerning terms of employment including the minimum working age, pay and working conditions including dismissal, working hours, leave, and health and safety requirements. Under the revised Posted Workers Directive (173/18/EC), posted workers are also guaranteed equal treatment with relation to working hours and rest periods, leave, pay, and health and safety.

According to the proposed EU Directive on transparent and predictable working conditions, EU Member States should ensure that employers inform workers of the essential aspects of the employment relationship in writing. Written information provided to workers should include, among other things, information on the place of work, type of work, working time, remuneration, amount of paid leave, institution receiving the social security contributions, training entitlement and procedure for terminating employment. The adoption of this directive would increase workers' knowledge of their working conditions and of their rights.

In 2018, the European Commission proposed the establishment of a European Labour Authority. One of its proposed objectives is to strengthen operational cooperation between authorities in the cross-border enforcement of EU law, including facilitating joint inspections, and another is to improve individuals' and employers' access to information about their rights and obligations in the areas of labour mobility and social security coordination, and about access to relevant services.

³ CJEU, C-311/13, *O. Tümer v. Raad van bestuur van het Uitvoeringinstituut werknemersverzekeringen*, 5 November 2014.

FRA opinion 3

To combat severe labour exploitation, EU Member states should increase efforts to enforce labour law effectively so as to protect migrant workers' rights and guarantee adequate working conditions in relation to pay, working hours, rest periods and leave.

Such working conditions should include that the basic terms and circumstances of an employment relationship are transparent, well documented and comprehensible throughout the term of employment. In particular, all workers should be given a written contract in a language they can understand, at least as regards the basic terms of their employment.

To enforce labour law effectively, labour inspection mechanisms must be considerably reinforced, in terms of financial resources, human resources and technical expertise.

The EU should swiftly adopt the EU Directive on transparent and predictable working conditions and proceed with the establishment of the European Labour Authority to strengthen enforcement of all workers' rights in favour of all workers.

- legislation in some EU Member States providing domestic workers with less protection than other categories of workers;
- lack of labour inspections in the domestic work sector;
- heightened social isolation due to domestic workers residing in private homes and the absence of co-workers;
- specific gender-related risks, i.e. sexual and gender-based violence.

Noting the particular vulnerability of domestic workers, in 2015 and 2018 FRA published reports that recommended a number of measures to EU institutions and Member States to decrease their vulnerability to labour exploitation. These recommendations are presented in [Annex II](#).

FRA opinion 4

For domestic workers to enjoy similar working conditions to those of other workers, EU Member States currently excluding domestic workers from the scope of the legislation transposing the Working Time Directive should include them without delay.

Preventing and detecting labour exploitation in the domestic sector

In its Report on the implementation by EU Member States of the Working Time Directive,⁴ the European Commission noted that in five Member States (Belgium, Greece, Luxembourg, Sweden and the United Kingdom) domestic workers have been entirely or partially excluded from the legislation transposing the directive.

The findings of this research point to domestic workers as particularly at risk of labour exploitation because of a range of factors, including:

- their increased dependence on employers for food and accommodation, as they usually work and live in their employer's home;
- third-country national domestic workers' visas often being tied to one specific employer, so domestic workers often endure exploitative working conditions in order to keep the job which allows them to legally reside in the country of work;

Ensuring an adequate standard of living

Respect for human dignity is at the core of the EU Charter of Fundamental Rights. According to Article 1, human dignity is inviolable. It must be respected and protected. Over half of the exploited workers that FRA interviewed depended on their employers for accommodation during the period of labour exploitation. Most living at the workplace in extremely poor circumstances (especially those working in agriculture, domestic work and construction). These workers experienced particularly degrading living conditions including lack of bedding, inadequate food, lack of running water and poor sanitary conditions. Workers were often obliged to stay in employer-provided accommodation, with employers providing no alternatives.

Workers would often have accommodation costs deducted from their wages, with no rental contract provided. For those who were not provided with accommodation by the employer, low pay and withholding of wages had detrimental effects on their living conditions, as workers could not afford decent accommodation.

Under Article 79 of the Treaty on the Functioning of the EU, the Union has the power to adopt measure to

⁴ European Commission (2017), [Report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time](#), COM(2017) 254 final.

define the rights of third-country nationals residing legally in an EU Member State. EU law regulates workers' accommodation in Article 20 (2) of the Seasonal Workers Directive, if it is provided by or through the employer. The directive requires that the rent must not be excessive compared with the remuneration and the quality. The rent shall not be automatically deducted from the wage of the seasonal worker. There has to be a rental contract and the accommodation must meet relevant health and safety standards.

Article 3 (1) (h) of the revised Posted Workers Directive requires that Member States shall ensure equal treatment of nationals and posted workers in relation to accommodation provided by the employer.

FRA opinion 5

In accordance with Article 20 of the Seasonal Workers Directive, Member States must ensure that seasonal workers' accommodation respects adequate standards of living as set in national law and/or practice, that a rental contract is provided and that the rent is not automatically deducted from the wage, when provided by the employer.

In accordance with Article 3 of the revised Posted Workers Directive, Member States must ensure that posted workers enjoy the same rights as nationals in relation to accommodation when provided by the employer.

For other categories of migrant workers, Member States should consider their relevant obligations under national and international law and ensure that accommodation is safe and decent and that the rent is not excessive compared with the remuneration and the quality of the accommodation, when provided by the employer.

Enhancing health and safety of workers

Improving enforcement of health and safety regulations in sectors at high risk of labour exploitation

The Framework Directive on Safety and Health at Work (Directive 89/391) establishes an equal level of safety and health for the benefit of all workers, and obliges employers to take appropriate preventive measures to make work healthier and safer. A number of more specific directives address specific economic sectors or groups of workers. EU secondary law also protects specific groups of third-country nationals working in the EU.

More specifically, the Single Permit Directive (Article 12 (1) (a)) and the Seasonal Workers Directive (Article 23 (1) (a)) guarantee equal treatment with nationals as regards health and safety requirements for third-country workers. The revised Posted Workers Directive (Article 3 (1)) establishes equal treatment of third-country nationals and posted workers in health and safety at work.

The findings of this research point to violations of health and safety regulations as a common aspect of situations of labour exploitation, especially in the agriculture and construction sectors. Lack of personal protection equipment and lack of safety instructions and training emerged as common breaches of health and safety regulations across all Member States, often resulting in work accidents and occupational health issues. This was compounded by discrimination, with third-country workers, especially those in an irregular situation, requested to perform the most hazardous tasks.

The EU Strategic Framework on Health and Safety at Work 2014-2020,⁵ which the European Commission adopted in 2014, lists three major challenges. One is to improve implementation of existing health and safety rules, in particular by enhancing the capacity of micro and small enterprises to put in place effective and efficient risk prevention strategies.

FRA opinion 6

Given that labour exploitation is currently not addressed in the EU Strategic Framework on Health and Safety at Work 2014-2020, EU institutions could consider addressing it in the next (post-2020) EU OSH strategic framework.

In line with the strategic objectives set in the EU Strategic Framework on Health and Safety at Work 2014-2020, EU Member States should better enforce health and safety regulations. In this context, Member States should prioritise the sectors most at risk of labour exploitation, including construction and agriculture.

Extending health and safety regulations to domestic workers

The Framework Directive on Safety and Health at Work (Directive 89/391), establishing an equal level of safety and health for the benefit of all workers, excludes 'domestic servants' from the scope of the directive.

⁵ European Commission (2014), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU Strategic Framework on Health and Safety at Work 2014-2020, COM(2014) 332 final.

The International Labour Organization's Convention concerning decent work for domestic workers (No. 189, 2011) which entered into force on 5 September 2013, states that every domestic worker has the right to a safe and healthy working environment and that this principle shall be implemented with due regard for the specific characteristics of domestic work (Article 13). To date, only six EU Member States have ratified the convention: Belgium, Germany, Finland, Ireland, Italy and Portugal.

Furthermore, according to the 2017 Commission Communication "Safer and healthier work for all – Modernisation of the EU occupational safety and health legislation and policy",⁶ only around half of the EU Member States have occupational safety and health rules in place covering persons employed for household work in private households.

FRA opinion 7

The EU should review the Framework Directive on Safety and Health at Work to include domestic workers.

Meanwhile, EU Member States should consider extending minimum requirements for the protection of health and safety to domestic workers.

EU Member States which have not yet done so should consider ratifying the International Labour Organization's Convention concerning decent work for domestic workers (No. 189, 2011).

Dealing with employers' strategies to prevent workers from leaving the situation of exploitation

Employers used a number of strategies to control workers and prevent them from leaving the situation of labour exploitation, with different gradations of coercion. Softer strategies included false promises to regularise workers' status, or to pay amounts due, with workers enduring exploitation in the hope of receiving what was promised them. Threats (of not paying the wages, of dismissing the worker or of reporting migrant workers in an irregular situation to the authorities), psychological and verbal violence, and degrading treatment were used to intimidate workers and prevent them from reporting the exploitation to the authorities.

⁶ European Commission (2017), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Safer and healthier work for all – Modernisation of the EU occupational safety and health legislation and policy*, COM(2017) 12 final.

Strongly coercive strategies included resorting to physical or sexual violence, threats of violence, and establishing an inhuman and degrading environment for the workers, including sleep deprivation, poor nutrition and lack of food. Confiscation of personal documents was a strategy that exploitative employers used to prevent workers from seeking help or feeling free to go back to their country of origin.

The spatial, emotional and/or social isolation of many exploited workers, especially domestic and agricultural workers, was enhanced by employers' actions to control them physically and spatially in order to prevent any communication with the outside world and the possibility of seeking help. In a few extreme cases, workers were completely deprived of their freedom of movement. All these strategies create a fearful and intimidating environment and increase employers' control of the worker, and are ultimately meant to deter escape. Specific strategies were adopted to minimise the risk of detection during labour inspections, including requesting workers to hide or not show up during inspections, to lie about real work conditions or to pretend not to understand the language that labour inspectors spoke.

Countering employers' exploitative strategies

Physical, psychological and sexual violence, discrimination, and psychological and sexual harassment in the workplace can sometimes be indicators of labour exploitation, as may be lack of access to medical care or untreated injuries. Such incidents may not be one-off events, but be part of an employer's strategy aiming at labour exploitation. Closer cooperation of labour inspectors and police to deal with these cases helps counter employers' exploitative strategies.

FRA opinion 8

EU Member States should ensure that their law enforcement, inspection and monitoring bodies are trained to identify and address the exploitative strategies employers use, and that these bodies take them into account when planning their work, to maximise the detection of labour exploitation.

Addressing risk factors

FRA's findings show that according to workers the most important factors that make it possible for labour exploitation to happen are, in order of relevance:

- vulnerability linked to residence status, including being in an irregular situation, or depending on the

employer for regularising one's status, or being on a single-employer third-country national workers' visa;

- economic need, indebtedness and poverty in the home country as well as in the country of work (e.g. due to low pay and precarious working conditions);
- lack of knowledge of legal provisions and workers' rights;
- lack of knowledge of the language of the country of work;
- lack of inspections, checks and punishment by authorities;
- discrimination.

Addressing risks deriving from irregular residence status

According to workers, the key risk factor for severe labour exploitation is vulnerability linked to residence status – first and foremost, irregular residence status. Being a migrant worker in an irregular situation is an enabler of labour exploitation because it reduces alternative avenues of employment (hence increasing the worker's dependency on the exploitative employer) and strengthens the position of the employer, who can easily use the threat of deportation to keep the victim in a situation of exploitation.

In this context, it is crucial that migrants in an irregular situation feel that they can safely report the abuse experienced to the police without fear of being returned to their country of origin.

As noted in FRA's 2015 report, specialised police units experienced in trafficking and severe labour exploitation, such as those established in Spain and Belgium, are often more willing to treat the exploited workers as potential victims of crime, even in cases of irregular residence status, and can be considered to provide examples of promising practices.

Article 13 (4) of the Employers Sanctions Directive requires EU Member States to define in national law the conditions under which they may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals who are under particularly exploitative working conditions.

FRA opinion 9

To reduce situations of irregularity, EU Member States should be aware of the gap between labour demand and supply and fill labour market shortages through targeted labour migration programmes, especially for those sectors particularly at risk of labour exploitation, including domestic work, agriculture and construction.

In addition, as FRA already suggested in 2011 in relation to domestic workers, to reduce the exposure of migrant workers in an irregular situation to exploitation and abuse, EU Member States should find ways to address protracted situations of irregularity. This could, for example, be achieved through individualised regularisation procedures set out in national law.

When evaluating the Employers Sanctions Directive, the Commission should pay particular attention that the implementation of Article 14 of the Employers Sanctions Directive, requiring EU Member States to carry out effective and adequate inspections to check the employment of third-country nationals in an irregular situation, should not result in the immediate expulsion of victims of labour exploitation who are in an irregular residence situation. The Commission should also pay particular attention to how Article 13 (4) is implemented.

Avoiding dependency on employers

Third-country nationals who are residing in the EU on the basis of a work permit may lose not only their work but also their right to stay, if they complain against their exploitative employer. Considering that they and their dependents at home have heavily invested in time, energy and money in their migration project, and that many have debts to repay before being able to provide for the well-being of their families, losing their right to stay is, for many of them, not an option, even when this means enduring exploitative labour conditions.

One key obstacle to migrant workers being empowered to fight for their rights is the fact that third-country national workers' visas are often tied to one specific employer: such workers often endure exploitative working conditions in order to keep the job which allows them to legally reside in the country of work.

Ensuring that migrant workers can easily change employers is the best way of creating competition between employers on who provides the better working conditions, as a means of responding to their labour shortages and increasing their worker retention rate. This has worked for nationals in the past century and will contribute to reducing labour exploitation of migrant workers as well. Resident permits and visas

should allow migrants to switch employers, clearly informing workers of this right.

To ensure that workers can effectively enjoy their fundamental right to fair and just working conditions and to prevent other fundamental rights abuses, in its 2015 report on severe labour exploitation FRA already encouraged EU Member States to prioritise measures to safeguard workers against dependency on a single employer.

Migration policies that tie the residence permit to the existence of an employment contract are another common risk factor. The same applies to regularisation schemes which require workers to spend a set amount of time in an employment relationship. These instances can lead to situations in which the worker will accept exploitative work conditions in order to acquire or renew legal residence or regularise his or her status. In line with what was expressed by professionals that FRA interviewed in 2015,⁷ these findings further reinforce the relevance of the institutional framework as a risk factor for labour exploitation.

FRA opinion 10

EU Member States should make full use of the possibility of allowing a seasonal worker to change more than one employer under Article 15 (4) of the Seasonal Workers Directive.

More generally, the EU and EU Member States should avoid issuing residence permits or visas which are tied to a single employer, especially in economic sectors which have a history of abuse against migrant workers. Instead, Member States could consider providing sector-based permits (rather than employer-specific permits) so as to allow migrant workers to leave an exploitative employment relationship to take up a job with another employer, and use available complaint mechanisms without fear of losing their residence status.

To decrease workers' dependency on the employer, EU Member States should ensure that the residence permit of a third-country worker does not automatically terminate if the job is lost. For instance, if third-country nationals lose their jobs and become irregular as a result of labour exploitation, EU Member States could consider granting them the possibility of applying for a new residence permit with a new employer, following the example of what happens in Ireland, or to grant them a short-term residence permit to look for work.

Raising awareness of labour rights and labour exploitation

Lack of knowledge of legal provisions and workers' rights was mentioned as another key risk factor for labour exploitation. Almost all interviewees reported not being aware of their rights when they arrived in the country where the exploitation took place. When workers do not know their rights and the legal standards employers have to comply with, it is more difficult for them to identify their employers' practices as exploitative. Lack of language skills emerged as strongly interconnected with migrant status and as an obstacle to knowing workers' rights. First and foremost, interviewees reported their inability to understand the work contract, when one was provided. Others referred to lack of language skills as deterring workers from challenging exploitative employers and reaching out for help.

Research participants suggested that information could be distributed in EU embassies in third countries where migrant workers apply for visas or at EU representations in third countries. They also suggested that dissemination strategies should take into account where the workers can be best reached, for instance by offering such information in TV adverts in the country of origin and destination; through posters and leaflets in public places that migrants are likely to attend, such as airports, bus stops, coach stations, train stations; at shops selling products targeting migrants; in churches, mosques, internet cafes; at international cash transfer points; and through social networks. Research participants suggested that strategies to raise awareness of labour exploitation should also target employers and the population at large.

Unions have been the single most important actor in allowing workers to know and fight for their rights since the industrial revolution. Under the Single Permit Directive (Article 12 (1) (b)) and the Seasonal Workers Directive (Article 23 (1) (b)), third-country workers enjoy freedom of association and affiliation and membership of an organisation representing workers to the same extent as nationals.

⁷ FRA (2015), *Severe labour exploitation – Workers moving within or into the European Union*, Luxembourg, Publications Office of the European Union (Publications Office).

FRA opinion 11

EU Member States should ensure that workers have access to knowledge about working conditions and their rights. Such information should be provided in a language they understand.

Once established, the new European Labour Authority, to the degree that its mandate includes facilitating access for individuals and employers to information on their rights and obligations, could play a pivotal role in this regard.

As FRA stated in its 2015 report on severe labour exploitation, which interviewed professionals working in fields addressing labour exploitation, Member States should encourage trade unions and other organisations to provide information to workers before their departure, as well as when they arrive in the country of work, targeting especially workers in those sectors at greatest risk of exploitation. The role of embassies in providing information before departure or on arrival should be considered. Workers should also be informed of the risks associated with different recruitment methods.

The EU and EU Member States should support the role of unions in informing migrant workers of their rights and how they can access justice. In line with the fundamental principles of international labour law, as promoted by the International Labour Organization, the EU and EU Member States should work towards facilitating the unionisation of migrant workers, especially in economic sectors which have a history of abuse against migrant workers.

Stepping up language classes for migrants

Knowledge of the language(s) of a Member State is crucial to understand labour rights and the terms of a contract and to be able to communicate with employers and authorities, including monitoring bodies and law enforcement authorities. Research participants also identified access to language courses as a factor positively influencing willingness to report a case.

FRA opinion 12

EU Member States should step up measures to facilitate language acquisition of newly arrived EU and third-country national migrants, including by offering support services in different languages, but also easily accessible language courses (including online courses) taking into account the strenuous working and living situations of newly arrived workers.

Enhance effectiveness of labour inspections

Lack of sufficient and effective inspections, checks, oversight and punishment of employers by authorities also emerged as a risk factor for labour exploitation and was primarily pointed out by interviewees in Germany, Italy, Poland, Portugal and the United Kingdom whose status at the time of the interview was regular. Interviewees pointed out that the ineffectiveness of the authorities in dealing with the exploitative situation resulted in a perception of impunity among exploitative employers. FRA opinions on the role of labour inspections were already included in past reports and are listed in [Annex II](#).

Promoting access to justice

Effective access to justice

Migrants are, for the most part, resourceful and exercise considerable agency. Given their fear of retaliation or other negative consequences by people in power (employers, the police, complaint mechanisms, labour inspectors, etc.), informal channels such as friends, relatives, co-workers, acquaintances and members of ethnic communities play a key role in their entering the support system, with a subsidiary role for migrant organisations and victim support organisations. The majority of interviewees had received support and advice, as most of them were identified for interview through civil society organisations.

In terms of what enabled workers to seek assistance and leave their exploitative work situations, crucial factors mentioned were:

- knowing about workers' rights and about organisations offering support in case these rights are violated;
- getting in touch with third parties who could refer workers to support organisations;
- having confidence that the organisation the worker turns to will be supportive;
- familiarity with the language of the worker as a factor which supports people to come forward.

Victim and migrant support organisations played a key role in supporting interviewees in deciding how they want to proceed with their case and in guiding them through the process of reporting a case.

Fewer than half of the interviewees stated that they had reported their case to the police or were in the process of doing so. Workers were more likely to

report violence or threats of violence to the police than exploitative working conditions.

Factors linked to workers reporting to the police include:

- having the possibility of being recognised as a victim of trafficking in human beings;
- support organisations, trade unions or lawyers accompanying workers to the police;
- experiencing physical violence.

Interviewees in an irregular situation would not contact the police, fearing that, instead of treating them as victims of labour exploitation, the police would take action against them as migrants in an irregular situation.

Almost half of the interviewees indicated that their case ended in court proceedings. Experiences with court proceedings were diverse, with no clear pattern. Exploited workers decided to take cases to court to:

- receive payments owed by the employer;
- obtain a regular residence status when pressing criminal charges;
- deter other employers from exploiting their employees.

Barriers to taking a case to court include being a migrant in an irregular situation, costs (e.g. for lawyers, translation, travel, trade union support), having to leave the country where the court proceedings take place, and lacking language skills.

Labour courts often decided in favour of workers who took part in civil proceedings before labour courts. However, the complainants did not consider

the sanctions imposed by such courts appropriate. Similarly, those (the majority) who were involved in criminal proceedings considered that restitution from the offender was an important element of what criminal justice should entail. Even those interviewees who had been able to leave the exploitative work relationship were to a large extent not satisfied with their current situation. Many remained discontent, given that they were still unable to receive back pay owed to them and their employers remained unpunished.

FRA opinion 13

In accordance with Article 8 of the Victims' Rights Directive, EU Member States must ensure that appropriate, sufficiently specialised support services are available to all victims of crime, including victims of severe labour exploitation. To this end, extending the mandate of organisations established to support victims of trafficking to cover victims of labour exploitation is one measure that should be considered.

Specialised support services, including support organisations that were set up or tasked to assist victims of trafficking, should provide to victims of severe labour exploitation targeted information on workers' rights and on the role and rights of victims in criminal proceedings with a view to enhancing victims' participation in the proceedings, assistance in all encounters with the police and court hearings, and support in finding an appropriate employment.

EU Member States should pay due attention to ensuring that victims of severe labour exploitation receive comprehensive back pay and restitution as a result of criminal proceedings without having to also engage in civil proceedings or in the enforcement of judgments.

Annex II lists all opinions included in past FRA reports on severe labour exploitation.



Introduction

This report provides an in-depth account of the experiences of workers who were interviewed as part of FRA's fieldwork, which serves to fill a significant gap in the body of research evidence. An in-depth legal reading of the various legislation that is applicable in this field is sketched out in one section and is covered thoroughly in FRA's 2015 report *Severe labour exploitation – Workers moving within or into the European Union*.⁸

Why this report

“There was a problem with everything. With regard to payments as well as work hours, and breaks. We had agreed to work between three and four hours per day. In fact, we worked up to 11 hours per day. The conditions were terrible. Sometimes, we had to work at minus four or minus five degrees, with heavy rainfall or snow. We had to work outside, without breaks. Also during weekends.”

(Germany, male interviewee from Eastern Europe, construction, EU national)

“In Nepal, and in Asia, in general, there is this thinking about Europe: in Europe they treat people with respect for human rights; they treat people in a nice way.”

(Portugal, male interviewee from Southern Asia, agriculture, regular migrant)

This report takes an in-depth look at how migrant workers experience severe labour exploitation and redress mechanisms in selected EU Member States. This includes both EU nationals who moved to another EU Member State and third-country nationals who came to the EU, including people in need of international protection. Throughout this report, the legal status of third-country national respondents reported after a quote refers to the legal status at the time of exploitation.

Based on interviews and focus group discussions conducted with exploited workers, the report complements FRA's 2015 report on severe labour exploitation, which examined the views and experiences of 616 professionals including labour inspectors, representatives of victim support organisations and trade unions, police officers, legal professionals, recruitment agents and members of employment bodies in 21 EU Member States.

This report fills an important knowledge gap concerning the experiences of exploited workers in the EU. Previous research conducted on exploited workers has tended to focus on the more specific phenomenon of trafficking (for the purpose of labour exploitation) or

has had a more narrow geographical focus.⁹ This is the first EU comparative project looking into victims' experiences of labour exploitation, which is based on in-depth interviews with hundreds of people. In line with a rights-based approach, this report gives voice to workers who have become victims of labour exploitation and gives an account of their experiences when seeking redress.

The evidence suggests that the experiences with criminal forms of labour exploitation (hereafter referred to as severe labour exploitation) that the workers described for this report are just the tip of the iceberg when it comes to the reality and extent of severe labour exploitation in the EU today.

As in FRA's 2015 report, the term 'severe labour exploitation' refers to all forms of labour exploitation that are criminal under the legislation of the EU Member State where the exploitation occurs. Hence, what constitutes severe labour exploitation in one EU Member State may not in another. For this report, the meaning of 'severe labour exploitation' is the same as adopted in the other FRA reports on this issue and covers situations referred to by Article 9 (1) of the Employers Sanctions Directive: the employment of a worker in an irregular situation under "particularly exploitative working conditions". This means, according to Article 2 of the directive, working conditions "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".

This report ties in with current EU policies aiming to level the playing field in terms of standards of decent work across the Union, such as the Single Permit Directive (2011/98/EU), the Seasonal Workers Directive (2014/36/EU) and the revised Posted Workers Directive (173/18/EC), which introduces, among others, the principle of equal treatment in relation to working conditions, including pay, health and safety, and maximum working hours.

This report also speaks to the proposed EU Directive on transparent and predictable working conditions (COM(2017) 797 final).¹⁰ This draft directive addresses challenges relating to the increased flexibilisation of

⁸ FRA (2015), *Severe labour exploitation – Workers moving within or into the European Union*, Luxembourg, Publications Office Chapter 1.

⁹ See, for example, reports from the Council of Europe Group of Experts Against Trafficking in Human Beings, available at: <https://www.coe.int/en/web/anti-human-trafficking/monitoring-mechanism>.

¹⁰ European Commission (2017), *Proposal for a Directive on transparent and predictable working conditions in the European Union*, COM(2017) 797 final.

the labour market and, in particular, the increase in the number of 'non-standard' forms of employment, such as temporary employment. Especially relevantly to this report, the draft directive includes revised obligations to inform workers of the essential aspects of their work, in written form and in a timely manner.

The report provides outlines for public authorities regarding the most relevant risk factors for severe labour exploitation according to exploited workers. This is practical information that can be taken into account when carrying out workplace inspections. This is especially relevant in the light of the recent (March 2018) proposed European Commission regulation to set up a new EU agency – the European Labour Authority¹¹ – as well as an initiative to ensure access to social protection for all workers including self-employed people.¹² These initiatives are accompanied by a communication on monitoring the implementation of the European Pillar of Social Rights,¹³ which will be closely linked to the European Semester of policy coordination.

This report also speaks to EU policy areas relating to trafficking in human beings and feeds into the communication from the EU Commission which identifies the need to improve victims' access to justice as one of the priorities to prevent trafficking in human beings.¹⁴

The report could also be kept in mind with respect to those Member States looking to implement Sustainable Development Goal (SDG) 8 concerning decent work and economic growth. This includes its targets to take effective measures to eradicate forced labour; end modern slavery and human trafficking; and protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular female migrants, and those in precarious employment.

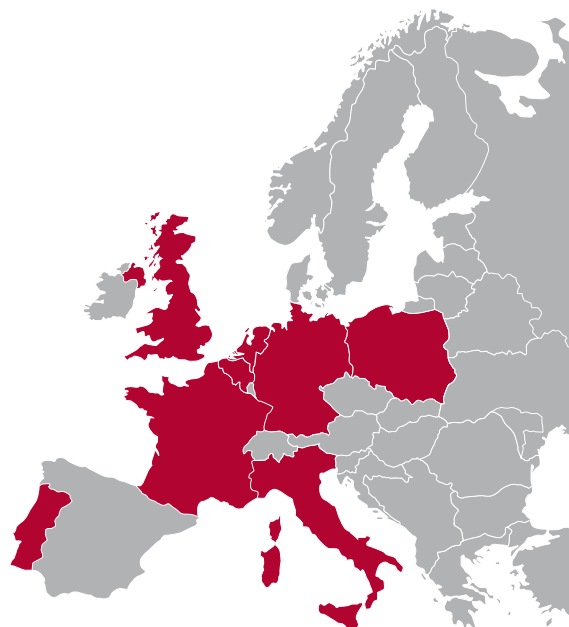
Evidence base: who was interviewed?

To better understand the troubling phenomenon of severe labour exploitation, FRA reached out to migrant

workers through face-to-face interviews and focus groups in 2017.

- As shown in Figure 1, research was carried out in eight EU Member States: Belgium, France, Germany, Italy, the Netherlands, Poland, Portugal and the United Kingdom.
- In total, 237 adult migrant workers gave accounts of having been severely exploited for their labour or having worked in sectors at high risk of exploitation between 2013 and 2017. This report is based on their experiences.

Figure 1: Eight EU countries where the project was conducted



Source: FRA, 2019

The views and experiences of these 237 workers provide a valuable insight into the everyday realities of the living and working conditions of migrant workers in a number of economic sectors, although the findings cannot be considered representative of the overall situation of severe labour exploitation in the EU. Their experiences include accounts of the most severe forms of labour exploitation: slavery and servitude. The evidence also points to workers with irregular residence status being at heightened risk of exploitation, as they are especially unlikely to complain or report their situation for fear of being returned to their country of origin.

The sample of 237 exploited workers includes 162 workers whom FRA interviewed individually (typically 20 interviews per Member State) and 75 exploited workers who participated in a total of 16 focus groups (two in each of the eight Member States, each with

11 European Commission (2018), *Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority*, COM(2018) 131 final, Strasbourg, 13 March 2018.

12 European Commission (2018), *Proposal for a Council recommendation on access to social protection for workers and the self-employed*, COM/2018/0132 final – 2018/059 (NLE).

13 European Commission (2018), *Communication from the Commission to the European Parliament and the Council monitoring the implementation of the European Pillar of Social Rights*, COM(2018) 130 final.

14 European Commission (2017), *Communication from the Commission to the European Parliament and the Council reporting on the follow-up to the EU Strategy towards the eradication of trafficking in human beings and identifying further concrete actions*, COM(2017) 728 final.

three to seven participants who had typically experienced exploitation in the same economic sector). The sample includes:

- 134 men and 103 women;
- 175 third-country nationals from 40 countries worldwide (making up 74 % of the sample);
- 62 EU citizens working in Member States other than their own (26 % of the sample).

The seven top countries of origin are Morocco (16), Philippines (15), Poland (15), Ukraine (14), Bulgaria (13), Bangladesh (8) and Romania (7).

The workers were active in various sectors, such as agriculture (14 %) domestic work (21 %), construction (15 %), hospitality (e.g. work in restaurants and hotels) (16 %), manufacturing (e.g. meat/food processing, textiles and clothing) (5 %), transport, logistics and warehousing (3 %), cleaning services (7 %), and retail and

other services (e.g. work in car washes, launderettes, beauty studios) (7 %).

Of the workers interviewed, 25 % were aged 18-30, 61 % 31-50 and 14 % older than 50.

At the time of the interview, 31 % had been residing in the country of work for up to three years, 19 % between three and six years, 12 % between seven and nine years, and 30 % more than nine years. Information on length of stay in the country of work was not available for 8 % of the respondents.

Table 1 presents the main characteristics of the sample in relation to region of origin of the workers and economic sector in which exploitation took place in each of the eight EU Member States that the project covered.

Table 1: Main characteristics of the sample, per EU country where the research was conducted

| Member State | Main geographical regions of origin of workers* in order of predominance | Three main economic sectors where workers were employed** in order of predominance |
|----------------|---|---|
| Belgium | <ul style="list-style-type: none"> • Africa (mainly Morocco) • Caribbean, Central and South America • EU | <ul style="list-style-type: none"> • Domestic work • Construction • Hospitality |
| France | <ul style="list-style-type: none"> • Africa (mainly Morocco) • Asia • Caribbean, Central and South America | <ul style="list-style-type: none"> • Hospitality • Domestic work • Construction |
| Germany | <ul style="list-style-type: none"> • EU (more than half from Bulgaria) • Caribbean, Central and South America • Asia | <ul style="list-style-type: none"> • Hospitality • Cleaning • Construction/domestic work |
| Italy | <ul style="list-style-type: none"> • Africa • Asia (mainly Bangladesh) • Caribbean, Central and South America | <ul style="list-style-type: none"> • Agriculture • Other • Construction/hospitality |
| Netherlands | <ul style="list-style-type: none"> • EU • Asia • Africa | <ul style="list-style-type: none"> • Agriculture • Retail and other services • Hospitality |
| Poland | <ul style="list-style-type: none"> • Other (non-EU) Europe (mainly Ukraine) • Asia and Middle East (mainly Philippines) | <ul style="list-style-type: none"> • Construction • Domestic work • Agriculture |
| Portugal | <ul style="list-style-type: none"> • Africa (mainly Cape Verde) • Asia • Caribbean, Central and South America | <ul style="list-style-type: none"> • Domestic work • Agriculture • Construction |
| United Kingdom | <ul style="list-style-type: none"> • EU (mainly Poland) • Asia | <ul style="list-style-type: none"> • Domestic work • Other • Hospitality |

Notes: N = 237.

* All geographical regions of origin, aside from the Middle East, are based on the United Nations publication "Standard country or area codes for statistical use", commonly referred to as the M49 standard. This report uses the term 'Middle East', rather than the M49 standard of 'West Asia', for ease of understanding.

** Economic sectors are based on an adaptation of the classification provided in NACE 2 (Statistical classification of economic activities in the European Community). 'Hospitality' includes work in hotels, restaurants, bars and cafes, usually as waiter, cook, dishwasher, etc.

Source: FRA, 2018

Table 2 shows the residence status of the exploited workers at the time of exploitation. This information is available only for workers interviewed individually, not for focus group participants. Three quarters of

workers were third-country nationals. Among them, more than 60 % were regularly staying in the EU country of work at the time of exploitation; the others were in an irregular situation.

Table 2: Interviewees' residence status at the time of exploitation, individual interviews (absolute numbers and percentages)

| Nationality | Interviewee residence status at the time of exploitation | | Number | % |
|------------------------|--|---|--------|-----|
| Third-country national | Regularly staying | Seasonal worker* | 9 | 6 |
| | | Posted worker | 5 | 3 |
| | | Asylum applicant | 13 | 8 |
| | | Beneficiary of international protection | 3 | 2 |
| | | Tourist visa | 3 | 2 |
| | | Other regular status | 41 | 25 |
| | In an irregular situation | | 43 | 27 |
| EU national | Posted worker | | 3 | 2 |
| | Other EU national** | | 37 | 23 |
| Missing/unknown | | | 5 | 2 |
| Total | | | 162 | 100 |

Notes: N=162.

* This includes seasonal workers under national schemes as well as under the EU Directive on Seasonal Workers.

** Including EU workers moving for seasonal work.

Source: FRA, 2019

In the wake of interventions by victim support organisations or authorities, 25 % of the workers interviewed individually were recognised as victims of trafficking in human beings.

The exploited workers whom FRA interviewed for this report were identified through the following gatekeepers:

- national-level civil society organisations primarily working in the areas of victim or migrant/refugee support, including organisations involved in human trafficking referral systems;
- trade unions;
- lawyers;
- labour inspectorates.

The exploited workers had typically been referred to or come into contact with these organisations for the purposes of accessing support following their experiences of labour exploitation.

The interviews and focus group discussions were conducted in the language of choice of the workers interviewed, often with the assistance of interpreters. Some of the data presented are available only for individual interviewees, as they answered more in-depth

questions than focus group participants did concerning their individual experiences of labour exploitation. The views of focus group participants were nevertheless integrated across all chapters of the report. Furthermore, differences in gender, residence status, country of origin (EU and third countries) and economic sectors were considered when analysing the data, and commented upon where illuminating.

FRA also conducted some desktop research, for example concerning risk assessments of economic sectors in which workers are at higher risk of severe labour exploitation. A comprehensive description of the methodology can be found in [Annex I](#).

Recognising the limits of the sample

To reach and interview exploited migrant workers, who often remain isolated, invisible and fearful of the authorities (especially when they have an irregular residence status), the workers interviewed for this research were identified and contacted through gatekeepers. Gatekeepers included support services as well as third parties who helped workers in the aftermath of labour exploitation. Therefore, there is an inherent research bias, as it cannot be assumed that the overall population of migrant workers who may experience labour exploitation come into contact with support services.

Legal framework

There is no uniform supranational legal framework regulating severe labour exploitation, meaning those forms of labour exploitation which are criminal or could be criminalised under EU law. At the same time, several international, Council of Europe and EU law instruments relate to issues which emerged from the field research.

Many of the issues that this report covers fall under the scope of EU law. It is on those issues that FRA's analysis focuses. FRA takes the Charter of Fundamental Rights of the European Union as the starting point for its analysis of relevant EU law provisions.

International law

Historically, international and European human rights law relating to labour exploitation addressed specific phenomena, such as slavery, servitude, forced labour and, more recently, trafficking in human beings.¹⁵ In parallel, labour law standards emerged in the framework of the ILO to promote decent working conditions, including safety and health at work.

This report uses selected ILO instruments and Council of Europe standards, where they complement EU law in a significant way. This is the case, for example, with the ILO Domestic Workers Convention of 2011.¹⁶ For an overview of relevant standards, the reader can consult FRA's 2015 report on *Severe labour exploitation – Workers moving within or into the European Union*.¹⁷

EU law: the treaties

According to Article 153 of the TFEU, the EU supports and complements the activities of EU Member States in different fields relating to work, including working conditions, social security and social protection of workers, conditions of employment for third-country nationals legally residing in Union territory, and equality between

men and women with regard to labour market opportunities and treatment at work.

Under Article 79 of the TFEU, the EU must adopt measures to combat trafficking in human beings, a crime that Article 83 of the TFEU lists among those criminal offences for which the EU may establish minimum rules.

Whenever EU Member States act within the scope of EU law, the EU Charter applies. The Charter prohibits slavery, forced labour and trafficking in human beings in Article 5. Its Article 31 entitles every worker to fair and just working conditions. These two articles together with the provision on human dignity in Article 1 of the Charter are the starting point for the analysis in this report.

Secondary EU law: an overview

The severe exploitation of workers who have moved within or into the EU is located at the intersection of EU social policy, freedom of movement, migration policy, criminal justice and the rights of victims of crime. As illustrated in **Figure 2**, several directives in various areas of EU law – covering both EU and third-country nationals to various extents – are of relevance for this report.

Secondary EU law applying to workers regardless of nationality

Horizontal EU law instruments relating to working conditions apply to all workers, regardless of their nationality. This is the case of the Working Time Directive,¹⁸ for example, which entitles workers to minimum periods of daily rest and annual leave, breaks and maximum weekly working time.

The same applies to instruments which regulate the rights of specific categories of workers, namely the Temporary Agency Work Directive,¹⁹ establishing the principle of equal treatment for temporary agency workers and prohibiting the charging of fees to workers, and the revised Posted Workers Directive.²⁰ This directive covers situations in which workers, for a limited period, carry out their work in the territory of a Member State other than the state in which they normally work. The revised directive introduces the principle of “equal pay for equal work” between posted and local

¹⁵ United Nations (UN), International Labour Organization, Convention concerning forced or compulsory labour No. 29, 28 June 1930; United Nations (UN), International Labour Organization, Protocol of 2014 to the Forced Labour Convention, 11 June 2014; United Nations (UN), Slavery Convention, 25 September 1926; United Nations (UN), Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others, 25 July 1951; United Nations (UN), International Labour Organization, Convention (No. 105) concerning the abolition of forced labour, 25 June 1957; United Nations (UN), United Nations Office on Drugs and Crime, Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime, 15 November 2000.

¹⁶ United Nations (UN), International Labour Organization, Domestic Workers Convention, 16 June 2011.

¹⁷ FRA (2015), *Severe labour exploitation – Workers moving within or into the European Union*, Luxembourg, Publications Office, Chapter 1.

¹⁸ Council Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time, OJ 2003 L 299 (Working Time Directive).

¹⁹ Council Directive 2008/104/EC of 19 November 2008 on temporary agency work, OJ 2008 L 327 (Temporary Agency Work Directive).

²⁰ Directive of the European Parliament and of the Council 2018/957 of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ 2018 L 957 (revised Posted Workers Directive).

Figure 2: Main EU directives relevant to severe labour exploitation

| Transparency | Social Policy | Freedom to Provide Services | Free Movement of Workers | Migration Policy | Asylum Policy | Criminal Justice |
|--|--|---|---|--|--|---|
| Consumer Rights Directive Directive 2011/83/EU | Working Time Directive Directive 2003/88/EC | Revised Posted Workers Directive* Directive 2018/957 | Free Movement of Citizens Directive Directive 2004/38/EC | Employer Sanctions Directive Directive 2009/52/EC | Reception Conditions Directive Directive 2013/33/EU | Residence Permit Directive (Victims of trafficking) Directive 2004/81/EC |
| Public Procurement Directive Directive 2014/24/EU | Temporary Agency Work Directive Directive 2008/104/EC | Enforcement Directive Directive 2014/67/EU | Free Movement of Workers Regulation 2011/492 | Single Permit Directive Directive 2011/98/EU | Qualification Directive Directive 2011/95/EU | EU Anti-Trafficking Directive Directive 2011/36/EU |
| Disclosure Directive Directive 2014/95/EU | | | Facilitation Directive Directive 2014/54/EU | Seasonal Workers Directive Directive 2014/36/EU | | Victims' Rights Directive Directive 2012/29/EU |

Note: * Transposition deadline not yet expired (30 July 2020).

Source: FRA, 2019

employees. The Enforcement Directive complements the Posted Workers Directive,²¹ and aims to strengthen practical application by addressing issues related to fraud, circumvention of rules and exchange of information between the Member States. For this research, posted workers were interviewed in Belgium.

In addition to this existing legal framework, two relevant developments which will – if enacted – have an impact on working conditions deserve to be highlighted.

- In December 2017, the European Commission proposed a Directive on transparent and predictable working conditions addressing insufficient protection for workers in more precarious jobs.²² According to the proposal, all workers in the EU should have the right to receive more complete information (in writing) on the essential aspects of the work.

- In March 2018, the European Commission proposed a regulation to set up a new EU agency: the European Labour Authority.²³ FRA's reports have highlighted that effective labour inspections and checks are a crucial means to fight against labour exploitation. The new authority will facilitate access for individuals and employers to information on their rights and obligations, and support cross-border enforcement of relevant Union law including facilitating joint inspections.

Also applicable to all workers, whether they are EU nationals or not, are those legal instruments which relate to criminal justice. This is particularly the case for the Victims' Rights Directive and the EU Anti-Trafficking Directive. The EU Anti-Trafficking Directive contains a number of provisions for the protection of victims of trafficking in human beings.

21 Directive of the European Parliament and of the Council 2014/67/EU 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, OJ 2014 L 159 (Enforcement Directive).

22 European Commission (2017), Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union COM(2017) 797 final, Brussels, 21 December 2017.

23 European Commission (2018), Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority, COM(2018) 131 final, Strasbourg, 13 March 2018.

Connection to trafficking in human beings

The EU Anti-Trafficking Directive, the EU strategy towards the eradication of trafficking in human beings 2012–2016*, the follow-up to this strategy and the progress reports** under Article 20 of the EU Anti-Trafficking Directive include extensive information on trafficking for the purpose of labour exploitation. Indeed, a number of interviewees were either identified by authorities as victims of trafficking in human beings or referred to as such by victim support services who facilitated the interview. Interviewees who were recognised as victims of trafficking experienced more types of labour exploitation than interviewees who were not recognised as victims of trafficking.

This report can aid and inform analysis of current trends in trafficking in human beings and emerging concerns, and point to progress in identifying, assisting, supporting and protecting victims. FRA's report on labour inspections finds that there is a need for labour inspectors to receive adequate training to be able to identify instances of trafficking in human beings and highlights the importance of labour inspections as a tool for identifying and recognising victims of trafficking.*** The short paper "Out of sight – Migrant women exploited in domestic work" recognises that domestic work is a sector in which victims of trafficking end up being exploited and illustrates the need for more monitoring and reporting.****

* European Commission (2012), *EU strategy towards the eradication of trafficking in human beings 2012–2016*, COM(2012) 286 final, Strasbourg, 19 June 2012.

** European Commission (2017), *Communication from the Commission to the European Parliament and the Council (2017) reporting on the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions*, COM(2017) 728 final, Brussels 4 December 2017; European Commission (2018), *Second report on the progress made in the fight against trafficking in human beings (2018) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, COM (2018) 777 final, Brussels 3 December 2018.

*** FRA (2018), *Protecting migrant workers from exploitation in the EU – Boosting workplace inspections*, Luxembourg, Publications Office

**** FRA (2018), *Out of sight – Migrant women exploited in domestic work*, Luxembourg, Publications Office.

Secondary EU law applying to workers who are EU nationals

The free movement of persons regulated in the Free Movement of Citizens Directive²⁴ is one of the four fundamental freedoms of the EU. The Free Movement of Workers Regulation²⁵ regulates workers' rights to equality of treatment with local workers in respect of any conditions of employment and work in a Member State other than that of their nationality (Article 7). The rights granted to EU nationals are extended to nationals of the European Economic Area and to Swiss nationals.²⁶

Secondary EU law applying to third-country nationals

Either national or EU law regulates the admission of third-country nationals to the labour market and their rights and obligations.

EU law notably establishes a uniform format of residence permits which EU Member States issue to third-country nationals²⁷ and sets the conditions of entry and residence for certain categories of migrant workers, as well as their rights during their stay. These standards are set forth in various directives on legal migration.

Among them, the Seasonal Workers Directive²⁸ is particularly relevant to economic sectors at risk of exploitation, such as agriculture, horticulture and tourism. It grants seasonal workers equal treatment with nationals of the host Member State in relation to terms of employment, working conditions, including pay and dismissal, working hours, leave and holidays, and health and safety requirements in the workplace. Equal treatment also applies to back payments (Article 23). Under the directive, Member States must also require evidence that the worker will benefit from accommodation ensuring an adequate standard of living (Article 20).

24 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.

25 Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ L 141, 27.5.2011, p. 1–12.

26 Agreement on the European Economic Area, OJ L 1, 3.1.1994; Agreement with the Swiss Federation: free movement of persons, OJ L 114 of 30.4.2002.

27 Council Regulation (EC) No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, OJ L 157/1, as amended by Council Regulation (EC) No. 380/2008 of 18 April 2008 amending Regulation (EC) No. 1030/2002 laying down a uniform format for residence permits for third-country nationals, OJ L 115/1, and by Regulation (EU) 2017/1954 of the European Parliament and of the Council of 25 October 2017 amending Council Regulation (EC) No. 1030/2002 laying down a uniform format for residence permits for third-country nationals, OJ L 286/9.

28 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014, OJ 2014 L 94.

The Single Permit Directive complements the instruments applying to specific categories of workers.²⁹ It sets out a common set of rights for all other third-country national workers legally residing in an EU Member State, irrespective of the purposes for which they were initially admitted. Article 12 of the directive grants equal treatment with nationals of the EU Member State in which they reside in relation to working conditions, as well as freedom of association and membership of trade unions.

Third-country nationals who have been residing in the EU for more than five years, and fulfil certain criteria, are entitled to long-term residence permit under the EU Long-Term Residence Directive.³⁰ Under the directive, third-country nationals enjoy the same treatment and rights as nationals in access to employment.

The EU asylum *acquis* regulates access to employment and working conditions of asylum applicants and beneficiaries of international protection. Pursuant to the Qualification Directive,³¹ refugees and subsidiary protection status holders are authorised to engage in employment under the general rules for the profession or public service. When they work, the laws in force in the Member State apply with regard to remuneration, social security and working conditions.³² Under the Reception Conditions Directive,³³ applicants for international protection

are entitled to access the labour market in, at the latest, nine months from their application.³⁴

Finally, the Employers Sanctions Directive³⁵ prohibits the employment of third-country nationals who do not have the right to stay in the EU, setting sanctions against employers who infringe that prohibition. However, a second component of the Employers Sanctions Directive emphasises the rights of workers to back payments to be made by employers (Article 6) and to the facilitation of complaints (Article 13). Article 9 obliges EU Member States to criminalise situations where third-country nationals in an irregular situation are subjected to "particularly exploitative working conditions". Under Article 13, EU Member States shall define the conditions under which they may grant residence permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved in cases of criminal offences regarding particularly exploitative working conditions.

To sum up, the subject matter that this report analyses relates to a significant number of EU law instruments, ranging across various fields of EU law. The report's findings can support the work on many of the instruments listed in this section, for example when the European Commission evaluates their implementation by EU Member States. For some of these policy files, this report contains specific opinions.

29 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure 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 2011 L 343.

30 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16.

31 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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, OJ L 337/9.

32 Qualification Directive, Art. 26.

33 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.

34 Reception Conditions Directive, Art. 15.

35 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.

1

Pathways into severe labour exploitation



KEY FINDINGS

- Most interviewees found the job in which they were exploited through personal networks, including friends, family members and acquaintances, often with the same nationality or language as the worker, who were knowingly or unknowingly involved in the labour exploitation.
- There seems to be no clear link between the way the job is found and the severity of the labour exploitation experienced, in other words similar exploitative labour conditions are experienced when a friend or an employer suggested a job. The exception is recruitment agencies.
- While some recruitment and private employment agencies are legally compliant organisations, others are involved in deceptive recruitment practices and severe forms of labour exploitation. They link up workers with exploitative employers and jobs, charge high and illegal recruitment fees, deceive workers by promising either jobs that do not exist or conditions (e.g. legal residence) that are not then guaranteed once the worker arrives in the Member State, and/or rely on a complicated system of subcontracting and intermediaries.
- Reliance on agencies is more frequent among seasonal workers including those under national schemes, posted workers and domestic workers.
- As is clear from the workers' testimonies and also confirmed by professionals interviewed for the 2015 report, there is an increased risk of (severe) labour exploitation when workers are dependent on agencies for visas, transport, accommodation and information about the nature of the work.
- Almost two thirds of the interviewees recruited via agencies were later recognised as victims of trafficking in human beings. This shows the major role that unscrupulous agencies can play in the exploitation of workers in the EU.

There are different ways for people to end up in situations of severe labour exploitation. A person may on his or her own initiative move to another country and consequently be exploited. Other persons may have relied on the services of recruitment agencies. Often, people are lured into jobs by acquaintances, intermediaries or agencies, with the promise of a decent salary and good working conditions, but end up being exploited. This chapter looks at how workers found the job in which they were exploited. According to the experiences of the workers interviewed, there are six main ways they ended up in exploitative working conditions:

1. Personal networks: they find jobs through friends, relatives, former employers or other workers.
2. Agencies: workers find jobs through a recruitment agency, a temporary agency or subcontractor, that is, any person or any company to whom the execution of all or part of the obligations of a prior agreement/arrangement is assigned.
3. Pick-up spots: employers pick up day labour from known locations, for example at the roadside.

4. Finding the job themselves: workers find jobs by directly asking in a shop or by distributing their CVs.
5. Online recruitment: they find jobs by searching online or through social media.
6. Other channels: for example, workers are recruited by the prospective employer on the street; or non-governmental organisations (NGOs) or civil society organisations find the jobs for them.

More than half of the interviewees gained access to the jobs in which they were exploited through personal networks. Almost one in every five interviewees were recruited through recruitment or temporary agencies, while 10 % found the jobs themselves by, for example, directly asking in a shop. The remainder found them through the internet (6 %), were recruited at pick-up spots (4 %) or found the job in other ways (11 %) (see Figure 3). These trends are similar across all employment sectors and across Member States.

Generally speaking, there seems to be no correlation between type of recruitment and the different situations of labour exploitation or the severity of the exploitation experienced, except for recruitment agencies (see Section 1.2).

Almost half (46 %) of the jobs were found by the interviewee in the EU country where the exploitation took place and slightly more than a third (36 %) in the home country. This finding also shows that, in (at least) one third of the cases, severe labour exploitation is experienced when taking up the first job upon arrival in the EU. Therefore, efforts to prevent labour exploitation should (also) target newly arrived migrants.

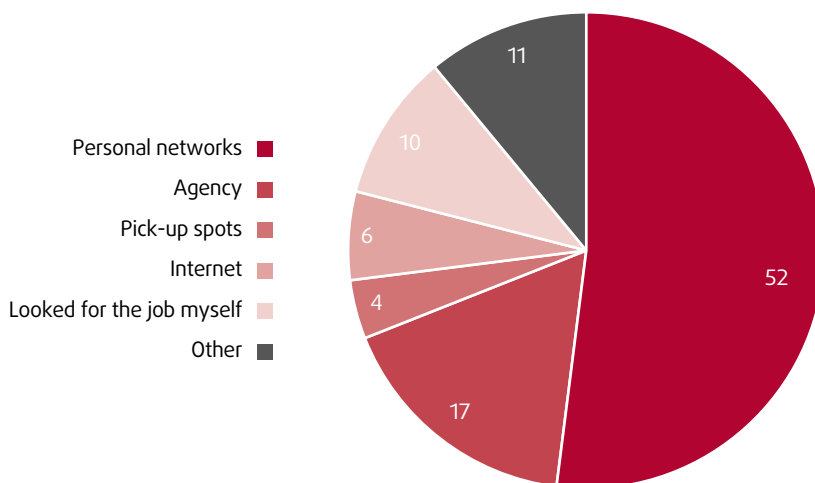
A few interviewees (6 %) found the job while living in countries other than the one where the exploitation occurred. For example, all but two of the 10 domestic workers interviewed in the United Kingdom were working in Middle Eastern countries as domestic workers and later moved (often were brought by their employers) to the United Kingdom.

Some differences among EU Member States can be observed in this regard. In the United Kingdom, Poland and the Netherlands, more than half (between 50 % and 90 %) of the workers found the job where the exploitation occurred in their home country; in the remaining countries that the research covered, half or more of the workers found the job in which exploitation occurred in the EU country where they were working.

As shown in Figure 4, recruitment in the home country was most common in agriculture and domestic work; this could reflect the presence of legal migration schemes to the EU for workers employed in these sectors or the existence of an active business of recruitment agencies in these economic sectors. In manufacturing, the workers found the job in almost equal numbers in the home country and in the country of exploitation. In all other sectors, most interviewees found the exploitative job while already in the EU. For instance, three quarters of those working in hospitality were recruited in the EU country where the exploitation took place.

Note that the majority of third-country nationals interviewed who had irregular status at the time of exploitation were recruited while already in the EU.

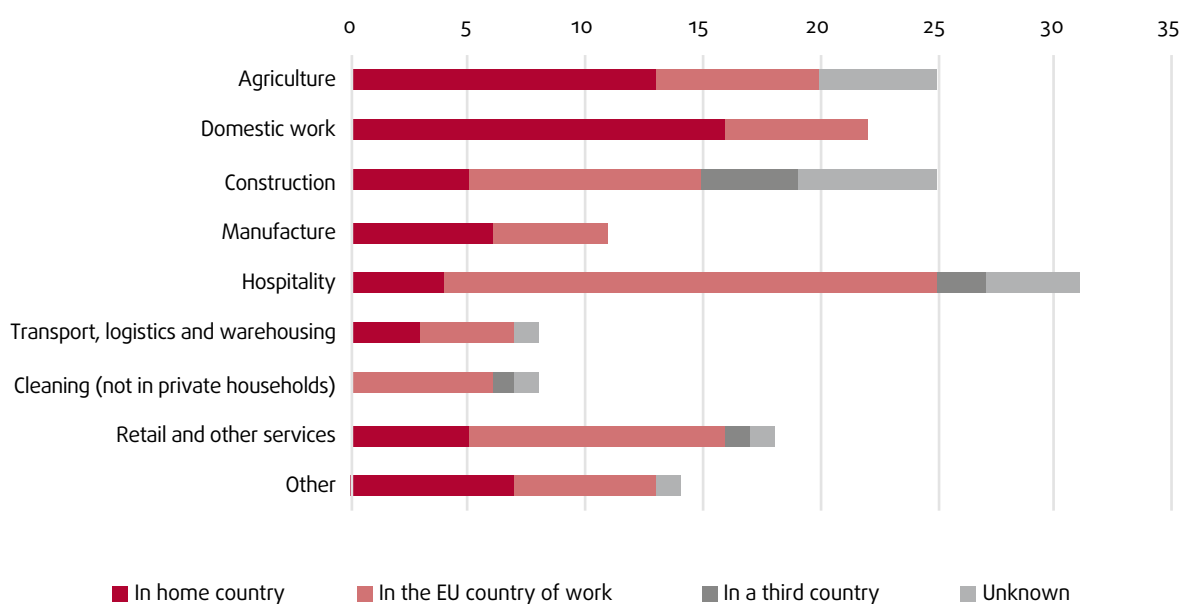
Figure 3: Ways interviewees found the jobs at which the exploitation occurred (%)



Notes: Question: 'How and where were you recruited?'. The graph summarises the answers given by 157 of the 162 respondents; five respondents did not know/did not reply and are excluded from the chart.

Source: FRA, 2019

Figure 4: Where recruitment took place, by economic sector (absolute numbers)



Notes: Question: 'How and where were you recruited?' The graph summarises the answers given by 143 respondents; an additional 19 interviewees did not know/did not reply and are excluded from the chart.

Source: FRA, 2019

1.1. Role of personal networks

Almost half of the interviewees found the exploitative job through personal networks. This was the most common channel of recruitment across all Member States. Within this category, friends and relatives were most commonly named as a source for information about the job. To a larger extent, this kind of informal recruitment took place in EU Member States more often than in third countries. Interviewees very often asked friends or acquaintances for support in looking for work in the EU Member State where they were living, and experienced various forms of labour exploitation. Friends and other acquaintances were often of the same nationality or spoke the same language as the interviewees and often had no apparent connection to the exploitative employer.

For instance, a woman who left Cape Verde because of poor economic and living conditions migrated to Portugal, where she had relatives. She arrived in Portugal with a tourist visa and stayed with her aunt, where, through an acquaintance of her relative, the interviewee was referred to and recruited by a company caring for elderly people at their homes. However, once she started working, she found out that the conditions were not as promised.

Another interviewee from Bulgaria learned from a friend about a job opportunity in Germany as a construction worker. The friend mentioned the possibility

of good earnings. The interviewee and his co-workers drove together to Munich, where they met their employer. However, once he started working, he was severely exploited.

"I had been unemployed for the entire winter, and I was looking for a job. [T]he construction site was very far but I accepted the job anyway because I needed work."

(Germany, male interviewee from Eastern Europe, construction, EU national)

However, a small number of interviewees had clearly been recruited by people they knew and trusted who were involved in the exploitation. In the Netherlands, three interviewees found out that the acquaintances helping them to find a job were themselves involved in the exploitation, which added to their feeling of betrayal. One of these cases was particularly severe, as it involved child exploitation and serious threats. An Eastern European woman from a EU country was recruited – together with her husband – by a relative she had grown up with (a cousin of her sister's husband) to work as an agricultural worker in the Netherlands. She asked the relative if she could bring her two children (14 and 17 years old), who would stay with her there. The relative charged her EUR 300 for the job mediation, and EUR 10 per day per person for the accommodation. He also charged her for the children, and requested that the older one work. They were paid much less than promised. The woman and her family were later dismissed after challenging the employer.

"I do not even want to talk about this man, because I suffered so much because of him, you cannot imagine. He brought so much damage to us, you have no idea how it was [...]. There were days we did not have food. If I come across that man one day, I don't know what I will do to him. I am very angry."

(Netherlands, female interviewee from Eastern Europe, agriculture, EU national)

These interviewees ended up in a situation of labour exploitation by trusting people they had previously established a relationship with; arguably, the sense of security given by personal networks aggravated the extent of the exploitation they experienced, as shown by the case of the woman above who, on trust, also brought her children with the promise they could stay with her in the accommodation but found that they also ended up being exploited.

Severe labour exploitation in the context of exploitative sham marriages

Trafficking for labour exploitation can happen in the context of a sham marriage between a third-country national and an EU national, with the victims being lured with false promises and opportunities, as exemplified by two interviewees in France. In one case, the victim was a man and the perpetrator his wife; in the second case, the victim was a woman and the perpetrator her employer.

The first case involves a Moroccan man who married a Moroccan woman with French nationality in Morocco. Once married, she persuaded him to move to France with the promise that he would find a better job there. The man, once in France, ended up being exploited by his wife and brother-in-law, who obliged him to work all day in their shop as well as at home (cooking and cleaning for the three of them). He could not leave the exploitative situation because he depended on his wife for the residency permit.

In another case, a Moroccan woman was offered a job as a domestic worker by another Moroccan woman with French nationality. She first worked for the employer in Morocco and then moved with her to France, after being promised adequate medical treatment for a foot injury. The employer organised a fake marriage so the interviewee could get a visa to France. Once in France, the woman worked as a domestic worker and was severely exploited by her employer. The 'husband', whom the woman met only twice, was never involved in the labour exploitation. The employer did not allow the woman to seek healthcare for her injured foot, once in France.

1.2. Role of recruitment agencies, gangmasters and intermediaries

Recruitment agencies

Almost one fifth of the interviewees were recruited for the jobs in which they ended up being exploited through recruitment or temporary agencies. Agencies were used in the Netherlands, Poland, Portugal and in the United Kingdom and, to a lesser extent, France. In most cases, these agencies were located in third countries (e.g. in order of predominance, in the Philippines, Sri Lanka and Indonesia); in fewer cases, they were in the EU Member State in which workers ended up being exploited. For example, in the United Kingdom the majority of domestic workers were recruited in the Philippines by a recruitment agency specialising in sending Filipinos to work abroad. Often recruitment and temporary agencies located in third countries have branch offices in EU countries or they might cooperate closely with intermediaries ready to exploit workers. These findings confirm the results of previous reports on the relevance and pervasiveness of recruitment practices that do not respect the human rights of migrants.³⁶

The fieldwork research identified various combinations of the following recruitment practices as typical situations of involvement of agencies in (severe) labour exploitation of workers moving within or into the EU in employment relationships. Often more than one of these forms was present:

- high recruitment fees;
- deception such as:
 - promising jobs that do not exist once the worker reaches the EU Member State of destination
 - promising working conditions which are not met
 - promising to apply for a visa or to regularise the legal status of workers once in the EU Member State without fulfilling this;
- smuggling (through irregular border crossing or visas arranged on false documents);
- debt bondage;

³⁶ Eurofound (2018), *Regulation of labour market intermediaries and the role of social partners in preventing trafficking of labour*, Luxembourg, Publications Office; United Nations Special Rapporteur on the human rights of migrants (2015), Report of the Special Rapporteur on the human rights of migrants, A/70/310, 11 August 2015.



- the agency being part of a complicated system of subcontracting which decreases transparency, accountability and liability.

The findings show that workers have a considerable dependency on agencies, as they rely on them for a number of services including visas or other residence documents, transport, accommodation and information about the nature of the work, often in exchange for very high fees, as the following example shows. An interviewee was recruited via an agency in Southern Asia, arranging for people to work in agriculture in Portugal. The agency arranged his aeroplane ticket and assured him of work and regular migration status as a foreign worker in Portugal. The agency charged him a very high fee of EUR 9,000. The person who recruited him and the person who received him in Portugal were in contact with each other; the interviewee was then provided with a job for which the salary was considerably less than what the agency promised. This example also points to collusion between labour brokers in origin and destination countries.

The sectors of agriculture and domestic work rely more often on recruitment agencies than other sectors. The vast majority of interviewees recruited via agencies were of third-country origin and more than half of them were female, which is related to the fact that many domestic workers (who were all female) were recruited via agencies. Agencies were often used by workers in the context of legal migration schemes such as seasonal work and posted work. Almost two thirds of the interviewees recruited via agencies were later recognised as victims of trafficking in human beings; this shows the major role that unscrupulous agencies can play in the exploitation of workers in the EU.

Interviewees who had used a recruitment agency revealed some forms of abuse or fraud already at the recruitment stage. Recruitment agencies were described as fraudulent especially by interviewees working in the Netherlands, Poland and Portugal. Because of the high fees of agencies, the indebtedness that often results and the need to repay the debt often drives workers to accept exploitative working conditions. Recruitment agencies are prohibited by law from charging employment-related fees to workers (see box).

Unlawfulness of agencies collecting employment-related fees from workers

According to Article 1 (3) of the Council of Europe's revised European Social Charter, the right to work implies the obligation of States Parties to "establish or maintain free employment services for all workers". Accordingly, Article 29 of the EU Charter of Fundamental Rights grants to everyone the right of access to a free placement service.

As regards private employment agencies, Article 7 (1) of the ILO Private Employment Agencies Convention establishes the clear rule that such "agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers". Hence it is the employers who should bear the costs of employment services. As FRA found in its previous report on labour exploitation (2015), "exceptions to this rule for workers seeking jobs that neither require sophisticated skills nor entail managerial responsibilities are hardly acceptable."* In line with this, FRA adopted the opinion that "EU Member States should enhance the monitoring of recruitment agencies and ensure that legal regulations prohibiting the collecting of fees from the workers are enforced."

* FRA (2015), *Severe labour exploitation – Workers moving within or into the European Union*, Luxembourg, Publications Office, p. 18.

In Poland, 'national seasonal workers' need to obtain a statement by an employer who declares his or her intent to employ the worker for up to six months. At the time of the research, Poland had not implemented the Seasonal Workers Directive (2014/36/EU). 'Seasonal work' then referred to work performed in any sector of economy by citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine, based only on the employer's statement registered at the labour office regarding the intention to employ the person. Recruitment agencies acquired employers' statements in great numbers and arranged visas for 'national seasonal workers'. However, some workers reported finding out there was no job to wait for them once in Poland.

"They [Ukrainian agencies] place an order in Poland, they work with somebody here who issues false declarations [fake statements of intent to employ a person]. Another company, which may not even exist, may send invitations. They just lie that over there there is such a great job, with such good conditions, that it will be such a pay cheque. And when we're here, there's nothing there, it does not exist."
(Poland, female interviewee from Eastern Europe, manufacturing, non-EU national)

Seven out of eight interviewees who had used a recruitment agency to find a job in Poland revealed some forms of abuse already at the recruitment stage, including

charging high fees (between USD 250 and USD 500 in the case of Ukrainians and about EUR 3,000 in the case of Filipinas), arranging visas based on false documents and/or directing workers to exploitative employers.

In Portugal, an interviewee from Southern Asia working in the agricultural sector used an agency which offered a contract for two years and the regularisation of his legal status after one year, in exchange for EUR 6,700. The agency also promised to pay him the minimum wage, even if he was not employed for all of this time. When he arrived in Portugal, it took him some time to get in touch with the agency, which then shared with him a few job proposals with the possibility of signing a work contract. None of the other promises was kept. For example, when he decided to leave his first job, the agency did not pay him a minimum wage during his time of unemployment, as had been promised, nor did the agency act to regularise his legal status. The worker had to engage a lawyer to do that.

Debt bondage in the context of trafficking for labour exploitation

An interviewee later recognised as a victim of trafficking in human beings came to the United Kingdom to reunite with his father. However, his relocation was conducted by a criminal network of traffickers to whom he became debt-bonded. The respondent had received very little money and had to accept the work he was given in a Chinese takeaway, as it was being used to pay his debt.

“Yes, I had problem with pay with the Chinese takeaway because I wasn't paid at all for the work that I had done; they told me that all the money I had earned would go to pay the debt that I and my family owed. They gave me GBP 30 or GBP 40 a week, or less than that, to buy cigarettes and some personal clothing.”

(United Kingdom, male interviewee from South-eastern Asia, hospitality, migrant in an irregular situation at the time of exploitation)

In Poland, it was reported that first-time workers take what they are offered and tend to end up in the situation

of severe exploitation, which especially applies to those who have used the services of a recruitment agency or an intermediary. According to a 'national seasonal worker' employed in construction, their chances of getting a better job improve as time passes:

“People who come here knowing nothing, rush to places they manage to find. In any case, you have to be prepared to find a job where you will be tricked. I came to Poland through some kind of intermediary, so I realised that I wouldn't last in that job for a long time. I got PLN 320 [about EUR 75] for 21 working days at my first workplace; later I found a second and then a third workplace. I've been working for a year and a half in my fourth workplace.”

(Poland, male focus group participant from Eastern Europe, construction, non-EU national)

Fewer cases involved agencies operating (only) in the EU country of exploitation. For example, an African woman approached a private employment agency while already in France. The agency placed her in a hotel job and handled the salaries of the employees. The interviewee was later exploited by, among others, withholding her salary.

Gangmasters

Besides recruitment agencies, so-called 'gangmasters' (licensed labour providers and employment agencies who provide workers for the agriculture, forestry, horticulture, shellfish-gathering, and food-processing and -packaging sectors – see glossary) play an important role in recruiting individuals into labour exploitation in the United Kingdom, where the majority of interviewed European workers were recruited by gangmasters either in their home country or through people who introduced them to the gangmasters in the United Kingdom. The majority of Polish workers who were exploited in the United Kingdom were exploited by Polish gangmasters, the most common situation being gangmasters controlling workers' bank accounts, or having wages paid directly into their own accounts. Document frauds were also reported, with interviewees having their passports stolen and later sold by gangmasters.



Promising practice

ILO General principles and operational guidelines for fair recruitment (2016)

The ILO has established general principles and operational guidelines for national governments and other organisations to promote and ensure fair recruitment. The principles include:

- no recruitment fees or related costs should be charged to workers;
- regulation of employment and recruitment activities should be clear and transparent and effectively enforced;
- the role of the labour inspectorate and the use of standardised registration, licensing or certification systems should be highlighted;
- the terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements.

See ILO (2016), General principles and operational guidelines for fair recruitment, Geneva, ILO.

Subcontracting and outsourcing

Another aspect raised in the context of recruitment agencies was complicated and opaque structures of subcontracting or outsourcing. For example, in Belgium, a quarter of the interviewees were recruited by intermediaries/agencies. All of them had regular status, including (third-country national) posted workers and EU citizens. This setting involved a series of sub-employers, which resulted in fragmented and unclear rules, responsibilities and liabilities, which makes it difficult to identify the persons responsible for the exploitative work situation.

A good example of the functioning of this complicated web of intermediaries is the case of two Filipino posted workers interviewed in the Netherlands. They signed a contract in English with the Filipino recruitment agency and upon arrival in the EU signed a contract in Slovak with the Slovak company. Yet, in reality, the Slovak company existed only on paper, to ensure that these two migrant workers could work for a transport company in the Netherlands for a Slovak wage.

Promising practice

Online initiative to help workers identify reliable recruitment agencies

"RecruitmentAdvisor" is an online platform for workers from Indonesia, Nepal and the Philippines to review recruitment agencies in their country and share their employment experiences. The platform also offers country-specific information about workers' rights when looking for a job abroad. Developed by a group of unions and national organisations from Indonesia, Nepal and the Philippines, and assisted by the ILO and the Migrant Forum in Asia, the platform allows workers to post reviews of their experiences with different recruiters. The purpose of the platform is to empower and protect workers, and promote fair recruitment processes.

For more information, see the platform's website.

1.3. Pick-up spots

Another pathway to work and subsequent labour exploitation is through known 'pick-up spots', mostly for workers in an irregular situation. They were mentioned in Belgium, France and Italy. A 'pick-up spot' is a known location, for example at the roadside, from which employers or intermediaries pick up day labour. All the workers reporting on this kind of recruitment practice were male, of third-country origin and working in construction and agriculture.

Third-country nationals with an irregular status considered pick-up spots an important resource for finding jobs. It was reported that those looking for work wait on the street for future employers to pass by and to offer them a specific job, often for one or more days, in different sectors (e.g. construction, house removals, gardening). When picked up from these locations, the workers do not know where they are being taken, whether or not they work for a company that really exists, or how much and when they will be paid.

"Usually we used to go to the pick-up spot and 'the Italian' picked us up to work, because it was the normal way for us immigrants to get a chance to work in Italy. We stayed there and sometimes you can't even negotiate the price, because you need money to buy food and so you are obliged to [accept any amount] that he proposes to you."

(Italy, male focus group participant from Sub-Saharan Africa, agriculture, regular migrant at the time of exploitation)

One interviewee in Belgium described the practice of being hired at a pick-up spot as extremely humiliating.

“If I had continued to look for work at the pick-up location for workers without residence documents, I would have lost my dignity. It is like women who sell their body. The bosses, they pass by there to ask for services in painting, electricity, etc.”
(Belgium, male interviewee from Northern Africa, construction, migrant in an irregular situation at the time of exploitation)

The same worker mentioned that illegal jobs are often offered: “with the promise of regularising you, they ask you to sell drugs for example. Or for EUR 10,000, to put boxes from one car into another without knowing what is inside them.”

Some of the workers stated that they would never work through the pick-up system again, because of the precarious working conditions; others considered the pick-up spot an essential means by which workers in an irregular situation could earn enough to survive, even though it resulted in exploitation.

Promising practice

Introducing new legal measures to counter illegal intermediation (*caporalato*)

A trade union report published in 2018 estimates that in the Italian agriculture sector there are between 400,000 and 430,000 workers employed through illegal intermediaries (*caporali*) and at risk of labour exploitation. Italy banned the *caporalato* system in 2011. On 18 October 2016, the Italian Parliament approved a new bill against *caporalato*. The new legislation introduces innovative measures to eradicate the phenomenon, including sanctions imposed on employers (not only on *caporali*), arrests of employers caught in the act of committing the offence, land requisition, enhanced protection for the victims, organised labour inspections and measures to prevent labour exploitation. According to the Italian police, investigations have increased four-fold since the entry into force of the new law (13 investigations were initiated in 2015 and 10 in 2016, before the law came into force; 39 were initiated in 2017, following its entry into force).

For more information, see Law 199, 29 October 2016 (Legge 199/2016, “Disposizioni in materia di contrasto ai fenomeni del lavoro nero, dello sfruttamento del lavoro in agricoltura e di riallineamento retributivo nel settore agricolo”); Ispettorato Nazionale del Lavoro (2018), Rapporto annuale dell’attività di vigilanza in materia di lavoro e legislazione sociale; Perrone, M. (2017), “Dossier dell’Arma: quadruplicate le indagini sul caporalato”, Il Sole 24 Ore, 7 November 2017; FLAI-CGIL (2018), Quarto rapporto agromafie e caporalato – Scheda di sintesi.

1.4. Online recruitment and other means of looking for a job

In some cases, for example in the Netherlands and in Poland, people found jobs by searching online or through social media. In the Netherlands, three interviewees working in the agricultural sector found the job where they were ultimately exploited by responding directly to the company’s online advertisements, which painted a rather idealised picture of the future work.

An interviewee from South-eastern Asia found an online vacancy advertisement in the hospitality sector in Poland, posted by a hotel in a professional Facebook group for wellness and hotel workers. She reported that she applied for the position because she wanted to come to a European country and be able to travel in Europe. The employer bore the visa and travel costs to Poland, which also encouraged her to apply. However, upon starting work, she found out that the work conditions were not as advertised. She experienced many problems with late and reduced payments, overtime work and misleading information about the contract, and about her accommodation.

One in every 10 interviewees ended up in a situation of labour exploitation when looking for a job themselves, mostly once already in one of the eight EU Member States in which exploited workers were interviewed. This included workers finding the job by directly asking, for example at a shop, or by distributing their CVs or by asking a third person not related to or known by the worker.

The remaining interviewees found jobs in other ways. For example, three interviewees from Morocco were approached in their home country by nationals of that country whom they did not know before and who wanted to bring them to France and employ them there. These interviewees ended up being exploited in France.

Most interviewees went abroad because of economic need or to find better working and living conditions (see Chapter 3). However, some had no intention of migrating. For example, a man from Egypt was severely exploited in construction work by a fellow countryman who smuggled the respondent into France, where the exploiter lived and had a business. The respondent had never considered leaving his country:

“I had never had any intention to leave Egypt but this man was offering me a lot of money and a better life. I hesitated a lot and then I accepted his offer because I realised that it would enable me to make my family’s life better.”
(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

Other recruitment channels included NGOs or assistance organisations that unknowingly referred

interviewees in Germany and Portugal to the exploitative job. This shows how labour exploitation can be a hidden phenomenon.

2

Working and living conditions of exploited workers



KEY FINDINGS

- Almost all interviewed workers received very little (or no) pay for very long working hours.
- The findings point to systematic violation of work conditions, including violation of health and safety regulations with (mainly irregularly residing) workers being requested to perform hazardous tasks with no accident insurance or safety equipment.
- Contracts do not exist in approximately half of the cases. When there are contracts, exploitative employers do not abide by them and workers do not understand their content because they are written only in the language of the EU country of work.
- Criminal forms of labour exploitation were also identified, with workers being requested to perform illegal tasks such as theft and cannabis cultivation.
- Substandard housing and living conditions were a reality for half of the interviewees. They mainly affected workers who had to sleep at the workplace or at the employer's house. These workers were more dependent on the employer, as they relied on the employer for housing, food and transport. Such dependence made them particularly vulnerable to degrading living conditions including lack of bedding, inadequate food and sanitary conditions. Domestic workers were especially at risk of experiencing problems with violation of working and living conditions.

This chapter describes the various forms of labour exploitation that workers experience. They form a continuum of abuses spanning from violation of labour standards to less frequent, but very serious, criminal forms of labour exploitation including child and forced labour.

The interviewees experienced various forms of (severe) labour exploitation, which related to either working conditions or living conditions. Often different forms of exploitation were combined.

- Violations of labour law included:

- pay – almost all workers received pay well below the minimum wage, or no pay at all, and in other instances employers deducted food, accommodation or work-related expenses and social contributions from salaries;
- working conditions including violations of health and safety regulations – almost all workers worked excessive hours, many of them without breaks or holidays, and without the required safety equipment for harsh working conditions;
- work tasks – workers were sometimes asked to perform additional, including illegal, tasks;

- lack of work contracts and other contract-related issues, such as the provision of a contract in a language that workers could not understand.
- Substandard housing and living conditions included lack of bedding, inadequate food and degrading sanitary conditions.

2.1. Violations of labour law

To understand the nature of the abuse experienced, the interviewees were specifically asked if during their exploitative work relationship they faced issues with pay, work conditions, contracts and work tasks. **Figure 5** presents the results.

The most common issues that interviewees faced in situations of labour exploitation were issues with pay and with working conditions. Almost all interviewees experienced problems in both of these areas. Other issues were less widespread but still very recurrent: almost two thirds of the interviewees reported issues with work tasks they had to carry out. More than half of the interviewees faced issues with work contracts (e.g. not having a contract) or other documents they had to sign.

Interviewees in agriculture and domestic work reported suffering a higher combination of simultaneous labour law violations and hence seem to have been affected more severely by labour exploitation than workers in other sectors. This is also true of interviewees whose residence permit is tied to one specific employer, which is quite often the case in the sectors of agriculture and domestic work, and of interviewees seeking international protection.

In addition, interviewees who were recognised as victims of trafficking in human beings were identified as experiencing a higher number of labour law violations than interviewees who were not recognised as victims of trafficking in human beings.

Issues with pay

Article 23 of the Universal Declaration of Human Rights guarantees to “everyone who works the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”. This is reaffirmed with similar wording in Article 7 of the International Covenant on Economic, Social and Cultural Rights. An individual’s future income is also protected under Article 1 of Protocol No. 1 to the European Convention on Human Rights, where it has already been earned or where an enforceable claim to it exists. A number of ILO instruments also reaffirm the principle of equal

treatment in relation to remuneration, which also applies to migrants in an irregular situation.³⁷

The revised Posted Workers Directive introduces better conditions for remuneration for posted workers than in the past by establishing that they receive all elements of remuneration including various allowances if such rules exist in the host Member States (Article 3). The revised directive further prohibits costs such as travel, boarding and lodging from being deducted from workers’ salaries.

Article 6 of the EU Employers Sanctions Directive (2009/52/EC) stresses the employer’s responsibility to pay any outstanding remuneration to the illegally employed migrant as well as an amount equal to taxes and social security contributions. The agreed level of remuneration shall be presumed to be as high as the minimum wage unless proven otherwise.

Article 12 of the Single Permit Directive grants third-country workers equal treatment with nationals with regard to working conditions, including pay and dismissal, as well as health and safety in the workplace.

Despite these provisions in law, almost all interviewees reported having issues with pay, including:

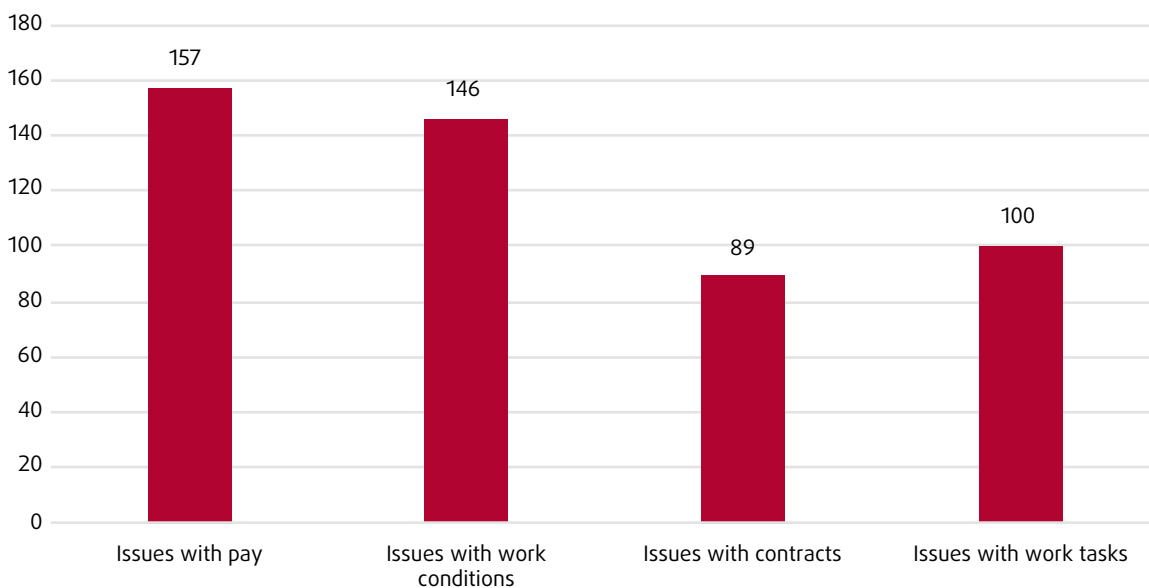
- underpayment, including cutting pay or withholding parts of the pay and paying less than the minimum wage (where present);
- not paying wages at all;
- not paying wages on time;
- deducting food, accommodation or work-related expenses or social contributions from salary;
- not paying during sick or annual leave, when granted.

Underpaying or withholding pay

Almost all workers across the eight EU Member States covered by the research reported that employers did not pay them what was promised. The most recurrent problems relate to employers underpaying workers, by paying them well below the legal minimum wage, not matching pay to the hours worked or simply refusing to deliver outstanding payments:

³⁷ ILO Convention No. 111, Art. 1 (3), ratified by all EU Member States; ILO Migrant Workers (Supplementary Provisions) Convention No. 143, Art. 9 (1).

Figure 5: Labour-related issues faced by interviewees during exploitative work relationship (absolute numbers)



Notes: Question: 'Which of the following problems did you experience in your work situation?'. N=162.

Source: FRA, 2019

"I usually worked more than 200 hours a month but I never received more than EUR 300 and sometimes EUR 200."
(Portugal, male interviewee from Southern Asia, agriculture, regular migrant)

"I felt terrible mentally. I felt I was stuck in this job, that there was nothing else for me besides work, no life. [...] What can a man feel when he knows his papers are unofficial, hasn't got any health booklet and hasn't been paid his weekly wage? What would you feel?"
(Poland, male interviewee from Eastern Europe, hospitality, 'national seasonal worker', non-EU national)

As an illustration, in Poland agricultural workers reported being paid PLN 250 (approximately EUR 58) for one month of tomato picking and PLN 400 (approximately EUR 92) for six weeks of work in restaurants (working 11-17 hours a day with no days off). In Belgium, research participants reported salaries as low as EUR 5 per day.

The majority of the interviewees did not receive the promised salary; they were paid only a part and only from time to time (e.g. EUR 20 here and EUR 100 there). In Germany, the exploitative employers still owed the interviewees amounts between EUR 700 and EUR 15,000. In the Netherlands, almost half of the workers received only pocket money, just enough to survive. Even this amount was sometimes insufficient to buy food.

Not paying wages at all

Some employers did not pay wages at all, which frequently resulted in interviewees being unable to

support themselves, not being able to buy food and having nowhere to sleep.

"One works here, one cannot receive his money. They keep us like dogs, like slaves, we sleep outside, we sleep in a park, we all sleep outside. If he gives us the money, then I can rent a flat for myself."
(Germany, female focus group participant from Eastern Europe, hospitality, EU national)

"The main problem was the salary. We haven't been paid, we have been swindled. The boss did not respect us as human beings. [...] We were not only badly paid, we have not been paid at all."
(Belgium, male interviewee from Northern Africa, construction, posted worker)

Withholding pay was particularly hard for workers who had children or other dependants to support, in the country of origin as well as in the country of exploitation, and who could rely on only this one source of income:

"My situation was much worse because I had my children with me. The rest did not have their children. My children would sometimes not eat."
(Netherlands, female interviewee from Eastern Europe, agriculture, EU national)

Not getting any salary is also particularly difficult for workers who have debts resulting from the migration process and owe money to family members, former employers, intermediaries and/or recruitment agencies.

Deducting food, accommodation or work-related expenses or social contributions from salary

Many workers reported having food, accommodation or work-related expenses (e.g. transport or expenses for working clothes) deducted from their salary, sometimes with no clear understanding of how much would be deducted for what and without these deductions being agreed beforehand. Although these deductions may be legal, the law regulates their application. According to Article 20 (2) (a) of the Seasonal Workers Directive, if the accommodation is arranged by or through the employer, seasonal workers may be required to pay a rent which shall not be excessive compared with the net remuneration and the quality of the accommodation, and the rent shall not be automatically deducted from the wage of the seasonal worker.

"I never knew how much I was going to receive at the end of the month. He [the employer] likes to do as he wants to. They said to me that the food was for free but in the end I had to pay for the food."

(Portugal, male interviewee from Southern Asia, agriculture, regular migrant)

For instance, an interviewee from Southern Asia who moved to Portugal for agricultural work received a maximum amount of EUR 300 per month for more than 200 hours of work. Even so, his employer deducted from his wages the costs of social security payments, taxes, food and accommodation. According to the interviewee, the food was of poor quality and the water was sometimes muddy, while the accommodation was located on the farm, with very bad housing conditions and no electricity. Another woman from an EU country was obliged to live at the workplace when accepting the job at a launderette in the Netherlands. The interviewee was told that accommodation costs were deducted from her salary, but she did not know how much.

Information on money being deducted from the workers' pay is often provided only upon arrival in the country of exploitation, as demonstrated by an agricultural worker in Belgium whose employer deducted money for transport, housing or food from his pay:

"They informed us after we arrived and had been working for a couple of weeks that 'You owe us money for transportation, for commission, for food, for housing. When you get your limit, then we will start paying.'"

(Netherlands, male interviewee from Eastern Europe, agriculture, EU national)

In other cases, employers deducted the social security contributions they were in charge of paying from the salaries of legally employed workers, as reported

in France, Italy, Poland and Portugal. In France, these deductions were particularly high:

"The basic salary is EUR 800. And then he [the employer] said: 'I give you EUR 400, and I keep EUR 400 for your papers, to pay taxes, to declare you.'"

(France, male interviewee from Northern Africa, hospitality, migrant in an irregular situation)

An exploited worker working for a car wash in the Netherlands mentioned that the employers would just withhold money whenever they felt like it, sometimes for arbitrary reasons: for example, something was supposedly stolen and the employees had to pay for it so their money was withheld. The employers would just announce it the day the employees were to be paid, aggravating the worker's precariousness.

Employers used numerous excuses for not paying workers or not paying them on time, including criticism of the quality of work delivered, increased expenses, costs of paying for workers' papers, accommodation, food or travel, the fact that the employers had themselves not been paid, the economic crisis or pretending to put aside the money for the worker.

"At first, I often told him [the employer] he needed to pay me so that I could send money to my family in Egypt. He always replied that he was keeping my money in a safe place so that I didn't worry, and that I had to be patient."

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

Money withheld by intermediaries

Sometimes money was also withheld by intermediaries, most notably in the United Kingdom, where the exploitation of most of the EU workers was by the gangmaster and not at the workplace. The jobs they were doing were legitimate and legal, but they were overseen by a gangmaster who stole their money through fraudulent practices such as gaining access to the interviewee's bank account and transferring the pay.

Similarly, in Belgium, France and Poland, interviewees reported that money was deducted from the salary to pay fees of 'intermediary services' and sometimes traffickers, as reported by two interviewees awaiting a decision on the temporary stay permit as victims of trafficking in human beings.

"What they did was every month take the money from what I receive. It went to their account, and then they took some for themselves and gave me what they wanted."

(France, female interviewee from Sub-Saharan Africa, hospitality, unknown status at the time of exploitation)

Issues of pay relating to migration status

Migration status affected the specific circumstances of labour exploitation that workers experienced. In Poland, several Ukrainian workers mentioned employers' practice of not paying full salaries to 'national seasonal workers' for the last month of work. When workers were about to leave the country because their visas were expiring, the employer used to promise that he would send them the rest of the money later, but he never did. One interviewee mentioned that the defrauded migrants keep coming to the exploitative employer every year because the total payment is still high in their opinion.

Atypical forms of payment and discriminatory pay

Atypical forms of payment increasing workers' precarious employment situations were mentioned. In France, workers were employed on a daily basis; 'piece rate pay' was reported in Germany and Poland, with agriculture, cleaning and food services workers being sometimes paid per room cleaned, per kilogram harvested or per sausage sold, with no basic income, which created severe time pressure and low pay.

Additional issues with pay included lowered payments for national holidays and lack of access to information on how exactly the pay cheque was calculated (Poland). Some workers reported being paid in cash (Germany); professionals interviewed for FRA's 2015 report identified that as a strategy used by employers to avoid any evidence that could be used against them in court proceedings.

Interviewees also raised the issue of employers discriminating between workers in terms of pay, a factor which will be discussed in detail in [Chapter 3](#).

Issues with conditions at work

According to Article 31 of the Charter, every worker has the right to working conditions which respect his or her health, safety and dignity and the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. The EU Working Time Directive³⁸ further specifies that workers have the right to:

- weekly working hours that do not exceed 48 hours on average, including any overtime;

- a minimum daily rest period of 11 consecutive hours in every 24 and a minimum weekly rest period of 24 uninterrupted hours for each seven-day period;
- paid annual leave of at least four weeks per year.

Working conditions were as recurrent as pay issues; almost all interviewees reported having issues with them. Exploitative work conditions included extremely long working hours; the impossibility of taking breaks, even to go to the toilet; very few or no days off; working at weekends; not being allowed to take holidays; working under extremely harsh conditions; not being able to call in sick; and violation of health and safety regulations. The account of an EU national working in the construction sector in Germany exemplifies how multiple aspects of exploitation related to pay and working conditions are experienced in combination: he had to work up to 11 hours a day, sometimes outside when the temperatures were below freezing, in heavy rain or snow, without a break, including at weekends.

Similarly, a worker in the United Kingdom described a full array of appalling working conditions while working in restaurants. The interviewee was expected to work for 12-14 hours a day, finishing at 2 a.m. He was not allowed to take breaks or to use the phone. He worked seven days a week and was not allowed any time off for illness. He was allowed to go to the bathroom to wash at the end of the day (around 2 a.m.). During his work, he suffered minor injury and illness, such as burns from pans or oil, and colds, but was given no medical care.

Excessive and irregular working hours

Excessive and irregular working hours were the most recurrent issue mentioned in relation to working conditions: 80 % of the workers reported this problem.

In Italy, workers in the cleaning sector mentioned working up to 11 or 12 hours a day and 200 hours per month, and agricultural workers mentioned working 12 hours a day, including Saturday and Sunday. In Poland, interviewees in the construction and agriculture sectors mentioned working up to 15 hours a day.

"I finished my work [after midnight] and then I started my work at 9.00 in the morning. I had time to sleep for five hours; of course I was feeling exhausted."

(Portugal, male interviewee from Southern Asia, retail, migrant in an irregular situation)

Extremely long working hours were common to all sectors but especially identified as a condition of live-in domestic and care workers, as expressed by a carer for elderly people working in Poland:

³⁸ Council Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time, OJ 2003 L 299 (EU Working Time Directive).

"I had four days off during these 100 working days in a year. And my working day was 24 hours, because I was sleeping there."

(Poland, female interviewee from Eastern Europe, healthcare, 'national seasonal worker', non-EU national)

Inability to take breaks and days off

Having no days off or almost no days off was another common problem. For example, over a third of interviewees in France and half in Poland reported working seven days a week.

"I was working like 92 hours per week, without any holiday, even on Sundays. Eleven months and not a single day do I have some kind of leave."

(Belgium, male interviewee from Southern Asia, retail, migrant in an irregular situation)

Being unable to take breaks and pauses during the work, even to go the toilet, was identified as an issue in Belgium, Germany, the Netherlands and Poland. For example, one third of those interviewed in Poland mentioned difficulties in taking breaks at work. Agricultural workers who picked strawberries 15 hours per day had only 15 minutes twice a day to take care of their basic needs (eating, going to the toilet), and they were disciplined for any other disruptions in work:

"Honestly, it was like in a concentration camp. If someone went to use the bathroom, they would say, 'You use the bathroom too often.'"

(Poland, female interviewee from Eastern Europe, agriculture, 'national seasonal worker', non-EU national)

One interviewee working for a cleaning company in Portugal clearly testifies that the employer controlled all her movements as well as those of her colleagues, not allowing them to have any breaks:

"No [we could not take breaks]! I said, 'At least, we should have 30 minutes.' [The employer replied] 'You work in the morning, you don't need to have 30 minutes to eat or anything.' It's working, working, working, and full stop. [We could go to the bathroom] In secret! Because he said, 'You do not go to the bathroom for a reason. You go to the bathroom to rest or to save time, to win time.' We did everything hidden from him."

(Portugal, female interviewee from Sub-Saharan Africa, cleaning, migrant in an irregular situation)

For others, the limited opportunities to take a break usually resulted from work overload.

Impossibility of taking sick leave

Not being able to stay home when sick, let alone to be paid during sick leave, was mentioned by the majority

of workers. Many workers reported being threatened with dismissal when requesting sick leave, or simply not even requesting it because of fear of dismissal. Health services were usually sought in extreme cases.

"I have a kidney cyst, 13 cm big, and I suddenly felt sick and I told my manager that I needed to go to the hospital for an ultrasound, and asked whether I could leave early. She give me since fifth floor till the ground floor to clean the stairs and I had to bend. [...] I took this sick note to her and she told me, 'I don't want you to come in any more - stop, finish, go.'"
(United Kingdom, female focus group participant from Eastern Europe, cleaning, EU national)

"I could not leave; I could not take a rest because if I did so I would not perform well. If I left maybe they would give my work to another. I must work well. [...] A supervisor gave me a powder to put in the water to drink but no one said to me to go to the hospital. No one substituted me. I only went there after a week. At that time I couldn't [bend to] pick up fruit any more."

(Portugal, male interviewee from Southern Asia, agriculture, regular migrant)

In Poland, a regularly employed worker mentioned the lack of payments for sick leave despite working under an employment contract. In Portugal, a woman who was working at a restaurant mentioned being requested to sign a document related to the rules of the workplace (but not a contract) according to which the employer would discount EUR 70 if the employee was absent from work regardless of the reason.

Work overload and harsh working conditions

Another common issue faced was work overload, with workers requested to perform tasks which would have required two or three workers to accomplish them. Examples include a carer employed in a home for the elderly in Poland having to take care of six residents, being at their disposal round the clock; farm workers being assigned daily quotas of 2,000 kg of tomatoes per person to pick and transport; and a worker exploited in a meat-processing company:

"I have to feed these 60 people - me alone. Can you imagine how much you have to cook? Two meals. [...] I had to cook in the kitchen and clean up. The office upstairs, the work hall, the corridors, which are very large. You can't imagine how much they dropped on my shoulders. And I have to wash the dishes after these people, after breakfast and lunch. So much work that my hand is stiff."

(Poland, female interviewee from Eastern Europe, manufacturing, 'national seasonal worker', non-EU national)

Many reported working under harsh conditions, with heavy labour (agriculture, transport, laundry facilities, car wash, construction), too cold (agriculture) or too warm (laundry facilities, agriculture). Workers often

mentioned they had to work under very great time pressure, being forced to work hard or fast for longer hours, which they perceived as treating them like slaves.

Workers sometimes mentioned that the work conditions in an employment relationship worsened over time.

Payment of social security contributions

Interviewees in all countries covered by the research also raised the issue of employers not paying social security contributions at all. In some Member States, that might prevent the worker from obtaining or renewing their residence status, as will be discussed later.

In the Netherlands, the majority of the five interviewees who found a job through a recruitment agency located abroad reported that such agencies prevent migrant workers from enjoying full social security rights by not allowing them to work for longer than two years without a half-year break. Being forced to remain in starting positions, the workers do not build up more rights and better dismissal protection, making them more vulnerable to abuse.

Issues with health and safety at work

The Framework Directive on Safety and Health at Work (Directive 89/391) establishes an equal level of safety and health for the benefit of all workers (with the exception of domestic workers), and obliges employers to take appropriate preventive measures to make work healthier and safer. The minimum standards for workplaces are set out in Directive 1989/654/EEC. However, they do not apply to many sectors that are particularly at risk of labour exploitation, including ‘workplaces inside means of transport’ (e.g. drivers), work in fields and woods (i.e. part of agriculture and forestry), work on fishing boats and ‘temporary and mobile work sites’ (e.g. construction sites). Whereas workplaces on temporary or mobile construction sites³⁹ and on fishing boats⁴⁰ are covered by other directives, to date there are no directives on the minimum requirements for workers in the agriculture and forestry sector and for drivers. The employer is, however, obliged to carry out a risk assessment and to respect the general rules on risk prevention, as the Framework Directive is fully applicable.

Violations of health and safety regulations emerged as a common situation of labour exploitation. They were mentioned in all countries and often resulted in accidents causing disability and, in one case, death. The problem was aggravated by lack of accident insurance and employers usually offering no medical treatment.

³⁹ Directive 1992/57/EEC.
⁴⁰ Directive 1993/103/EEC.

Lack of personal protective equipment and health and safety information and training

According to Article 4 (6) of Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace, personal protective equipment shall be provided free of charge by the employer, who shall ensure its good working order and satisfactory hygienic condition by means of the necessary maintenance, repair and replacements. Article 6 (1) of the Framework Directive on Safety and Health at Work (Directive 89/391) introduces an obligation for the employers to take the necessary measures for the safety and health protection of workers, including through provision of information and training.

Construction workers in Belgium, Germany, Italy, Poland and Portugal raised lack of personal protective equipment (including boots, helmets and protective gear) and lack of health and safety instructions and training. Manufacturing workers in Poland reported lack of health and safety training. Workers in Belgium and Italy reported buying their own personal protective equipment. More generally, lack of safety equipment was mentioned in the sectors where such gear is required, including in manufacturing, construction, cleaning services and agriculture (where masks protecting against pesticides were not provided).

Agricultural workers in Poland and in the Netherlands reported being exposed to toxic chemicals and pesticides:

“They told us to clear the cells with chlorine, but they didn’t give me a mask, they told [me] they didn’t have one. Nor overalls. They gave me overalls, but when some chlorine splashed, it melted. I’ve wounds on my legs, but no one cared. They just said, ‘You’ve to clean everything with chlorine within two hours, just do it. Next cell.’ Nobody cared about our health.”

(Netherlands, male focus group participant from Eastern Europe, agriculture, EU national)

“This employer has no idea about chemical safety. I learned at the university that after spraying with pesticides one cannot work on a field for two or three days. And I saw girls squatting and cutting plants, while he was spraying with pesticides five metres from them [...] Of course, they immediately had allergic reactions.”

(Poland, female interviewee from Eastern Europe, agriculture, ‘national seasonal worker’, non-EU national)

Other violations of health and safety regulations included workers in the Netherlands having to work at height with no protection, in mushroom farming, and workers working with chemical products/waste. In Poland, workers from the manufacturing sector mentioned continuous risks of electrocution due to water leaking from the roofs of buildings.

Violations of health and safety regulations often result in work accidents and health issues, including injuries, heat stress, intoxication and musculoskeletal problems. In the Netherlands, a migrant man in an irregular situation working in agriculture had to burn waste without being provided with any protective clothes, and fell over. He had 65 % burn wounds over his body and was in a coma for weeks. In Poland, interviewees working in the manufacturing sector mentioned not fully functional machines and the lack of training on how to operate them, which resulted in frequent accidents at the workplace. In the United Kingdom, a pregnant EU national working in a hotel was made to lift boxes of bananas weighing 25 kg. She went into premature labour at eight months, which she linked to the strenuous work she was forced to do.

Lack of provision of medical assistance following work accidents

According to Article 8 (1) of the Framework Directive on Safety and Health at Work (Directive 89/391), employers must arrange any necessary contacts with external services, particularly as regards first aid, emergency medical care, rescue work and firefighting.

Several interviewees reported that their employers did not provide medical assistance following a work accident for fear that authorities would be alerted to exploitative or unsafe work conditions. For example, in the Netherlands, one in every five interviewees reported that the employer refused them permission to visit a doctor after having suffered an injury or being sick. The following story exemplifies the lack of care of employers:

“There were absolutely no security measures taken. A loaded cart fell on my foot. My big toe was swollen and thick and I could barely walk. The day after, I went to the director, who was sitting in the canteen, to ask if I could see a doctor. In front of everybody he just laughed at me and said, ‘You can chop that toe off, you still have nine left.’”
(Netherlands, male interviewee from Eastern Europe, agriculture, EU national)

An injured worker was sent back to his country of origin after a work accident with no healthcare been provided:

“[T]here is a boy who had an accident. Some crates had fallen on his leg. His leg was severely crushed, but the manager [...] did not take him to a doctor, although his leg looked so horrible that he should [have been taken] to the hospital or to a doctor straight away. She just brought some bandage with some ointment. The wound started to decay. Those who were staying with him in the same room moved out because of the smell. His leg turned black. They sent him to Poland, without consulting the doctor.”
(Netherlands, male focus group participant from Eastern Europe, agriculture, EU national)

In Belgium, a Sub-Saharan African construction worker in an irregular situation reported that no security clothing was provided and he lost a finger after accidentally cutting through his hand with a machine. The employer called his brother-in-law instead of an ambulance, and he did not pay for any medical treatment. Another male irregular worker, from Northern Africa, cut his finger putting bread dough into a machine at the bakery. Ten days after the accident, he was still waiting for a response from his employer, who was abroad when the accident happened. At the time of the interview, he was collecting evidence to prepare a legal case, in case his employer did not deal adequately with the incident. Another African worker in an irregular situation hurt his hand carrying heavy bags. His employer refused to do anything and forced him to continue work; if not, he would call the police and report him. A female EU worker had to continue working as a waitress in a restaurant after hurting her ankle because the end of the year was a busy time for the restaurant.

Not only by third-country nationals in an irregular situation experienced lack of provision of emergency care following a work accident; so did workers legally residing in the country but working undeclared, as the following example from Germany illustrates:

“I had a work accident and he [the employer] called a taxi instead of an ambulance despite the fact that I could not move at all. When I asked why not an ambulance, he asked me if I was crazy and said he would go to prison, as I was working there illegally. He then drafted a work contract while we were in the taxi.”
(Germany, male interviewee from Eastern Europe, construction, EU national)

Health-related problems were also mentioned in relation to being requested to perform physically strenuous tasks (Belgium, Germany). For example, a woman working for a company providing home-care support got a rupture in her harm tendon while providing care to older people; however, she did not have the (compulsory) accident at work insurance and she was not allowed by her employer to leave the workplace and get treated; therefore, she felt her only option was to quit the job in order to be able to get proper treatment. When she left, she was not fully paid for her work.



Issues with work tasks

Workers reported that employers often gave them tasks which had not initially been agreed upon. This was less common than other exploitative situations, but still mentioned in all Member States. These tasks entailed an extension of working hours or a greater physical and/or psychological burden on workers, which was not matched by an increase in pay. In addition, some workers were requested to perform illegal tasks such as unlawfully depositing waste material at night.

Unexpected work tasks were especially common among domestic workers, as reported in France, Germany and Poland. Domestic workers in these countries talked about starting out with a set number of cleaning tasks in private households, which, over time, were extended to include a variety of other tasks, including doing the shopping and taking care of the children.

Workers requested to perform additional (unpaid) tasks for the employer's private purposes or at the employer's house

Several workers mentioned being requested to do additional tasks, not agreed upon, at the employer's house or for private purposes, as the following example illustrates. In Poland, a woman recruited as an assistant teacher was told by the school principal, upon her arrival, that she should in fact be at her disposal all the time, including at weekends. As a result, apart from teaching, the interviewee performed the janitor's and accountant's work, supervised the kitchen and the delivery of culinary products, drove a delivery van herself, fed birds and rabbits kept at the school premises and cleaned their cages. Moreover, the interviewee was forced to cook food and serve her principal at her home, which contributed to her feeling of being treated like a slave, in the interviewee's words.

In France, where a quarter of interviewees reported working both for their employer's business and for their employer personally, a woman in an irregular situation who was exploited in a restaurant explained:

"I worked many hours. I worked at the restaurant and I worked at his place because he lived above the restaurant. I was doing the cleaning at his place, I was preparing the meals at 1.00 for him and his mistress ... We closed the restaurant at about 0.00, 0.30, and I do the cleaning to clear the place up, and him, at 1.00 he starts his evening, so I prepare food for him ... 2.00, 3.00."

(France, female interviewee from Northern Africa, hospitality, migrant in an irregular situation)

Interviewees living at their workplace or on the employer's premises were more at risk of being requested to perform additional (unpaid) work for the employer and his or her family.

Interviewees were also forced to do work they were not qualified for. This was the case of an interviewee employed to perform office work in Poland who ended up performing menial labour: packing aluminium in a warehouse during night shifts.

Workers requested to perform illegal tasks

Exploitative employers also required interviewees to perform illegal tasks. A construction worker in Belgium describes being requested to drive without a licence to throw away construction material at night, which most likely was illegal too. Other cases included an employer forcing a Moroccan construction worker to steal things from the house he was working on (Belgium) and, in the United Kingdom, an EU man being forced to steal for the family of his employer, an EU woman requested to prepare stolen shoes at night so that her employer could sell them, and an Asian worker who had been forced to work in a cannabis farm when he was a child.

Issues with the work contract

More than half of the interviewees who faced issues with work tasks also faced issues with their contracts. Tasks were not specified in the contracts, workers did not understand the specifications (e.g. when they were not in a language they could understand) or there was no contract at all. So the issue of work tasks is closely related to contractual issues.

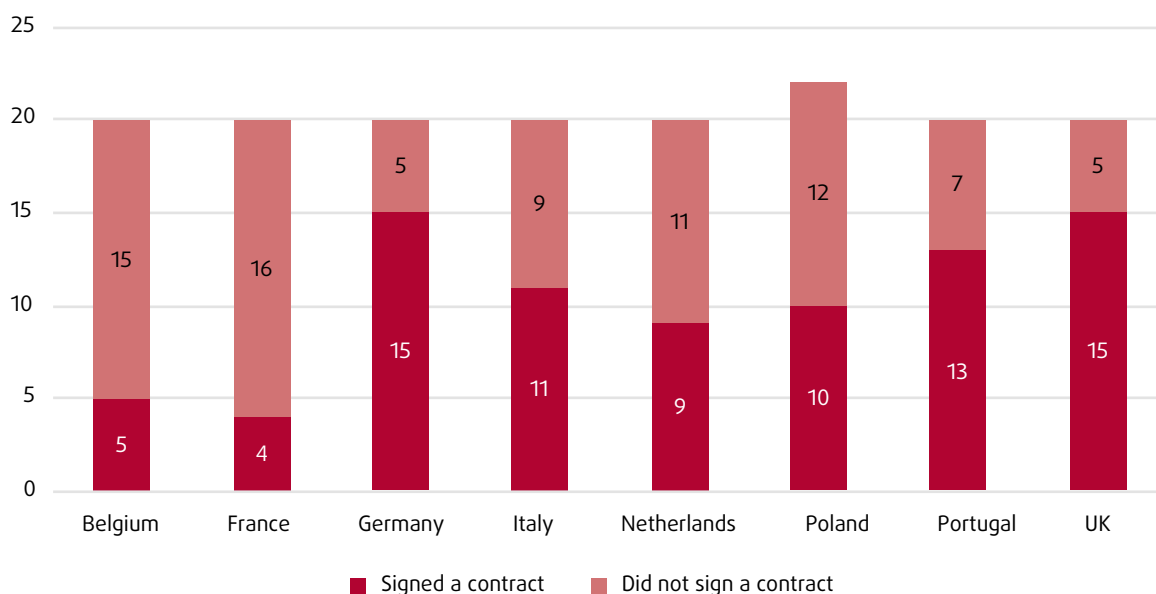
More than half of the interviewees had issues with contracts, including contracts not being provided by the employer; workers signing contracts with recruitment agencies (often in their countries of origin) and then having to sign another contract with worse work conditions in the EU country; workers having to pay employers to get a contract; workers having to sign a contract in a language that the interviewee could not understand.

Overall, two key situations arose: workers not being provided with a contract; and the existence of a contract but problems with understanding its content and/or issues with the type of contract signed.

Workers not provided with a contract

Almost half of the interviewees (80 out of 162) were not provided with a contract for the job in which they experienced the exploitation. However, there are significant differences between countries: in Belgium, France, the Netherlands and Poland, the majority of interviewees did not have a contract; in Germany, Italy, Portugal and the United Kingdom, the majority had signed a contract (Figure 6).

Figure 6: Existence of a contract during the exploitative working relationship, by EU Member State (absolute numbers)



Notes: Question: 'Did you sign a work contract/some other document to do your job?'. N=162.

Source: FRA, 2019

Workers often tried to persuade the employer to provide a contract:

"I asked, 'Are you not going to make a contract?' And he said, 'No. I will not. If you want, go to Social Security and make a complaint. I'm not going to make any contract.'"

(Portugal, female interviewee from Sub-Saharan Africa, domestic work, migrant in an irregular situation)

Some employers kept on promising to sign a contract, without this ever happening. Exploitative employers would refer to the absence of a contract as a reason for not paying the agreed salary.

"At the beginning the agreement was that I would stay for one month on probation. After this period I would have a contract if everything went right. The wage agreed was a fixed amount of EUR 500. But then things started to go wrong. They did not give me a contract and there were months they paid me only EUR 400, others a little more than EUR 400, but they never respected what was agreed. Since I had no work contract they said to me that they had no obligations."

(Portugal, female interviewee from South America, hospitality, migrant in an irregular situation)

The absence of a contract had several negative consequences on workers. First and foremost, in some countries (including France, Italy, Poland and Portugal), the lack of a contract prevented interviewees from renewing a residence permit or applying for a residence permit when the worker was in an irregular situation, as will be discussed in more detail in [Chapter 4](#).

In France, one interviewee mentioned that not having a contract resulted in the possibility of being dismissed easily and without prior notice; others were concerned about the lack of pension rights.

"The dismissal can happen overnight. You have commitments, bills to pay, rent to pay, social charges. But the employer, the day when he doesn't want you any more, he doesn't care about that. Overnight, he tells you, 'It's not possible, we can't stay together, you can't work for me any more'. And how do we manage to pay the rent, to support the children?"

(France, female focus group participant from Sub-Saharan Africa, domestic work, migrant in an irregular situation)

Many interviewees maintained that contracts were essential to prove the exploitation they experienced or claim their rights in court (see [Chapter 5](#)).

A lack of understanding of the contract signed

Like those who had no contract, several problems arose for the half of the respondents who signed a contract. The contract was simply not followed.

A major issue for many interviewees was signing contracts in a language they did not understand. Many argued that they did not see any choice but to sign the contract, as they felt dependent on the work. Others mentioned that the employer gave them no time to check the contract. These findings mirror the conclusions of FRA's 2015 report, in which professionals

identified not having a contract written in a language that workers understand as a factor adding to the risk of exploitation.

“Back then I was unable to speak German, I could not understand German or read German [...] So I got the contract, and I don't know whether what it said was okay, but I simply signed it [...]. It was completely in German. Okay. But I had to work, I wanted to work.”

(Germany, male interviewee from Middle East, hospitality, beneficiary of international protection)

In some countries, people reported that workers often do not know the legal nature of their contracts. In Italy, employers sometimes reverted to using “job vouchers”, instead of employment contracts, when they had to pay for services offered on an occasional basis. “Job vouchers” are a legal payment system. Employers can purchase vouchers from the government and pay the workers with them. Workers can then redeem the vouchers, a percentage of which will be kept for social security and accident insurance. However, vouchers do not entitle third-country national workers to renew their residence permits. Deceitful employers con migrant workers by making them believe that vouchers will be accepted by the authorities.

In Poland, there are different kinds of contracts, such as employment and civil law contracts. They imply different responsibilities of the employer and rights of the employee. Employers would ask workers to sign civil law contracts without informing them that those differ from employment contracts. This confused the workers about their rights, such as the right to paid sick leave, which is not guaranteed by civil law contracts.

Fraudulent practices in relation to work contracts

Workers in the Netherlands, Poland and the United Kingdom mentioned the practice of contract substitution: contracts being signed in the country of origin and, upon the worker's arrival in the country of exploitation, being replaced by another, with wages being considerably less than promised. A domestic worker from South-eastern Asia who had signed a contract for GBP 550 a month was paid only GBP 260 per month once in the United Kingdom. There are also examples of manipulations of contracts such as obscuring and removing figures: a domestic worker was promised a salary of GBP 1,500 but received GBP 150 (removal of a 0).

Other frauds identified include making workers sign contracts which state no payment for overtime; forcing workers to work under false self-employment, as

self-employed workers do not enjoy the same labour rights as employed workers (Belgium); offering contracts that contain the identification data of a company other than the one the interviewees actually worked for (Poland); and forging the interviewee's signature on contracts (Poland). In several countries, it was reported that workers were made to sign documents that had nothing to do with contracts. One interviewee in Belgium explained that her family incurred large debts because her husband had signed a document that (without his knowledge) made him the partner of a company which went bankrupt shortly after signing. In the United Kingdom, some interviewees were requested to sign employment letters but no contract, which they realised only later. In Poland, a construction worker signed a service contract but the employer made him believe he had signed an employment contract. He was required to return a significant part of his salary to cover supposed social security and insurance premiums. In reality, the premiums were never paid by the employer.

Employers charging fees for providing contracts

In some countries (including Italy, Poland and Portugal), research participants reported the practice of employers charging fees (up to EUR 2,000) to provide work contracts which would allow third-country nationals to apply for a residence permit. This money is often requested in cash or deducted from the salary.

For example, in Poland, employers of three ‘national seasonal workers’ from Eastern Europe, one male and two female, all working in manufacturing, offered the workers support in applying for a residence permit, which would allow them to stay in the country after their visa issued for seasonal work expired. Work permits may be arranged by an employer, but residence permits must be arranged by the workers themselves, unless they appoint a proxy, which can be any person who has full legal capacity, to take care of the application procedure. The employers offered their service as a proxy and demanded high payments from the workers to deliver this service. One female worker made use of the possibility. However, the employer's assistant appointed as a proxy did not perform her duties properly, and the worker ended up with no papers after her visa had expired.

In Italy and Poland, reference was made to employers' practice of offering contracts which specify fewer hours than agreed in order to pay less taxes. Workers in Poland call them ‘fake contracts’:

“For the last four years, I was working at kebab restaurants. But no one gives you a real contract. [...] There is a contract, but a fake one. I mean, I worked 56 hours [a week] and my contract read 10. [...] The only thing you get [thanks to this contract] is insurance. [...] If this was a real contract, then he [the owner of the restaurant] would pay higher tax. And the owner doesn't want to pay higher tax.”

(Poland, male interviewee from Southern Asia, hospitality, asylum applicant)

2.2. Housing and living conditions

Article 20 of the Seasonal Workers Directive establishes that EU Member States shall require evidence that seasonal workers' accommodation ensures an adequate standard of living in accordance with national law and/or practice. Accommodation is not regulated specifically for other categories of foreign workers.

More than half of the workers (89 out of 162) mentioned housing issues. They especially concerned workers living at the workplace and at the employer's home. Over half of the workers interviewed depended on their employers for accommodation during the period of labour exploitation, which means they either lived at the workplace (two thirds of this group) or at the employer's home (one third). As Figure 7 shows, issues with housing and accommodation were highest in agriculture, domestic work and 'retail and other services', and in the Netherlands (90 %), United Kingdom (85 %) and Poland (64 %), where interviewees were predominantly working in these areas; in all other countries it was experienced by 50 % or fewer of the interviewees.

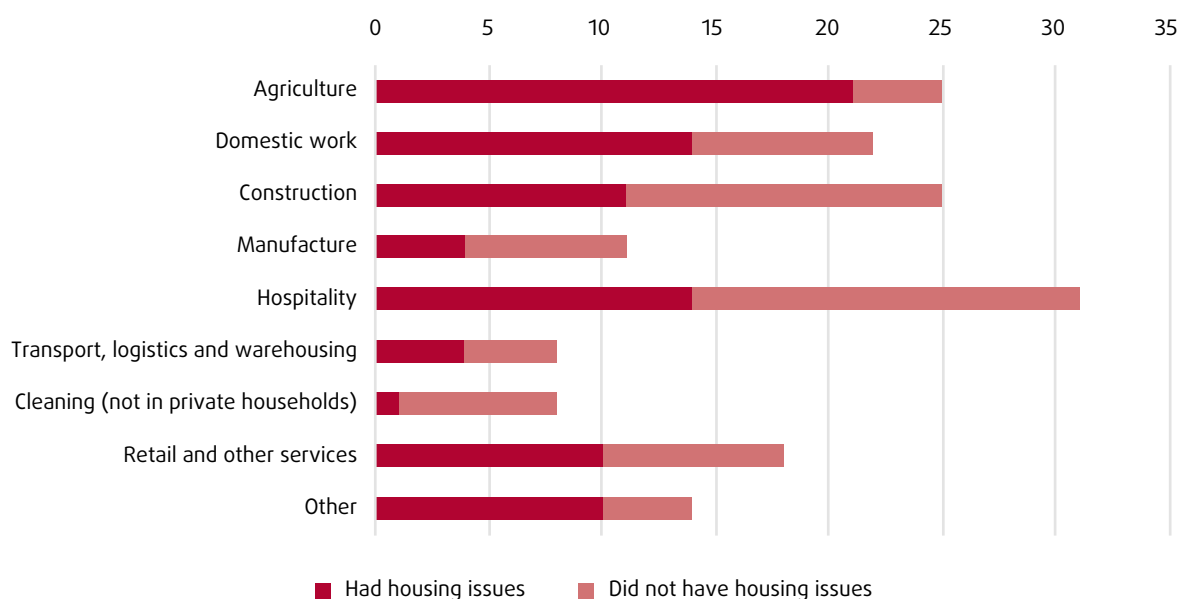
Poor living conditions

Some of the most severe forms of labour exploitation were experienced by workers living at the workplace or at the employer's home, with the worker depending on the employer not only for accommodation, but also for food and for transport. These situations were identified especially among domestic, construction and agriculture workers (including posted workers in Belgium and 'national seasonal workers' in Portugal).

Some of the agricultural workers living in accommodation provided by the employer in France, the Netherlands and Portugal reported staying in places without electricity, with no or very limited access to running water and to sanitary facilities and/or with no bedding, being overcrowded or being accommodated in containers with very high temperatures and poor nutrition.

Construction workers often mentioned substandard accommodation and living conditions. They had to live in overcrowded compartments lacking sanitary facilities and bedding. For instance, a Northern African man who came to France after having been offered a construction job there by a man whom he had met in Northern Africa, and who smuggled him to France, reported that, from the moment he arrived in France, he lived only in containers at the construction sites, where he was locked in at night with another Northern African man in the same situation:

Figure 7: Workers experiencing issues with housing and accommodation, by economic sector (absolute numbers)



Notes: Question: 'Did you experience problems with housing/accommodation?'. N=162.

Source: FRA, 2019

“We were put in three different containers on the different construction sites. Every time, he locked us in at night. In the three containers we had no water, no electricity. For ten months, he only gave us bread, tomatoes and cheese to [eat]. We could wash with cold water from a hosepipe. We didn’t have a shower as such. I was allowed to shower behind the container only once a month. We didn’t have access to any toilets.”

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

In the Netherlands, third-country national laundry workers were not provided with sleeping facilities, and slept in the shelves where the laundry was stored. Similarly, two transport workers were provided with no accommodation and had to sleep in the cabin of the truck for months, even when they were off work; they needed to go into a petrol station to use the toilet or find somewhere in the wild.

“We had to sleep at the construction site we were stationed at that moment. There were no facilities. There was water, but only cold water. We used the same bucket as we made the cement in, but we stopped doing that, because we got all kinds of skin rashes because of it. We slept on wooden planks or sometimes there were iron sheets or something like that. Everyone lived this way. This is also how we celebrated Christmas.”

(Netherlands, male interviewee from Eastern Europe, construction, migrant in an irregular situation, non-EU national)

A Polish man exploited in the United Kingdom expressed the feeling of degrading treatment associated with the substandard housing conditions he had to experience:

“It’s very difficult for me to express and for you to understand the living conditions we were put through. The accommodation and even the place where we were taking a bath, you know the hens were treated better. There was no bathroom in the caravan, we had to go about 10 metres to the garage, there was a bathroom there and it’s winter. There was only a bath[tub] there and in the middle of winter you are sitting there having a bath and you blow and you can see the air coming out of your mouth. [...] It was just unimaginable.”

(United Kingdom, male interviewee from Eastern Europe, retail, EU national)

Malnutrition and undernutrition

Workers in the agriculture sector in Belgium and France reported malnutrition and undernutrition, as did domestic workers in the United Kingdom:

“There were fields of potatoes around the camp There were days when we ate potatoes and potatoes, or corn.”

(Belgium, male interviewee from Northern Africa, construction, posted worker, legal resident in Spain)

“The hours were not calculated. Sometimes, he [the boss] left me at the construction site. I thought he had forgotten me. I did not even have anything to eat.”

(Belgium, male interviewee from Northern Africa, construction, migrant in an irregular situation)

A domestic worker in the United Kingdom was denied food by the employer. She relied on biscuits and free drinks from hotels and eating the children’s leftovers. She described sneaking out to meet other Filipinos in the park, who would give her food and money. Another domestic worker explained that she suffered hunger and, since there were no breaks permitted, she had to eat as much bread as she could in secret, whenever she had the opportunity. Undernutrition was a main reason for escaping employers, as workers could no longer survive without food.

Lack of privacy

Lack of privacy was a common experience of all people working at the employer’s house. Live-in domestic and care workers mentioned it regularly, coupled with the employer’s expectation that they would be always on call.

“They do not even pay attention to you. I, for example, later learned that by law my room needed to have a key. I did not have a key. So the child entered whenever he wanted to. So it was very strange, because in my room the bed was always wet, and I did not understand why. Later, about three months later, I learned that the child came and sat on my bed and peed in the bed.”

(Belgium, female focus group participant from Central America, domestic work, regular migrant)

One care worker in Portugal mentioned having to sleep on the floor next to the old lady she took care of. A domestic worker in Poland and a care worker in Germany mentioned that their employers set up video cameras to observe the employees, with one noting: “everything in this house was on closed circuit TV cameras, even my bed, they were watching me all the time”. At times, the domestic workers in Poland received phone calls from the owners of the house asking where she was because they could not see her on the camera. This was when, for example, she was standing behind a door.

Other housing issues

Other issues relating to housing include workers being homeless, living on the street, in train stations or in centres for homeless people (Belgium); accommodation supposed to be arranged by the employer, who did not arrange it (Netherlands); and workers housed in illegal properties not connected to gas, water and electricity (United Kingdom). In Poland, a construction worker mentioned that workers slept in rooms provided by the employer ‘in shifts’, meaning one group of people

worked day shifts and slept at night, while the other group of people worked night shifts and slept on the same beds during the day.

Child victims of labour exploitation

Two interviewees in Italy and one in the United Kingdom reported that their exploitation experiences had occurred when they were still children. At the time of the interviews, they had just turned 18. The EU Anti-Trafficking Directive also recognises that “children are more vulnerable and therefore at a greater risk of becoming victims of trafficking in human beings.” Given this, Article 2 (5) of the directive establishes that the recruitment of a child for the purpose of exploitation is punishable even if this recruitment did not take place 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” as is required in the case of adults.

In Italy, three male interviewees from Northern Africa were children upon arrival in Italy and were housed in a foster home for unaccompanied foreign minors. Two of the three were exploited at work while still under the age of 18. One worked in a car wash for EUR 15 a day, and often worked 11-hour days Monday to Saturday. The other worked night shifts (19.00 to 12.00) at a florist's six days a week, for which he was paid EUR 60.

In the United Kingdom, a male interviewee from South-eastern Asia indicated that he arrived in the United Kingdom aged 14 or 15. A migrant in an irregular situation, he reported that: “the first job that I did after I arrived in the UK was working in a Chinese takeaway and my job was cleaning, washing the dishes and helping with preparing the food in the kitchen; I also worked as a handyman, carrying things and repairing houses [...] I also worked as a male prostitute for a period of about two years.” While at the restaurant, he slept on the floor in a room (10 square feet) behind the kitchen shared with five or six other workers, and regularly experienced verbal, physical and psychological abuse.

An additional two migrants were children when they arrived in France and experienced severe labour exploitation shortly after turning 18.

Under the domestic laws of the EU Member States reviewed, exploiting children constitutes an aggravating factor for labour exploitation. In Italy, for example, Article 603bis of the Criminal Code also envisages aggravating conditions in cases of exploitation concerning more than three workers; if children are involved; and if the labourers are exposed to serious threats to their safety and/or lives.

In the Netherlands, a legislative proposal in 2016 was initiated in the Lower House that, when enacted, will establish a duty of care in relation to child labour for companies operating in the Netherlands. The bill was approved by the Lower House on 7 February 2017, and will be voted in the Senate on 14 May 2019.* If the bill is approved it will enter into force in 2020 and will oblige companies to submit a declaration outlining their due diligence to prevent their products from being produced with the use of child labour, and an action plan addressing any risks that have been uncovered. The declaration will need to be submitted to a monitoring body. The bill includes punitive measures. If after a complaint the company does not honour its obligations, an administrative fine can be imposed, and the company can be criminally prosecuted if fined on multiple occasions.

* Netherlands, *Eerste Kamer der Staten-Generaal, Voorstel van wet van het lid Van Laar houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen (Wet zorgplicht kinderarbeid) and Initiatiefvoorstek-Kuiken Wet zorgplicht kinderarbeid.*

3

Employers' strategies to keep workers in a condition of exploitation



KEY FINDINGS

- Employers use a number of strategies with varying degrees of coercion to create a fearful and intimidating environment and increase employers' control of the worker, ultimately preventing workers from exiting labour exploitation.
- Softer strategies include false promises to regularise workers' status, or to pay due amounts, with workers enduring exploitation in the hope of receiving what is promised.
- Threats – of not paying the salary, of dismissing the worker or of reporting migrant workers in an irregular situation to the authorities – verbal violence and degrading treatment are used to intimidate workers and prevent them from reporting the exploitation to authorities.
- Strongly coercive strategies include reverting to physical violence, threats of violence, and establishing an inhuman and degrading environment for the workers, including sleep deprivation and poor nutrition/denutrition.
- Withholding personal documents is a strategy that exploitative employers use to prevent workers from escaping and seeking help.
- The spatial, emotional and/or social isolation of many exploited workers, especially domestic and agricultural workers, is increased by employers' actions to control them physically and spatially in order to prevent any communication with the outside world and the possibility of seeking help.
- In a few, extreme, cases, workers are completely deprived of their freedom of movement.
- Specific strategies are adopted to minimise the risk of detection during labour inspections, including requesting workers to hide or not show up during inspections, to lie about real work conditions or to pretend not to understand the local language.

This chapter paints a detailed picture of the broad range of strategies and practices of employers, and to some extent of recruitment agencies and intermediaries, to trap members of the workforce in a situation of labour exploitation and prevent them from seeking help. Such strategies are important for monitoring bodies,

which can take them into account when carrying out workplace inspections, but also for other organisations that might come into contact with exploited workers, including health services, mental health services, social services, and housing and homelessness services, and

could identify potential victims and refer them to support services. These strategies include:

- various forms of violence, including physical violence, psychological violence, verbal violence, threats, sexual harassment and degrading treatment;
- confiscation of passports and other strategies relating to documents;
- strategies to isolate workers and restrict their social contacts;
- financial control and false promises;
- strategies related to inspections.

Workers' continued compliance with exploitative labour conditions was secured through a mixture of physical and psychological coercion, isolation, control of workers' communications and movements, deception, and verbal abuse and harassment creating an intimidating environment. These strategies aggravate the power imbalance between employers and employees in exploitative work situations and also show that labour exploitation is a systemic issue.

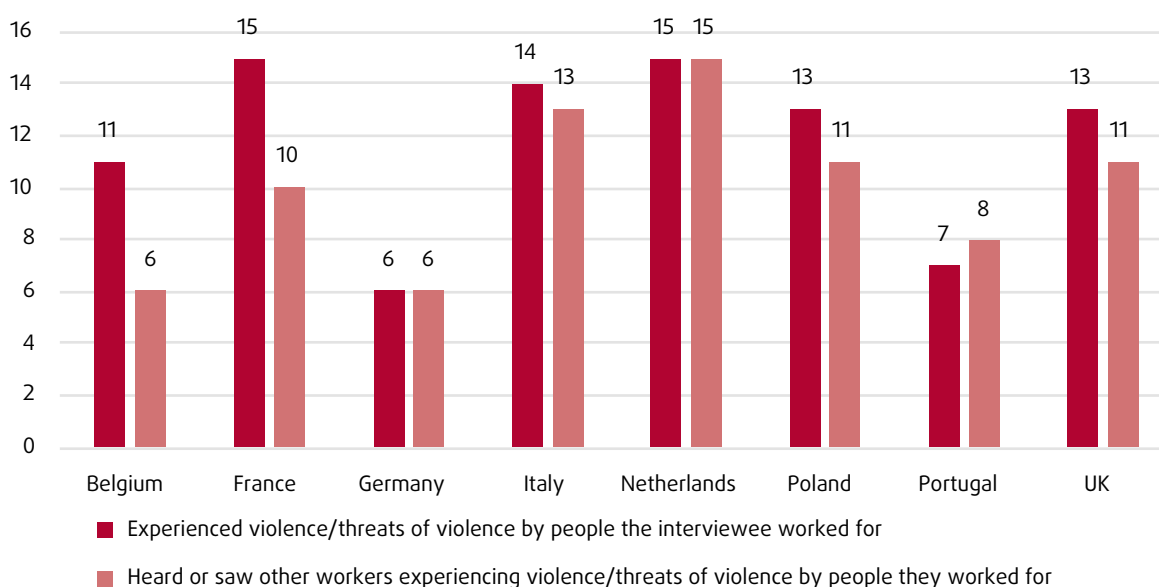
3.1. Violence and threats

Interviewees were asked if they had experienced violence or threats of violence and if they had observed violence and threats of violence being done to others. Overall, 59 % of the interviewees talked about personally experiencing some forms of violence or threats of violence by the employer, and 49 % had witnessed threats of violence being done to others around them. Interviewees gave detailed accounts of some of these experiences, which include cases of physical violence, verbal violence and threats (of violence, deportation, etc.), sexual and gender-based violence, discrimination and/or harassment by the people they worked for or their families. Many workers experienced multiple forms of violence at the same time.

In addition, the following was found:

- As Figure 8 shows, experiences of violence or threats of violence were especially common in France, Italy and the Netherlands, where approximately three quarters of interviewees reported such experiences.
- No relevant gender differences were observed.
- As Figure 9 shows, experiences of violence or threats of violence by exploitative employers or other superiors seem to be present in all economic sectors.

Figure 8: Experience of violence/threats of violence and hearing or seeing other workers experiencing violence/threats of violence by people they work for, by EU Member State (absolute numbers)



Notes: Questions: 'Did you experience (personally) threats or violence? Did you see/hear others experiencing threats or violence?'. N=162.

Source: FRA, 2019

- Threats and violence appeared to be related to nationality: third-country nationals were more likely to experience them than EU workers (60 % and 50 %, respectively).
- Threats and violence appeared not to be related to the vulnerability of the employees in terms of legal status. However, the interviews give some further insight into this matter. The fact that employers tend to be more aggressive with workers in an irregular status was explicitly admitted by the employer of a Northern African worker with irregular status who confronted him on this very matter:

“He [the employer] kept us [me and my colleague] away from the other workers on the site; he was deliberately making us work in parts of the sites where the others weren’t working. One day I asked him why he wasn’t treating me like the other workers who weren’t working as much, and who he was not shouting at, and who were paid. He replied to me that I wasn’t like them, that I didn’t have a choice but to work for him, unlike the others.”
 (France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

The interviews revealed that, most commonly, the threats and violence come from the employer directly, although in a few cases they came from an intermediary (e.g. the site foreman on a construction site). Physical and verbal violence are used by employers to intimidate workers and create a climate of fear. One third of domestic workers interviewed made it clear that they

feared their employers, all having experienced verbal and/or physical violence.

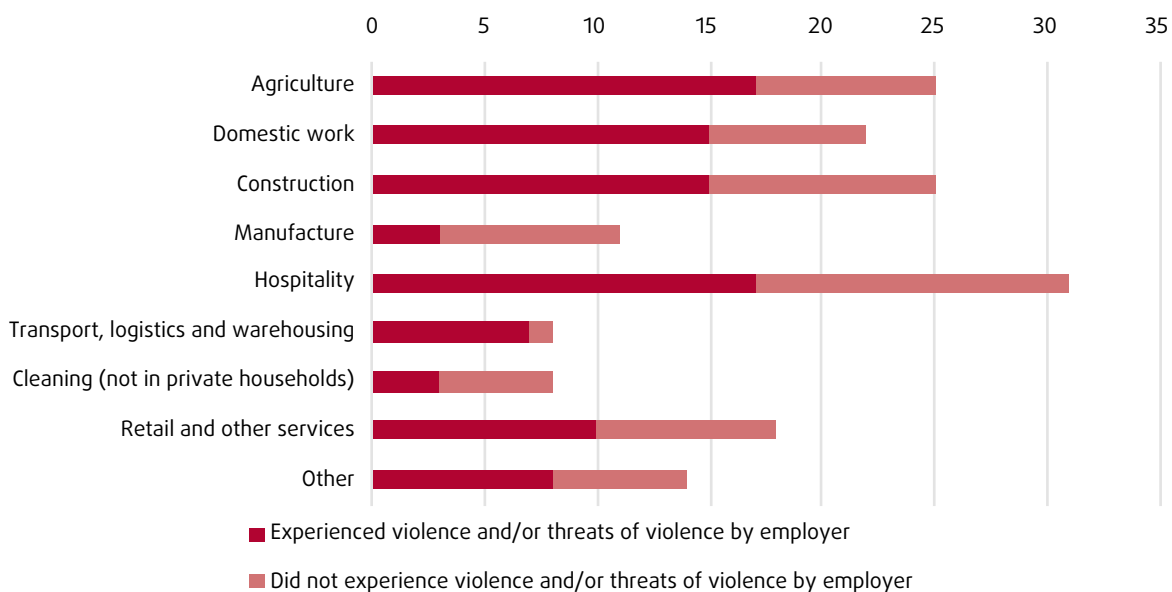
Being subjected to physical violence, threats, sexual harassment, discrimination and a broad range of forms of actual violence aggravated the situation of workers in an exploitative work relationship.

Physical violence

Most of the interviewees reported threats and verbal violence. They reported physical violence less frequently. However, given that violence is a very serious violation of the integrity of the person, it will be discussed first. Physical violence was quite often used to punish interviewees when they did not understand a command, made a mistake or did not deliver good work by the employer’s standards. Employers also used physical violence to stop workers reporting to the police. Physical violence encompassed hitting, kicking, beating, burning, stabbing, throwing objects at the worker or pushing workers so that they fell to the ground, but also sexual and gender-based violence.

A man working in the food industry and a domestic worker, both working in the United Kingdom, shared their experiences of violence. Arriving in the United Kingdom after a month spent in a camp in Calais as a child, one interviewee was forced into working in the kitchen of a takeaway shop. This specific experience of exploitation was one of a series of exploitative jobs that the interviewee experienced as he was trafficked

Figure 9: Workers who were threatened with violence by employers or experienced actual violence, by economic sector (absolute numbers)



Notes: Questions: ‘Did you experience (personally) threats or violence? Did you see/hear others experiencing threats or violence?’. N=162.

Source: FRA, 2019

around the United Kingdom for six years. In addition to restaurant work, the interviewee was forced to set up cannabis farms and later was forced into prostitution.

"They were very aggressive and when I didn't do a good job or I spilled water when I was cleaning they would verbally abuse me or beat me up, or when I cut vegetables or food too small or too big they would use that as a reason to beat me as well, or when they taught me how to cook some food and it wasn't good they would beat me up too ..."

(United Kingdom, male interviewee from South-eastern Asia, hospitality, migrant in an irregular situation)

A third-country national domestic worker employed by a diplomatic family shared a similar experience.

"I Hoover. He took that Hoover and beat me in the hand. Then I scream and I scream, and the small boy came: 'Aunty, what is the problem? Are you beating her, daddy? They tell us in school that you are not supposed to beat ladies. Why are you beating aunty?'"

(United Kingdom, female interviewee from Sub-Saharan Africa, domestic work, regular migrant)

An African man working in the construction sector in Portugal was even locked in. The employer took this measure especially when traces of physical violence such as bruises were visible.

Employers would often use violence against workers who challenged them. More than half of the interviewees who confronted their employer experienced violence or threats of violence. Some workers had to receive medical treatment because of the violence they experienced.

Threats

Exploitative employers very often threatened workers who refused to carry out a task, did not deliver what the employer had asked for, made a mistake or challenged the employer, for example by asking for the money they were owed, or in case they reported the exploitation to the police. The most recurrent threats used by the employers were to dismiss the workers, report them to the police/migration authorities, have them sent to prison or send them back to the country of origin, which are especially intimidating for workers in an irregular situation.

Dismissing the employee was a threat that respondents repeatedly mentioned. For instance, in France, a man in an irregular situation working on a construction site was threatened with being fired any time he asked to be paid his salary. In Germany, a male EU

national working in a warehouse unpacking containers described these threats:

"Threats in the sense of: 'If you cannot deliver, then the next person is waiting, then someone else will do the job.'"

(Germany, male interviewee from Eastern Europe, logistics, EU national)

Calling the police was also a very common threat. In Belgium, an African man in an irregular status was forced to work for EUR 5 per day after breaking a door and was threatened with being reported to the police if he did not turn up for work. An African man reported similar threats in France:

"In Egypt he [the employer] made it sound to me like a paradise. And I came here and I saw nothing, and I found like I'm a slave to him and he can do whatever he wants with me and I just work, and I work, and I work, and I don't have the right to ask him, 'Why do you do that?' and when I ask him he tells me, 'If you don't like it, I take you to the police and they will take you to Egypt.'"

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

Employers also threaten regularly staying workers. In the United Kingdom, where all domestic workers had visas and passports, the employers threatened them to take away their documents and make their status irregular if they reported the exploitation to the police:

"She told me, 'If you go [to the police], we have your passport. In this country they cannot do anything for us, if I have the passport ... if you go and say the way that we are treating you in this house, they can't do anything.'"

(United Kingdom, female interviewee from Sub-Saharan Africa, domestic work, regular migrant)

The data show that several employers make strategic use of violence, threats of violence and verbal abuse to exploit workers. The use of such strategies has the double effect of making sure the worker complies with the employers' request, punishing deviant behaviour, and creating a climate of fear and humiliation that curbs the worker's self-esteem, which in turn makes it more difficult for the worker to exit the exploitative situation.

Some employers threatened the workers with physical violence (such as hitting them with a hammer or even killing them).

The first time she confronted her employer, refusing to do a task he had asked her to do, a young woman from Morocco, who worked as a domestic, was threatened with violence:



"He got angry, so I tried to leave. He followed me to the studio apartment and wanted to hit me and he threatened me, saying he was the one who brought me to France, that he could take me back to Morocco any time and that he could hurt me. He tried to take the TV and throw it at me. I hid and his daughter, who was there, stepped in and prevented him from doing it."

(France, female interviewee from Northern Africa, domestic work, tourist visa)

Although threats of violence were often used for any reason, employers most often reverted to threats of violence to prevent workers from reporting the exploitation to the authorities.

The most severe threats were experienced by workers who had reported their employer to the authorities. A woman from Eastern Europe who was exploited in the Netherlands by a relative and had reported it explained that she was threatened with violence if she cooperated with the authorities. The brothers of the relative called her many times in the Netherlands and also threatened through her sister that they would send people to kill her. The interviewee also explained that she and her family back home experienced intimidation: some people visited her mother and offered her money, so that she would not cooperate with the authorities in the Netherlands.

In Belgium, after a construction worker from Northern Africa filed a complaint against his employer, the employer threatened him with death if the complaint had an impact on the employer's mother, in whose name the company was registered and who held an important public position.

In the Netherlands, some employers continued to threaten interviewees even after they had quit the exploitative work situation. Threats intimidated workers and caused fear in them.

"The first thing was the fear. Because I knew no one, whereas he [the employer] had been living here for 40 years so he knew the law well, he knows things. He was aggressive with me, so I was afraid that if I leave today, tomorrow or the day after tomorrow he would find me, so what am I going to do? He had already told me: 'Me, I know a lot of people here, I just have to make a phone call and the people who annoy me do not live any more.' That's what scared me. I wanted to find a solution to leave so that he would not be able to kill me. Sometimes I thought, 'He can kill me; that's fine, if I'm dead I'm dead. But if he beats me and I become disabled or something like that, I've no one here.' That's the problem, that's what I feared."

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

A few employers resorted to threatening the workers' family members. For example, this was documented

in France and the United Kingdom, where the threats aimed to keep the worker in a situation of exploitation.

Abuse and maltreatment in domestic work

The particular vulnerability of domestic workers to these forms of abuse as a result of their dependency on their employer for accommodation deserves attention. As FRA's report *Out of sight – Migrant women exploited in domestic work* highlights, many domestic workers experienced multiple forms of violations of human dignity. Almost all interviewees experienced bullying, harassment, emotional and/or physical abuse by employers and/or their family members. One third of those interviewed made it clear that they feared their employers as a result. Of the 22 domestic workers interviewed, five experienced threats of serious violence or of not being paid, and two reported being sexually harassed. Half of those interviewed also reported violations of their right to privacy. Other examples of maltreatment that interviewees highlighted were being forbidden to eat or drink (two), and go to the bathroom (two).

Verbal violence

Verbal violence was also very common. Employers shouted, screamed, used (racist) insults, called workers names, humiliated them and/or bullied them when interviewees made mistakes, asked a question, or asked for their work conditions to be improved or for the money owed by the employer.

"He bullied people, he shouted at us [...], because we can't say anything to him, because he's the Portuguese: whatever he says, we just say yes."

(Portugal, male interviewee from Southern Asia, agriculture, regular migrant)

In France, a Bulgarian woman working in a factory stated that the employer shouted above the noise of the machines. If she made a mistake, she was yelled at in a language she did not even understand.

Sometimes workers consider verbal abuse worse than physical violence, as expressed by a Moroccan woman in France who experienced physical violence, verbal abuse and sexual harassment by her employer:

"He burnt me, but this I forgot, because the scars fade away with time. But the words, they stay with me today. He used many swear words towards me, he would say, 'You're as fat as a cow, you're filthy', he laughed with the customers, he said, 'Tomorrow there's no need to buy milk, we have a cow in the kitchen look at her breasts, how big they are.' You know, these words they stay with me, until now."

(France, female interviewee from Northern Africa, hospitality, migrant in an irregular situation)

Racist insults and bullying were also mentioned as discriminatory strategies of employers in Germany, Italy, Poland and Portugal. In Portugal and Poland, interviewees talked about racist insults ("stupid, fucking Belarusian", "Ukrainian pigs"). In Germany, interviewees hinted at discrimination. In Italy, employers continually insulted black workers and threatened to fire them.

Sexual and gender-based violence

Instances of sexual and gender-based violence included several cases of sexual harassment and a case of rape.

Overall, just over one quarter of domestic workers reported being bullied or (sexually) harassed. Domestic workers reported sexual harassment more often, but it was also a reality for female workers in other sectors. Examples from France, Italy, Poland and the United Kingdom included an employer's husband wanting to sleep in the domestic worker's bed next to her, another employer's husband wanting to have sex with a domestic worker, sexual advances to a school teacher by the employer, who visited the worker in her room, and another employer frequently making verbal sexual allusions and making fun of the worker's breasts.

Female workers in Italy working in agriculture, restaurants and catering also reported sexual harassment, as the following quote illustrates:

"[W]hen we arrived, he said 'You are good, but not for this work, for another job with me ...' Then my brother-in-law said, '[...] he is joking'. The first time [...] he said, 'I am joking, I am like this', but then he continued more insistently, too much. [H]e said to my husband 'What do you do, you are too fat, what do you do with your wife, send her to me, I will do everything'. [...] Just words, nothing else."

(Italy, female interviewee from Eastern Europe, agriculture, EU national)

An African woman interviewed in France talked about being raped by her employer and the way the employer took advantage of situations of vulnerability:

"I wanted to file a complaint, so that all the harm he was inflicting on me [...] would not [be] do[ne] to another woman. Because he [the employer] is someone who takes advantage of people a lot, he takes advantage of people who come from villages, who do not know about the law, who do not know France."

(France, female interviewee from Northern Africa, hospitality, migrant in an irregular situation)

Degrading treatment

Some interviewees, especially those dependent on the employer for food and accommodation, referred to their overall work conditions and treatment by employer as amounting to violence. Elements of the working conditions perceived as forms of violence included the aggressive behaviour of employers/superiors, time pressure, lack of sleep, poor nutrition, pressure to work harder, quicker and/or longer hours, and bullying and humiliation. The strategies of employers very often aim at punishment and can be described as degrading treatment:

"They didn't hit me with their hands, but the violence was a lack of sleep, worse than [if they had] hit me, [...] that pain [would] go [away]. But every day lack of sleep, lack of food and more work. It is more than violence, it's worse."

(United Kingdom, female interviewee from South-eastern Asia, domestic work, regular migrant)

"He was throwing food to me and to another man who was working with me. Just like you throw food to a dog or to an animal. And there was very little food. A piece of bread or sometimes it was a piece of cheese, tomatoes, that [was] all."

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

Some interviewees said that their employers treated them like slaves or dogs, definitely not like human beings:

"If I asked something, they would respond with verbal abuse. You would not even treat animals the way we were treated."

(Netherlands, female interviewee from Eastern Europe, agriculture, EU national)

"If I wanted to compare my situation before and now, before I was lost, before I was like an animal, like a dog, I was sleeping in the street, and before sleeping in the street I was with this man, like an animal and he was also treating me very bad. And since I came to [the victim support organisation] they started to speak with me like [a] human. I had never felt that I'm a human in France, before I came to [the organisation]."

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

Lack of sleep and exhaustion were identified as elements that put exploited workers in a physical and mental state that does not allow them to react and leave the condition of exploitation:

"Someone who is in such a dire situation, that person cannot help himself. You can advise him 100 times, he cannot help it. This is because he is strangled, pushed in a corner. He is paralysed and just works and sleeps. That is why only someone from outside can do something about it."

(Netherlands, male interviewee from Eastern Europe, retail, EU national)

Interviewees were asked if they had ever been in a position to challenge their employers about their treatment. More than half of the workers interviewed said yes. However, the majority of interviewees did not witness any changes after they had confronted their employers, and some exploited workers experienced changes for the worse (e.g. threats of being moved to a workplace in a remote area, of getting fired, of violence).

3.2. Strategies to isolate workers and restrict their social contacts

One third of the workers interviewed reported feeling isolated. The feeling of isolation was most often reported by domestic, agricultural and construction workers and resulted from specificities of certain economic sectors, such as working in remote areas (e.g. agriculture) or not having any co-workers (e.g. domestic work).

However, rather than physical isolation, the feeling of isolation most often resulted from exploitative working conditions, such as employers trying to prohibit or restrict the worker's social contacts (e.g. with clients, customers, visitors, members of national communities) by monitoring, controlling and limiting the workers' lives and movements inside the workplace, as reported by men working in the construction sector in France and in the food industry in Poland:

"The material for the site was brought by a person from outside. One day, I wanted to talk to the driver because I couldn't stand the situation any more, I was exhausted. But my boss saw me and told me to go and work and started talking with the driver to prevent me from talking. I didn't insist because I knew that, once the driver was gone, my boss would make me pay for it."

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

"He [the employer] didn't want me to talk to anybody. He didn't want me to communicate with his friends or costumers so that I wouldn't make any friends. If I had had a friend, I would have talked with him and told him the truth [about the exploitation]."

(Poland, male interviewee from Northern Africa, hospitality, migrant in an irregular situation)

Exploitative employers also controlled or monitored movements of interviewees outside the workplace by not allowing them to do shopping or allowing them

to do so only when accompanied. Two asylum seekers in the Netherlands were allowed to leave only for their obligatory reporting to the reception centre and to quickly shop for groceries. The isolation of domestic workers was particularly severe, as they usually had no co-workers they could communicate with.

A few employers completely deprived workers of their freedom of movement by locking them in at the workplace or in their accommodation during the night, as reported in France and Portugal.

"[W]hen they [employer and wife] had beaten me so hard that I had my face all bruised ... they would go out and [...] leave the door locked [...] to stop me from leaving the house."

(Portugal, male interviewee from Sub-Saharan Africa, construction, regular migrant)

Other strategies and practices of exploitative employers included limiting or prohibiting use of mobile phones; forcing workers to work long hours to limit their opportunities to establish social contacts because of exhaustion and lack of time; not allowing workers to talk while working; and creating mistrust among workers by paying them to check on each other.

3.3. Confiscation of passports and other strategies relating to documents

Confiscation of passports and identity documents

In France, the Netherlands, Poland, Portugal and the United Kingdom, employers sometimes retained passports and identity documents of workers to prevent workers from going back to their country of origin and more generally escaping from the situation of labour exploitation.

"I wanted to go back to [my country]. I thought I would go back easily. But it was not easy. They kept my passport so that I could not run. And they did not give me money. If I had money I could look for my embassy and ask help but I did not even have money, so I did not know where to go."

(Netherlands, female interviewee from South-eastern Asia, domestic worker, regular migrant)

Confiscation of passports and identity documents also puts migrant workers at risk of their status becoming irregular, as they cannot renew their residence permits, which in turn increases the vulnerability to exploitation due to fear of being reported to migration authorities. When employers confiscated passports/ID cards, interviewees sometimes missed deadlines to apply for extending their visa/residence permits, as they could not check the expiry date.

Some employers promised to help workers regularise their status as an excuse to take away their passports/ID cards. Similarly, two employers of EU workers in the Netherlands took away the workers' ID cards under the pretence of registering them with social security.

Refusal to issue statements of dismissal

Sometimes employers refused to issue a statement of dismissal (Germany), with the effect that the workers could not easily access unemployment benefits, as the interviewees could not prove how many hours they had worked or that their contract was terminated. The impossibility of applying for benefits and having an income also helped deter workers from leaving the exploitative work relationship.

Many of the employers' strategies in the context of documents have negative legal consequences for the workers. That puts those in an irregular situation in an even worse situation or might cause workers to lose their regular status because they miss deadlines for extending the relevant permits.

3.4. False promises and financial control

Several employers (in Germany, the Netherlands and Poland) made false promises to interviewees that they would help them with the necessary paperwork to regularise their situation, so the workers endured the exploitative working conditions with the hope of gaining regular status one day. In some cases, employers made them think their situation had been regularised.

"I was talking with him about my papers all the time. He was saying to me, 'Be patient, I've filed your application at the office.' The office specialised in issuing documents for foreigners. There were his friends coming to the restaurant. And there was one man, tall, wearing a suit, proper clothes, and he [the employer] used to say, 'Here he is, this is the man who works in the immigration office and he will issue papers for you.' The guy gave me some documents to sign, all written in Polish, and I couldn't understand what I signed, but I signed them. It was just a trick to make me believe that I would get my papers."

(Poland, male interviewee from Northern Africa, hospitality, migrant in an irregular situation)

Three employers in Germany promised to support interviewees with irregular status in applying for a work permit, a promise they did not keep. In the Netherlands, two employers promised the interviewees that they would support them in getting a passport, also

a promise that turned out to be false. In France, one employer refused to fill in a form that would have entitled the interviewee, a female from Nigeria working in cleaning services, to a residence permit.

Financial control emerged in relation to interviewees staying in the exploitative work situation, as the employers owed them money and they hoped that they would get paid when they stayed on (reported in Belgium, the Netherlands and Poland). For example, in the Netherlands, almost half of the interviewees feared that they would never receive the money the employer owed to them if they left the work situation. Since they depended on the money earned and lacked any financial reserves, they stayed in the exploitative situation in the false hope that things might improve. Sometimes this was aggravated by false promises by employers about payment of salaries and due amounts:

"[The employer] started to say that he will pay each week. When the weeks arrived, he paid only half of it. He said, 'OK, next week.' The following week, when I worked, he said, 'OK, the people I work with, my boss as well, he is not paying me.'"

(Belgium, male interviewee from Sub-Saharan Africa, transport, logistics and warehousing, asylum applicant)

3.5. Strategies related to inspections

Workers requested to stay at home, hide or lie when inspections take place

Strategies related to inspections that workers reported included employers being aware, most of the time, of when inspections are going to take place. This enables them to take a number of measures to avoid exploitation being detected. Workers in all eight countries covered by the research reported this. Employers could ask workers, especially those in an irregular situation, either not to come to work on inspection days or to hide during inspections. Exploited workers in Belgium, France, Italy, Poland and Portugal reported that they had to hide during actual inspections, hiding in the street, a toilet, a storage room, the garden and a basement. This is well documented in FRA's inspections report.⁴¹

"When the owner of the studio came to get the rent, I was asked to hide in a closet. [...] At the bar, there were occasions when I had to stay shut away for a whole day, they called me and told me, 'Do not come out.'"

(France, female interviewee from Northern Africa, domestic work, tourist visa)

⁴¹ FRA (2018), *Protecting migrant workers from exploitation in the EU – Boosting workplace inspections*, Luxembourg, Publications Office.

Another strategy to circumvent inspections is to ask workers to lie about work conditions, pretending they are much better than they actually are:

"He [employer] said, 'If someone comes to ask you, 'How much is you[r] employer paying you?', you say '7.80 EUR'; 'How long are you working?', 'Four hours, five hours and then we go home' [...] let's say that, since I had worked there, it happened four times."

(Italy, female interviewee from Eastern Europe, agriculture, EU national)

Research participants reported being requested to smile and say they were happy during inspections (United Kingdom), to learn by heart what lies to say and rehearse them before the inspections (Netherlands), and to lie about their identity or about the kind of relationship they had with the employer (Belgium, France and the Netherlands).

It is so common for inspectors to inform employers of their visit beforehand that even workers who called monitoring bodies to report exploitation and trigger an inspection did not succeed:

"I called certain sources and wanted to organise such a sudden inspection, but the lady at the telephone said that unfortunately all inspection visits are planned. The employer is notified of the inspection beforehand, and everything has to be okay that day, and the next day, everything starts all over again."

(Netherlands, male focus group participant from Eastern Europe, agriculture, EU national)

Other strategies related to inspections

Other strategies that employers use to avoid detection of labour exploitation by inspection bodies include requesting workers to sign a fake contract to show inspectors (Belgium); workers receiving protective clothing prior to an inspection, which is taken away from them afterwards (Poland); hiring workers who cannot speak the language of the country where they are working, in order to stop inspectors/police officers from talking to anyone other than the employer, or forcing workers to pretend that they are not capable of speaking the national language to avoid inspectors' questioning (Italy); and moving workers around, which makes it more difficult for them to develop relationships with their co-workers and at the same time prevents inspection/monitoring bodies from finding out about employers who employ workers without a residence/work permit.

Workers in Germany reported employers forcing them to falsify documents such as time-sheets, a strategy used to hide evidence of labour exploitation in case of inspections. It was then more difficult for workers

to gain access to justice and claim their rights. One employer used the papers of a different person, as the respective worker was in an irregular situation.

These employer strategies evidence the imbalance of powers in the employer-employee relationship, which calls for structural and legal measures restricting the powers of employers and at the same time empowering workers and strengthening their position in the labour market and vis-à-vis the employers.

A few employers have even developed strategies of keeping back part of wages or making workers pay them so that the employers can pay possible fines in the event of an inspection.

"What is told to me by others is that he withheld the money from us and that he would save that money in case the labour inspectorate would show up and he would be fined. Then he would use that money to pay the fines. In this way, he had nothing to lose."

(Netherlands, male interviewee from Northern Africa, agriculture, migrant in an irregular situation)

In sum, as FRA's inspection report says,⁴² the experience of exploited workers indicates that: "employers have developed quite extensive strategies to deal with inspections and to cover up infringements of rules on working conditions. This is made easier when employers know about inspections in advance, as this enables exploitative employers to employ a broad range of strategies to deceive inspection and monitoring authorities. There can be valid reasons for announcing inspections in advance – for example, to guarantee that employers are present at a construction site on a certain day. However, this gives unscrupulous employers the opportunity to temporarily rectify situations not in compliance with relevant legal provisions and to instruct employees on how to behave and what to say during inspections."

In line with the views of professionals FRA interviewed for its 2015 report on severe labour exploitation,⁴³ experiences of workers interviewed in 2017 suggest that poor knowledge of the local language can contribute to the risk of labour exploitation of foreign workers and impede the effectiveness of labour inspections. Not knowing the language prevents some foreign workers from talking about working conditions. In addition, staff of inspection bodies appear to – at least in some cases – assume that foreign workers do not speak the language of the Member State and thus do not always try to interact with them.

⁴² FRA (2018), *Protecting migrant workers from exploitation in the EU – Boosting workplace inspections*, Luxembourg, Publications Office, p. 6.

⁴³ FRA (2015), *Severe labour exploitation – Workers moving within and into the European Union: States' obligations and victims' rights*, Luxembourg, Publications Office.

4

Interviewees' perceptions of risk factors for severe labour exploitation



KEY FINDINGS

In workers' views, the key risk factor for severe labour exploitation is vulnerability linked to residence status, which refers to being in an irregular situation or having one's residence status tied to one specific employer.

- Being a migrant worker in an irregular situation is an enabler of labour exploitation because it reduces alternative avenues of employment, hence increasing the worker's dependency on the exploitative employer, and strengthens the position of the employer, who can easily use the threat of deportation to keep the victim in a situation of exploitation.
- The other risk factor linked to residence status is migration policies that tie the residence permit to the existence of an employment contract, in some cases binding the worker to one specific employer, or regularisation schemes which require workers to spend a set amount of time in an employment relationship. These can lead the worker to accept exploitative work conditions in order to renew legal residence or regularise his or her status.

In line with what professionals expressed when FRA interviewed them in 2015, these findings further reinforce the importance of the institutional framework as a risk factor for labour exploitation and call for EU Member States to find ways of enhancing legal migration and regularisation schemes for migrant workers in the EU.

Other key risk factors for labour exploitation that workers identified include:

- economic need;
- lack of knowledge of workers' rights and legal provisions;
- lack of knowledge of the local language;
- lack of inspections/oversight/punishment by authorities.

The findings reflected in this report support the risk factors identified by professionals in FRA's 2015 report, but it should be noted that victims attach different levels of importance to the factors identified by professionals.

- Vulnerability linked to residence status ranks first among exploited workers but was less important to professionals.
- Similarly, victims of labour exploitation attached greater importance than professionals to workers' dependence on the employer.

- Lastly, while interviewees raise impunity, sector-specific risks, and lack of inspections, checks and oversight as elements enabling exploitation, these consistently rank lower than considerations of economic need, vulnerability linked to residence status and lack of knowledge of legal provisions, across all eight Member States.

This chapter looks into risk factors causing or promoting labour exploitation as identified by the interviewees and focus group participants, who were asked to discuss what they thought made it possible for labour exploitation to happen. Risk factors are crucial for monitoring bodies to know, so that they can take them into account when carrying out workplace inspections. Such inspections should not just be reactive – for example, conducted in response to complaints. Instead, they should be risk oriented.

FRA's 2015 report⁴⁴ sets out a number of categories of risk factors identified by professionals working in the field of labour exploitation that interventions by monitoring bodies should take into account. As Figure 10 shows, these risk factors were categorised into four groups:

- the legal and institutional framework: a lack of sufficient monitoring, a lack of investigations or ineffective investigations, and the irregular situation of workers;
- the worker's personal situation: for example not knowing the language of the place of work;
- specific workplaces or economic sectors: for example working in a sector that is particularly prone to

labour exploitation, such as agriculture, construction or domestic work;

- employers' behaviour: workers not being given a written contract, not being informed of their rights or not being remunerated in a transparent and traceable manner.

Workers were asked to identify any factors which they felt made it possible for labour exploitation to occur. As Table 3 shows, workers' perceptions of why they were exploited and of what led to them being exploited primarily revolved around, in order of prevalence:

1. vulnerability linked to residence status, which includes the difficulties faced due to being in an irregular situation, as well as being dependent on the employer for obtaining legal residence status;
2. economic need, primarily in the workers' countries of origin, but sometimes also in the EU Member States where they were exploited,
3. the lack of knowledge of legal provisions and workers' rights applicable in the EU Member States,
4. the lack of knowledge of the language spoken in the EU Member State, where the workers were exploited.

Figure 10: Risk factors relating to labour exploitation in professionals' views



Source: FRA, 2015

44 FRA (2015), *Severe labour exploitation – Workers moving within and into the European Union: States' obligations and victims' rights*, Luxembourg, Publications Office.

Table 3: Key risk factors for labour exploitation as identified by interviewees (absolute numbers)

| Risk factor | Number of interviewees |
|---|------------------------|
| Vulnerability linked to residence status | 48 |
| Economic need | 46 |
| Lack of knowledge of the law/workers' rights | 24 |
| Lack of knowledge of the language | 21 |
| Problems with the specific employer | 16 |
| Lack of inspections/oversight/punishment by authorities | 15 |
| Fear | 15 |
| Racism/discrimination | 13 |
| Belief that they had brought the situation on themselves | 9 |
| Acceptance of the situation because it is better than or similar to what is offered at home | 7 |
| Isolation | 7 |

Notes: Question: 'What do you think made it possible for labour exploitation to happen?'. The question was open-ended and the interviewees could report as many reasons as they wanted. The replies were analysed and classified into themes and their recurrence was counted. N=162.

Source: FRA, 2018

4.1. Vulnerability linked to residence status

According to the research participants, vulnerability linked to residence status is the most important risk factor causing or contributing to labour exploitation. Almost one third of the interviewees identified it, and more in Belgium, France and Portugal. All interviewees who raised this issue were of third-country origin and a majority were of irregular status during their exploitative work relationship.

There are two different ways in which the residence status of a worker affects the risk for labour exploitation:

- being in an irregular situation, which one quarter of the interviewees across all countries mentioned;
- being dependent on the employer for obtaining a residence permit, which was mentioned in France, Italy, the Netherlands, Poland, Portugal and Germany (overall mentioned by one in every 10 interviewees).

Whereas both situations can be considered as risk factors for labour exploitation, different mechanisms are at play in each, as analysed below.

Irregular status

Many of the migrants in an irregular situation regarded exploitation as unavoidable. These workers emphasised that, by definition, they will be exploited one way or another.

"[A]s an undocumented worker, [...] there is exploitation, there is. You can't escape it. You will be exploited. Because as it is, you don't have documentation. You know it. You know it from the very beginning."

(Belgium, male focus group participant from Northern Africa, hospitality, migrant in an irregular situation)

Being migrant workers in an irregular situation reinforces workers' vulnerabilities in two ways: it reduces employment options, thus increasing the workers' dependency on the exploitative employers; and it strengthens the employers' position of power because of workers' fear of being returned to the country of origin. The workers interviewed felt that they had to accept exploitative work conditions and could not quit their jobs because they saw no alternatives:

"When you work without papers, the employer will take advantage, he will pay four or five euros. When you are not legally in the country, you don't have the choice."

(Belgium, male interviewee from Northern Africa, retail, migrant in an irregular situation)

Irregular status is seen as making workers completely dependent on and under the control of the employer:

"They [other workers] did not have any papers, they were here illegally. He [the company's owner] could do with them what he wanted."

(Poland, female interviewee from Eastern Europe, manufacturing, 'national seasonal worker', non-EU national)

"If you don't have papers in France, it's like you're nothing."

(France, male interviewee from Sub-Saharan Africa, construction, migrant in an irregular situation)

Migrant workers in an irregular situation feel they cannot complain, they cannot confront their employer and they cannot report the exploitation to the police for fear of losing the job and of being returned to their country of origin.

The fear of being reported to authorities is actively used by employers to threaten the workers and to exert control, as expressed by an African woman working in the domestic sector:

"[E]nding exploitation starts when you are regularised. It is then when the person can breathe. [...] [Even if] they [employers] manage to exploit those who have working papers, [...] at least I am no longer at the mercy of threats, I am no longer at the mercy of threats of deportation."
(France, female focus group participant from Sub-Saharan Africa, domestic worker, regular migrant)

The sense of dependence on the employer means that migrants in an irregular situation have to accept very poor work conditions:

"The salary really is lower than the minimum, but I cannot complain, I do not have papers, it is difficult to ask, so I just keep quiet about it."
(Belgium, female interviewee from South-eastern Asia, domestic worker, migrant in an irregular situation)

In contrast, others expressed the feeling of empowerment related to now having papers, which enables them to refuse similar situations today and to find alternatives, as expressed by interviewees exploited in France and Italy:

"If you have a residence permit [...] you are not afraid, you know that you are regular and you know that, even if you lost your job, you can find another job because the residence permit gives you an opportunity to do whatever you want."
(Italy, male focus group participant from Sub-Saharan Africa, agriculture)

Workers dependent on the employer for regularisation, visa or residence permit

The second type of risk factor for labour exploitation related to residence status is being tied to one specific employer in order to acquire or keep legal residency in the EU Member State. This includes two different situations.

In a number of countries (e.g. Belgium, Italy and Portugal), it was mentioned that migrant workers in an irregular situation can regularise their residence if an employer signs a contract. Tying one's status to the willingness of the employer to sign a contract increases the dependence of the worker on the employer.

Workers will ultimately accept exploitative working conditions, hoping that the employer will at some point regularise their status.

"When they [migrant workers] arrive here, they need papers and to get them they would do anything. It is with a work contract that it is possible to regulate the situation ... but it is difficult."

(Portugal, female interviewee from South America, hospitality, migrant in an irregular situation)

The specific requirements of some regularisation programmes can increase vulnerability to exploitation. In Belgium, in 2009, irregular immigrants were given the option to regularise their situation by presenting a work contract that fulfilled certain conditions. One of the conditions was that workers had to have a contract with a minimum duration of one year.⁴⁵ In practice, the workers ended up staying with the same employer, no matter what the work conditions were, for at least one year, because only then could they gain a residence permit. On top of that, employers sometimes asked research participants for quite large amounts of money to meet the criteria for regularisation (e.g. to prevent the employer from terminating a contract, or to get a work contract that met the criteria for regularisation). One interviewee described the regularisation programme as "an invitation to exploitation and abuse of power". Several interviewees ended up staying in a job and accepting poor working conditions to meet the conditions of the regularisation process, even though the regularisation procedure was not successful in the end or was nullified by false promises from the employer.

In some countries, it was mentioned that administrative requirements to regularise the worker further increase workers' dependence on the employer, and the risk of exploitation. In Portugal, interviewees mentioned a complicated sequence of steps and procedures before regularisation can be attained, including the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*) requiring a copy of the employer's identity card, which the employer often refuses to provide.

Some countries (e.g. Italy and Poland) have established labour migration schemes/quotas that require a statement by the employer to issue the visa/residence permit for the migrant worker to come to the EU. Therefore, migrant workers, once in the EU country, tend to stay with an exploitative employer for fear of losing their right to remain.

⁴⁵ Belgium, Directive of the Federal Government adopted on 19 July 2009 on the application of the old Art. 9,3 and Art. 9bis of the Law of 15 December 1980 on the access to territory, stay, establishment and deportation of foreigners (*Instruction relative à l'application de l'ancien 9,3 et de l'article 9bis de la loi sur les étrangers*).

As an illustration, in Poland, two thirds of the workers interviewed were employed either on the basis of an employer's statement that they intend to employ a person (as for 'national seasonal workers', i.e. citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine, who are issued a 180-day visa to work in any sector of the economy) or on the basis of a work permit (which applies to other workers). This was identified as a factor increasing workers' risk of labour exploitation because quitting their job means that the reason for their stay in Poland ceases. Those with a temporary stay permit issued in relation to the work permit have 30 days to find a new employer or leave the country.⁴⁶ The fear of losing their regular status makes migrants stay with the exploitative employer and hinders reporting the exploitation to the police.

A group at special risk of exploitation is workers tied to one specific employer, which creates dependency on the employer. Workers will accept abusive working conditions for fear of being dismissed and having to return to their country of origin. This aggravates the situation of domestic workers in diplomatic households, who do not enjoy the same level of social protection as other domestic workers. For instance, in some countries (e.g. Belgium), they are excluded from social security payments.

The extent to which migration policies can trigger labour exploitation of migrants is fostered by a peculiar phenomenon: the illegal market for job contracts, through which employers charge migrants for work contracts which are needed to obtain legal residence or simply do not pay them their salary in exchange for the work contract. This was documented in Belgium, Italy and Portugal. For example, in Italy, migrants often pay employers directly, if they are already settled in Italy, or, before leaving the home country, pay someone (often a co-national) who organises the business by mediating with employers in Italy. In some instances, the working relationship is real; in others, the contracts are fake.

Similarly, in Portugal, focus group participants mentioned that it is common practice nowadays to work without pay, only in exchange for a work contract, so that one can apply to the immigration authorities for a residence permit. In this respect, the work trajectory described by a domestic worker in Portugal is particularly illustrative of how specific institutional mechanisms and migration policies enable labour exploitation. First, she worked as a domestic worker with a salary but no contract, so she had an income but could not apply for legal residency. Later, she became a domestic worker for another employer, who provided her with a work contract but in exchange did not pay her any

wages during the first three months. It was on the basis of that unpaid employment relationship that the woman applied successfully for her residence permit and could look for a better employer.

In Belgium, an interviewee had to pay a large amount of money to the employer to avoid his contract being terminated early, which would have prevented him from renewing the residence permit. Another reported that the employer asked him for large sums of money for a contract fulfilling the regularisation criteria; this was supposedly to pay taxes, but the employer kept the money.

Promising practice

Reactivation permit scheme for victims of labour exploitation

In 2014 the Irish government introduced the Reactivation Employment Permit (REP) Scheme. The REP scheme is designed so that a third-country national who entered Ireland on a valid employment permit but has fallen out of the employment permit and immigration system through no fault of his/her own (e.g. has been made redundant) or has been badly treated or exploited in the workplace can work legally again. The REP is available for most occupations, including certain carers but excluding all jobs in a domestic setting, for example housekeepers. This measure can be seen as a system to safeguard victims of labour exploitation.

For more information, see Ireland, Department of Justice and Equality (2018), Reactivation Employment Permit Scheme; Department of Business, Enterprise and Innovation (2017), Reactivation Employment Permit.

In Italy, focus group participants described how the interplay between specific labour migration schemes and (illegal) fees charged by employers and recruitment agencies increases workers' vulnerability to labour exploitation. The current Italian legislation requires third-country nationals working in some sectors to have a formal agreement with the employer to enter the country. The findings show that workers go into debt to pay recruitment fees and employers' fees (up to EUR 15,000). However, to repay these debts, workers have to work more than six months (the duration of the seasonal work visa/permit). Hence, many decide not to show up at the authorities upon arrival to request the temporary residence permit (to replace their visa), and soon become migrants in an irregular situation at risk of further exploitation.

⁴⁶ Poland, Act on foreigners (*Ustawa o cudzoziemcach*), 12 December 2013, Art. 123.

4.2. Economic need

Both interviewees and focus group participants ranked economic need second highest among the factors making workers vulnerable and therefore susceptible to labour exploitation. More than two thirds of the interviewees mentioned economic need in the country of origin, or in the EU country where they live, as one of the main risk factors for labour exploitation, especially in Germany, Italy and the Netherlands. Situations identified as main drivers for moving to the EU include lack of work, insufficient salary to make a living in their country of origin and poor working conditions. As FRA's 2015 report highlighted, poverty also influences the way workers assess their situation in the country of destination and compels them to accept exploitation because of a lack of alternatives.⁴⁷ This result highlights that a risk factor for labour exploitation is global inequalities that produce areas of poverty from which migrants come.

Research participants in all eight countries stated that they had no choice but to start working and accept any work situation, as they had to sustain themselves and their families in their country of origin and sometimes in their country of work. In many cases, it is a matter of survival, related to the provision of food and housing. The lack of any alternative makes workers accept situations of exploitation. As succinctly expressed by a Polish man employed in a food factory in the United Kingdom: "better GBP 100 in England than nothing in Poland".

"All the tasks they give us we have to do, because we are here to help the families and ourselves. So if we don't work, it's not good at all. The families suffer in the home country. [...] Even if he says, 'Pick up the poo', we do it. We don't choose the work."

(France, male interviewee from Sub-Saharan Africa, construction, migrant in an irregular situation)

Some workers reported, looking back, that they ended up being exploited because they were in desperate need of employment and money. One interviewee in the United Kingdom described this as people "grabbing" any job opportunity that they could, without any knowledge of the employer or their rights.

The urgent need to make a living forced some migrant workers with a regular status to take on unregistered work, because registered work, which would require them to pay taxes, would have paid a lower salary.

Some research participants had the additional burden of needing to pay off debts to people who had helped them leave their country of origin (e.g. family members,

recruitment agencies, intermediaries, brokers). The need to sustain their families and pay off debts leads workers to accept very low salaries. For example, an Egyptian migrant in an irregular situation working in the construction sector in France under very harsh conditions highlighted this issue, reporting that he borrowed money from his father's friends and used his savings in Egypt to pay a fee of EUR 5,000 for a journey by boat to France for which he had incurred a debt of EUR 4,000.

Financial needs make workers dependent on their employer. Several interviewees stressed that the employers know that the workers desperately need money. The awareness that workers have little or no alternative increases the imbalance of power and allows employers to take advantage of the worker.

4.3. Lack of knowledge of legal provisions and workers' rights

Lack of knowledge of legal provisions and workers' rights is the third most important risk factor causing or contributing to labour exploitation according to workers. More generally, many research participants felt that being a migrant added to their vulnerability to labour exploitation, because of their general lack of orientation in a completely new legal and institutional environment and not knowing how things work or what can reasonably be expected in a new country.

When discussing migrant status as a risk factor, most interviewees traced vulnerability back to a lack of knowledge of rules, especially labour standards and, to a lesser extent, migration rules. Half of the interviewees identified a lack of knowledge of legal provisions and workers' rights in general, and especially in the EU country of work, as a risk factor causing workers to be exploited. Further, the interviewees were asked if they had learned about workers' rights somewhere, either while still in their country of origin or after they arrived in the EU Member State. Almost all the interviewees reported not knowing their rights at the time of exploitation. As a result, they were not well informed about the existence of a minimum wage and all the legal elements of wages (e.g. social security benefits, health insurance, leave).

"Nobody has provided me with information about labour rights in the Netherlands upon arrival. At school we receive information about insurance, about health care, but nothing about labour rights. That information might have prevented me from accepting the job."

(Netherlands, male interviewee from Middle East, retail, asylum applicant)

⁴⁷ FRA (2015), *Severe labour exploitation – Workers moving within and into the European Union: States' obligations and victims' rights*, Luxembourg, Publications Office, p. 75.

"I want to say that those who don't know the Polish law, who don't know how it all works here, fall prey to such baits, such networks of swindlers."

(Poland, male interviewee from Eastern Europe, transport, logistics and warehousing, posted worker, non-EU national)

The lack of awareness of rights was often discussed in the context of language barriers in Germany, Italy, the Netherlands and the United Kingdom.

When workers do not know their rights and the legal standards employers have to comply with, it is more difficult for them to identify their employers' practices as exploitative.

"Most migrants who are being exploited don't know they are being exploited while they are in the situation. I myself thought that that is just how it is in Germany."

(Germany, male interviewee from Middle East, hospitality, beneficiary of international protection)

Several interviewees referred to employers strategically taking advantage of workers' lack of knowledge of rules and regulations of the new country:

"In most domestic work, employers know what the rights of the employee are, but they pretend that they don't, because this way they take advantage of the fragility of the person and use that in their own favour. Therefore, if there is more information, this will happen less often. It will always happen, but less."

(Portugal, female interviewee from Sub-Saharan Africa, domestic worker, regular migrant)

Almost all interviewees reported not being aware of their rights when they arrived in the EU country. Half of the interviewees learned about their rights as workers at some stage either during or after experiencing labour

exploitation, generally when they got in contact with NGOs/support organisations. Note that about half of the interviewees stated that they were not aware of their rights at the time of the interview, as they had never learned about workers' rights, even in the aftermath of their exploitation.

"Earlier we didn't know these things; we discovered them too late because, besides working in the fields and going home, we didn't go around. If you come home at 9 or 10 at night, when could I go?"

(Italy, male interviewee from Sub-Saharan Africa, construction worker, migrant in an irregular situation)

Several research participants (in the Netherlands, for example) indicated that they had no idea that exploitation even existed in the EU country; others stated that, when they migrated, they imagined that Europe guaranteed better work conditions and respect for human rights. They were appalled to find themselves in situations that did not correspond at all to their prior expectations.

Interviewees who learned about workers' rights earlier on usually mentioned informal channels such as friends, acquaintances or training sessions run by NGOs.

Many workers in an irregular situation do not know that they have the same workers' rights as workers in a regular situation. In France, the findings revealed quite strikingly that, even at the time of the interview, and although they were more or less familiar with the notion of rights, more than a third of respondents expressed in some way that they considered that rights did not apply to them as long as they were in an irregular situation. This factor was also significant in the reasons for not asking for help (see [Chapter 5](#)).

Labour rights for migrants in an irregular situation

As a 2011 report by FRA highlighted,^{*} core labour law standards apply to all workers, regardless of residence status. The ILO's governing body has identified eight ILO conventions as fundamental to the rights of people at work and hence applicable to all workers.^{**} All EU Member States have ratified them. The 1998 ILO Declaration on Fundamental Principles and Rights at Work stresses in Art. 2 that all ILO "Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights". Similarly, the social policy measures to combat exclusion and to protect the rights of workers envisaged in Articles 151 and 152 of the TFEU are not expressly restricted to nationals or lawfully staying third-country nationals. The 1989 Directive on safety and health at work defines 'worker' as "any person employed by an employer" without restricting it to workers in a regular situation.^{***} Core labour rights such as the right to claim withheld pay, the right to compensation for workplace accidents and the right to access to justice apply to migrants in an irregular situation. Similarly, the employers' duty to take measures for the protection of the workers' health and safety, stemming from international and EU law, concerns all workers.

* FRA (2011), *Fundamental rights of migrants in an irregular situation in the European Union*, Luxembourg, Publications Office.

** ILO conventions Nos. 29, 87, 98, 100, 105, 111, 138 and 182, covering freedom of association and collective bargaining, child labour, forced and compulsory labour, and discrimination in respect of employment and occupation.

*** 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 1989 L 183/1.

A worker in Germany referred to strategies of employers warning each other about workers who are known to understand their rights and know where to seek support, and who therefore should not be hired.

Workers in the United Kingdom discussed the role of sending countries not providing information on labour rights. Notably, Filipino domestic workers migrating to the United Kingdom said that pre-departure orientation seminars offered by Filipino state authorities, which all Filipinos are supposed to receive before working abroad, actually encourage interviewees to put up with exploitation abroad:

"I think one reason why we are hesitant to complain is the orientation we get from the Philippines, if they want to work abroad to another country. We have the PDOS, pre-departure orientation seminar, conducted by the Philippine government, which I have attended as a Filipino worker. There is one section in that whole-day seminar that, if you are working abroad and you are abused, you must be patient because it is part of an overseas job."

(United Kingdom, female focus group participant from South-eastern Asia, hospitality, regular migrant)

Filipino interviewees felt they had been let down or even abandoned by their own government, which continues to profit from exploitation because of the huge amount of remittances migrants send home.

4.4. Lack of knowledge of migration rules and procedures

Not knowing the requirements of migration law in a specific EU Member State might result in decisions with negative consequences. In Italy, workers arriving through legal migration schemes/quotas very often become workers with an irregular status because they do not know they have to attend the police station to request their temporary residence permit upon arrival.

Some employers rely on migrants' lack of awareness of migration rules and procedures to keep or make their situation irregular. That in turn increases the possibility of exploiting them. In Portugal, a male Southern Asian worker, tied to his specific employer for visa purposes, explained that his employer deliberately gave him the wrong information about the possibility of applying for asylum or obtaining another type of legal residence. In France, a female asylum seeker who worked in cleaning was recruited by women from Western Africa who took advantage of her lack of knowledge:

"They just told me that I could get my papers in six years ... that it was not easy to get papers and that I had to do that [stay in the exploitative job] to be able to live."

(France, female interviewee from Sub-Saharan Africa, hospitality, unknown status at the time of exploitation)

4.5. Lack of knowledge of the language of the country of work

Lack of knowledge of the language of the country of work ranked fourth as a risk factor for labour exploitation among the interviewees. Slightly more than a third of the interviewees mentioned it. Overall, only one fifth of the interviewees had good or very good knowledge of the language of the country of work upon arrival. The language barrier was greatest in Germany and the Netherlands, where all respondents reported no or basic knowledge of the language, and Italy, where only one worker reported good knowledge of Italian upon arrival (see Figure 11).

Lack of language skills emerged as strongly interconnected with migrant status and as an obstacle to knowing workers' rights. First and foremost, interviewees reported their inability to understand the work contract, as discussed in Chapter 2. Others referred to lack of language skills as deterring workers from challenging exploitative employers and reaching out for help.

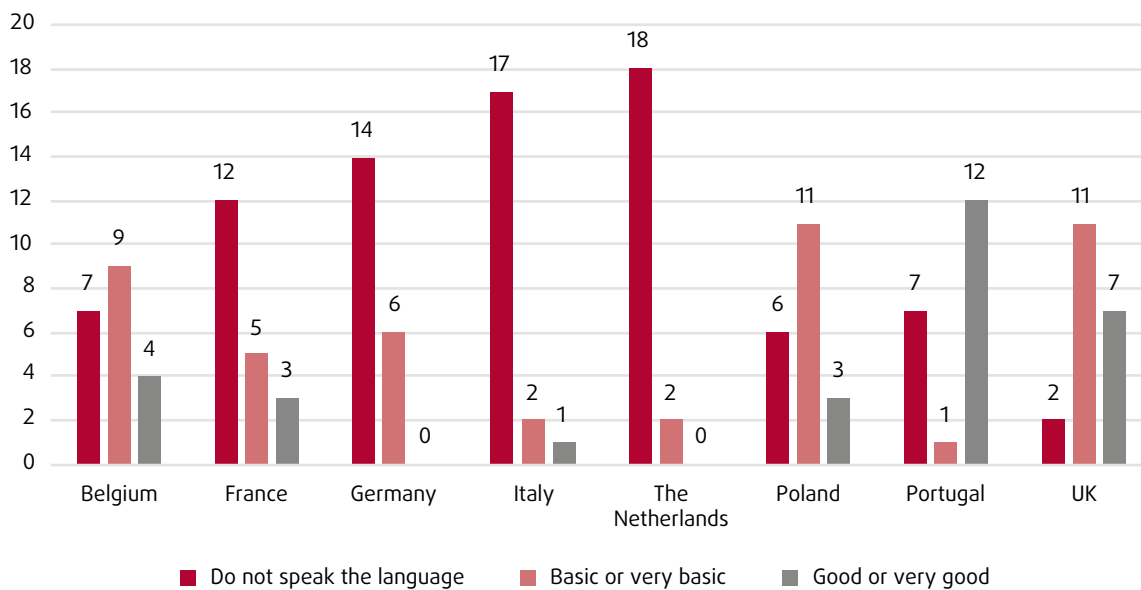
In some countries (Germany, the Netherlands, Portugal and the United Kingdom), research participants referred to lack of language skills hindering workers from seeking better employment, which would possibly match their qualifications. Not knowing the local language ultimately pushed them into unskilled jobs, which are at more risk of labour exploitation.

Interviewees reported that extreme overtime left no opportunity to learn the language. At the time of the interview, in the aftermath of exploitation, many interviewees had improved their language skills, and others were taking or planning to take language courses, which they considered a strategy to avoid experiencing labour exploitation in the future.

The importance of knowing the language is reflected in the findings of FRA's 2015 report, where professionals also noted that language barriers can impede the effectiveness of labour inspections because labour inspectors cannot directly ask workers about their labour conditions.⁴⁸

⁴⁸ FRA (European Union Agency for Fundamental Rights) (2015), *Severe labour exploitation – Workers moving within and into the European Union: States' obligations and victims' rights*, Luxembourg, Publications Office, p. 46.

Figure 11: Knowledge of the language of the country of exploitation upon arrival reported by the interviewee, per EU Member State (absolute numbers)



Notes: Question: 'How do you rate your knowledge of the language of the country on arrival?'. The graph summarises the answers given by 160 respondents; an additional two respondents did not know/did not reply and are excluded from the chart.

Source: FRA, 2019

Promising practice

Informing migrant workers of their labour rights and services provided by trade unions

In Flanders, an integration programme (*inburgeringscursus*), funded by the Flemish government and implemented by the Integration and Civil Integration Agency (*Agentschap Integratie & Inburgering*), is provided to newly arrived migrants. This programme was put in place by the Flemish Decree on integration and civic integration policy of 7 June 2013. The programme is free and includes modules on the Dutch language, living in Belgium (e.g. work, education opportunities, rights and duties), guidance on finding work or training, and information about sports, culture and leisure. These courses are given in the native language of the participants, or in a language they understand.

It was thanks to this programme that a female manufacturing worker from Eastern Europe learned about the support provided by trade unions in Belgium. As she noted, "[w]hen people first come here, they should do [the] inburgering [integration course]. After that, you understand everything. [...] Because we, at inburgering, learned everything. [About] health insurance ... social security ... all those. We went to the police, to ACV [General Christian Trade Union]. So you can learn and ask everything. So to live in Belgium and to be able to stay in Belgium, it is really necessary."

For more information, see *Flanders (n.d.), Inburgering in Vlaanderen; Integration and Civil Integration Agency (Agentschap Integratie & Inburgering), Wie mag of moet inburgeren?; and Flanders (2013), Decree on the Flemish integration and civil integration policy (Decreet betreffende het Vlaamse integratie- en inburgeringsbeleid), 7 June 2013.*

4.6. Lack of effective inspections, checks and punishment by authorities

Lack of sufficient and effective inspections, controls, oversight and punishment of employers by authorities also emerged as a risk factor for labour exploitation. It

was primarily pointed out by interviewees in Germany, Italy, Poland, Portugal and the United Kingdom with a regular status at the time of the interview. Interviewees pointed out that the ineffectiveness of the authorities in dealing with the exploitative situation resulted in a perception of impunity of exploitative employers.

FRA asked interviewees and focus group participants if they had ever witnessed or heard of any inspections or

checks at their workplace. As FRA's inspections report notes,⁴⁹ just over half (132 out of 237) of workers participating in the research had not themselves experienced, witnessed or heard of inspections at the workplace. Findings point to workplace inspections being virtually non-existent in the domestic work sector:

- only two of the 51 domestic workers participating in the research had experienced, witnessed or heard of an inspection in the private households in which they were employed;
- all 51 domestic workers in the sample were women, indicating that women are particularly vulnerable to experiencing labour and fundamental rights abuses in domestic settings.

Inspections appeared to be rare in the construction and food services sectors, with the majority of workers not having experienced or witnessed any inspections: 22 (61 %) and 17 (59 %), respectively.

Some research participants, such as an Ivorian land worker in Italy, expressed a firm wish for more frequent and thorough inspections:

"[C]onstant inspection, [...] this is the solution. Instead of [...] laws, laws, laws. Because even [when] you put the laws [in force], nobody is controlling, it's just a word that is written on a sheet of paper."

(Italy, male focus group participant from Sub-Saharan Africa, agriculture, regular migrant)

However, some focus group participants (e.g. in Poland) were divided about increasing the frequency of inspections as a solution. They also stressed that inspections could have negative consequences for them, such as losing their only income or a place to live, or being deported.

Some workers participating in the research who had witnessed or experienced inspections described what may be called ineffective inspections, including inspections being rather bureaucratic and not focusing on workers' rights or on their work situation. A focus group in Portugal made up entirely of male construction workers from Cape Verde was of the opinion that authorities were not very likely to attend to the situation of workers in an irregular situation. They thought that employers were aware of that tendency and therefore felt comfortable abusing the workers. A similar experience was shared by focus group participants from Bulgaria living in Germany, mostly working in cleaning services, who considered that their employers felt comfortable that the police would not act on behalf of the workers.

Nine research participants (in France, Italy and the United Kingdom) said that the inspectors or police officers either did not talk to them at all or did not ask any questions related to the working conditions. Others reported inspectors talking to workers in front of exploitative employers, which they considered made it difficult for the workers to talk about their situation, or inspectors allowing employers to choose which worker to interview. Other problems mentioned were lack of follow-up actions after the investigation at the workplace and perceived collusion between inspectors and police officers and employers (Italy and the Netherlands).

Several workers in an irregular situation mentioned that labour inspectors focused on irregular migration status rather than workers' rights. In Poland, focus group participants were quite divided about increasing the frequency of inspections because they thought that, if migrant workers in an irregular situation were detected, they would be required to leave the country. One male focus group participant working in a launderette in the Netherlands viewed the labour inspectorate as wearing two hats: checking work conditions and illegal employment at the same time. A female interviewee working in cleaning in Portugal claimed that labour inspections were dangerous only for the workers but not for the abusive employers.

Other interviewees regarded the inspectorate as helpful because it provided necessary information on labour rights or on judicial remedies enabling workers to claim back pay and compensation (Portugal). Positive practices and treatment by labour inspectors were mentioned, especially by most workers who had experienced inspections in the Netherlands.

These findings mirror the views of the professionals interviewed for FRA's 2015 report,⁵⁰ which also mentioned that the findings: "revealed multiple examples of failure to detect exploitation. With limited resources to go round, the priority given to checking workers' immigration status, even by labour authorities, diverts attention further from working conditions. Monitoring is limited in several Member States to a few sectors considered prone to exploitation, and staff and resource shortages further limit the number of effective workplace inspections."

Findings from this research shed light on how workplace inspections are organised and implemented.

49 FRA (2018), *Protecting migrant workers from exploitation in the EU – Boosting workplace inspections*, Luxembourg, Publications Office.

50 FRA (2015), *Severe labour exploitation – Workers moving within or into the European Union*, Luxembourg, Publications Office, p.70.



FRA published them in a special report entitled *Protecting migrant workers from exploitation in the EU – Boosting workplace inspections*.⁵¹

4.7. Other risk factors

The analysis of all interviews and focus groups showed more possible risk factors than those that respondents explicitly identified. Based on the accounts given by research participants, additional factors appeared to be common to several interviewees and are also discussed in this chapter.

Racism and discrimination

Racism and discrimination were identified as a cause of exploitation by interviewees in Germany, Italy, Poland, Portugal and the United Kingdom. They were reported mostly in relation to pay and working conditions. Skin colour, nationality, refugee status and being a foreign worker emerged as the most common grounds for discrimination, followed by gender.

In Poland, interviewees raised the topic of discrimination in the context of Ukrainian workers getting paid half as much as Polish nationals in the same workplace, not being provided with protective masks or not getting weekends off as the Poles did. A female interviewee from Ukraine, who had worked in a meat-processing company where many migrants were employed, mentioned that Ukrainians were offered a lower wage for performing the same tasks:

“Poles also worked there, but for different wages. Because you see, Poles would not agree to work for such money and Ukrainians worked for a laughable wage – for PLN 6 [EUR 1.41 per hour].”

(Poland, female interviewee from Eastern Europe, manufacturing, 'national seasonal worker', non-EU national)

Similarly, an interviewee from Southern Asia who had worked in a manufacturing company employing mostly Poles mentioned her own worse payment conditions:

“I asked the manager why I am paid only PLN 8 [per hour], less than the others, and she told me that I am a foreigner and this is what I deserve. I said her that I have all the rights you have but she told me ‘No, no, you are wrong.’”

(Poland, female interviewee from Southern Asia, manufacturing, regular migrant)

Two research participants confirmed the observation about the disparity between the wages of Ukrainian and

Polish domestic workers. One said: “if they hear that you’re from Ukraine, your hourly wage drops, immediately, I don’t know why”. In the United Kingdom, Roma workers from Slovakia, who worked as hotel workers, reported they had experienced direct discrimination, for example being given twice as many rooms to clean as non-Roma employees. Relating to discrimination based on religion, two factory workers in the United Kingdom were denied the same breaks and religious holidays as other employees. When they challenged the employer on these grounds, they were told they would not be given any more work:

“When there was Ramadan, their Muslim colleagues would go for prayers and they would spend half an hour minimum. But when people were asking ‘I would like a break as well, I want to pray as well’ because there are religious holidays for them as well they were told ‘No, you’re not allowed – if you go you don’t have to come tomorrow.’”

(United Kingdom, male focus group participant from Eastern Europe, manufacturing, EU national)

Female migrant domestic workers mentioned the situation of employers discriminating against workers because of their nationality (as in Poland) and/or skin colour (as in Portugal). In Portugal, men working in the construction sector spoke about racism among the employers, illustrating this with the common situation that employers and supervisors do not trust black workers to carry out new tasks, or they prevent black workers from learning and acquiring new skills on the job, while behaving the opposite way towards white workers.

In Germany, Syrian asylum seekers working in the food sector reported being discriminated against in relation to their right to take leave. In Italy, male African workers mentioned discrimination based on skin colour:

“I am a foreigner, when they give me huge money I will send it back to my country [...] they said that I’m black, so the money [received from the employer] was [considered] enough.”

(Italy, male focus group participant from Sub-Saharan Africa, construction, migrant in an irregular situation)

The identification of racism and discrimination as a factor causing exploitation means that public authorities, inspection and monitoring bodies, trade unions and support organisations need to enable their staff members to identify discrimination as a factor aggravating the situation of exploitation. Discrimination is a critical element in determining the quality of work conditions, and monitoring discrimination could therefore be integrated into the mandate of inspection and monitoring bodies.

⁵¹ FRA (2018), *Protecting migrant workers from exploitation in the EU – Boosting workplace inspections*, Luxembourg, Publications Office.

Dependence on the employer

Another risk factor identified is dependency on the employer. This risk factor was mentioned almost exclusively by third-country nationals particularly by interviewees who were in an irregular condition during the exploitative work relationship.

Dependence on the employer was linked to situations in which the interviewee was brought to the EU Member State by the employer, had to rely on the employer for housing or depended on the employer for his or her residence status. Other elements of dependence which emerged, not necessarily mentioned by the interviewees themselves, include feelings of dependence because the employer was a family member and domestic workers feeling an obligation to comply with employers' requests because they feel, and are told to be, "part of the family".

In FRA's 2015 report,⁵² 40 % of the representatives of all professional groups and in all 21 EU Member States participating in the fieldwork mentioned particularly frequently that employers increase workers' dependence on them, for instance by providing accommodation or transport.

Other individual risk factors that research participants identified included obstacles to accessing justice; blaming oneself for being exploited; workers accepting the situation because it was better than or similar to what had been offered at home; spatial, social and emotional isolation; exhaustion; and vulnerable workers. Those with drug and alcohol dependency, and homeless or uneducated individuals, were considered more at risk of labour exploitation and especially targeted by exploitative employers.

⁵² FRA (2015), *Severe labour exploitation – Workers moving within or into the European Union*, Luxembourg, Publications Office.

5

Exploited workers' access to justice



KEY FINDINGS

Overall, the interviewees had managed to improve their legal status and their work situation. However, many of them still felt the impact of the exploitative work situation, as issues had still been resolved only partially or not at all.

- Eighteen per cent of the interviewees were still in an irregular situation.
- About half of the interviewees at the time of talking to FRA had still not been informed about workers' rights, and about one tenth of the interviewees were still in the exploitative work situation.
- Even those interviewees who had been able to leave the exploitative work relationship were largely not satisfied with their current situation. Many remained discontent given that they were still unable to receive back pay owed to them and their employers remained unsanctioned.

This chapter relates to workers in the process of leaving their situation of exploitative labour conditions. It analyses the drivers and barriers that workers experience in seeking assistance and sometimes also access to justice. It explores whether or not interviewees were informed about their rights as workers and whether or not they reached out for help and, if so, to whom.

Organisations contacted include labour inspectorates, other monitoring bodies, the police, trade unions, organisations advising migrants or refugees, victim support and religious organisations. The chapter takes stock of what these institutions' interventions resulted in, how satisfied the research participants were with outcomes and what impact these outcomes had on their overall situation at the time the interviews were conducted.

What can be learned is what empowered and drove workers to seek support or impeded their exit from a situation of exploitative working conditions. In the end, a large number of workers left their exploitative

situations and only few were, at the time of the interviews, still in exploitative employment.

5.1. Exploited workers seeking support

Interviewees were asked why they decided to look for help, what kind of assistance they were looking for and to whom they turned for assistance. Questions pertaining to the quality of the support aimed to find out if the assistance was helpful, if it was offered in a language workers understood and if they were treated well by the persons they encountered. Those who had not sought assistance were asked about what prevented them from asking for support.

Reasons for seeking support and organisations involved

The most important reasons for reaching out for support was workers' desire for help in getting the money the

employers owed them and their decision to no longer put up with the exploitative working conditions. Other motives for coming forward were the desire for justice (e.g. that employers breaking the law should be sanctioned) and to protect other workers from having to go through the same experience of exploitation.

As shown in **Figure 12**, interviewees most often contacted individuals belonging to personal networks, followed by migrant and victim support organisations and then trade unions, when they wanted to get back the money the employers owed them.

“So I asked my boss to give me back the other EUR 400 that he took from [...] the beginning, and he told me, ‘You have nothing on me’, and he told me, ‘At the end of the month you’re gone.’ And after that I called my brother and I explained everything to my brother, and it’s my brother who helped me. He called the employment inspectorate, and they came on the 30th.”

(France, male interviewee from Northern Africa, retail, migrant in an irregular situation)

Case study: spontaneous and appropriate referral by an individual

A male interviewee from Northern Africa was severely exploited in the construction sector in France. For over 10 months, he was locked in every night in a container on the construction site, where he lived in extremely degrading conditions. After his employer left him in an abandoned building for days without coming back, he ran away and had to live on the streets. Although he tried to reach out for help because he was homeless, it was only after a year that his situation meaningfully improved. At the mosque where he was begging, he met a man who listened to his story and decided to help him out by identifying an organisation specialised in support to victims of modern slavery. The man put him in contact with this organisation, which made him feel like a human being again, as he said.

Some interviewees asked members of their migrant community. In the Netherlands, this was especially true of workers with an irregular residence status. In the United Kingdom, domestic workers from the Philippines got in touch with members of the Filipino community, who were able to refer them to support organisations.

“I felt comfortable [...] because she [the manager of a Philippine restaurant] told me there was a Filipino organisation that can help me. [...] I made a strong decision to [escape] because of her.”

(United Kingdom, female interviewee from South-eastern Asia, domestic work, regular migrant)

Being confident that an organisation/authority providing services will be supportive and can be trusted

was an important factor. Establishing trust is usually achieved by getting information from a trusted person, again often a person from within a migrant community.

Some interviewees indicated that they decided to make use of support services only when they were in contact with an organisation for another reason, for instance in the aftermath of a work accident or a police raid.

They contacted trade unions in Belgium, France, Italy, the Netherlands and Poland. Almost all the interviewees who turned to trade unions for assistance had a regular residence status. Half of the interviewees who contacted trade unions were either agricultural or construction workers.

Only four female workers (agriculture, manufacture, hotel work) contacted embassies, in Belgium and Poland.

“This company is still operating. [...] It’s a very big company. After the intervention of the Embassy of the Philippines, they just stopped taking Filipino workers. But they are continuously hiring. Every time a worker escaped, they hired someone new. [...] But the situation of workers is still the same.”

(Poland, female interviewee from South-eastern Asia, agriculture, regular migrant)

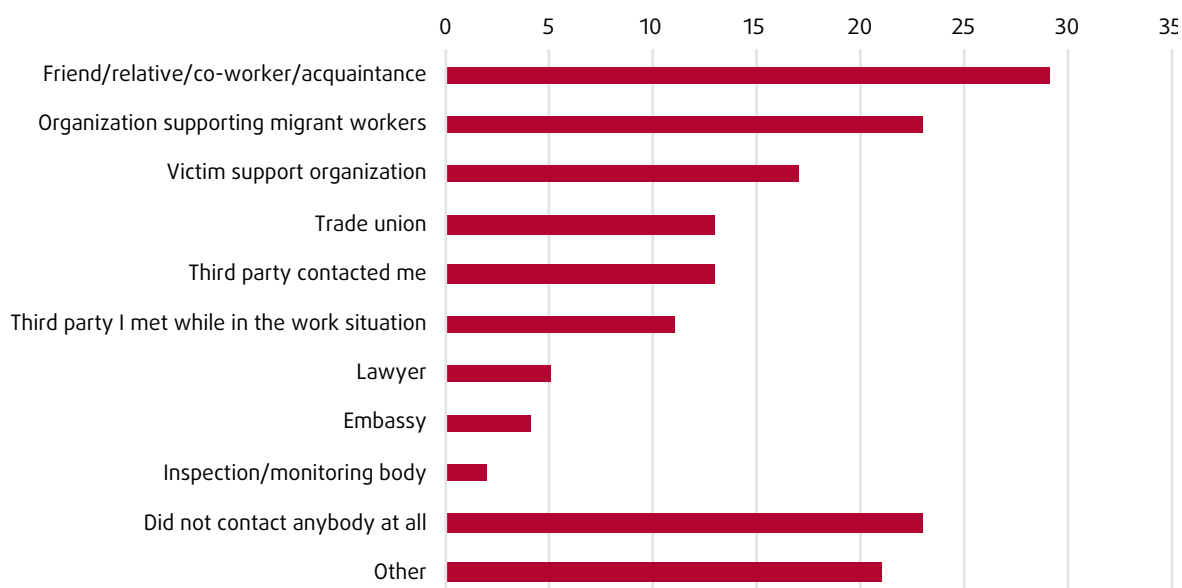
Barriers to seeking support

Approximately 15 % of the interviewees stated that they had not contacted anybody for support. The main reason was that they did not know who to turn to for support. This could indicate a lack of appropriate victim support organisations. Article 8 of the Victims’ Rights Directive⁵³ obliges EU Member States to ensure that all victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims. Alongside general support services, Member States must establish specialist support services where this is necessary to ensure that victims have appropriate services available to them.

Interviewees in an irregular residence situation were afraid of being reported to migration services and returned to their country of origin. This discouraged them from seeking support or justice. A focus group participant stated that workers in an irregular situation were visible when doing something wrong, but they did not exist when it came to securing their rights. This kind of fear was also an issue with workers who had sought support. An interviewee who reported his case

53 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, pp. 57-73.

Figure 12: Individuals, public authorities, civil society organisations and other organisations contacted first for support by interviewees (absolute numbers)



Notes: Questions: 'Did you contact anyone for support? Who did you approach?'. The graph summarises the answers given by 160 respondents; an additional two respondents did not know/did not reply and are excluded from the chart.

Source: FRA, 2018

to a lawyer and a victim support organisation said that he felt psychologically worse off after reporting, as he was scared that someone would call the police, who would then expel him.

Other reasons were more closely connected to the employer's strategies such as controlling and isolating workers from the outside world, or threatening them with not being paid, losing their job or being relocated to remote workplaces if they sought assistance.

Promising practice

Providing safe accommodation for victims of labour exploitation

In southern Italy, interviewees reported on a programme called "Work Out" funded by the Italian Episcopal Conference. The project provides legal and non-legal assistance to victims of labour exploitation. As non-legal assistance, the project opened a safe house for victims of labour exploitation, who could be particularly vulnerable to retaliation by the employer during the reporting process.

Interviewees identified not knowing the language as a reason for not seeking support. Some (especially seasonal workers) either were hesitant to contact an organisation, as they were not able to speak the

language, or tried to seek an organisation offering support in their native language.

"If I knew the language I would have done so [speak out against the employer about her conditions]. But because I do not know the language, I could not speak out to anyone."

(Netherlands, female interviewee from Eastern Europe, retail, EU national)

A seasonal worker of Nepalese origin also highlighted the importance of getting in touch with a Nepalese organisation based in Portugal in order to be able to communicate in his native language. Interviewees also pointed out the importance of organisations translating work-related documents and written communications from courts and authorities.

Other aspects preventing interviewees from coming forward were social isolation and lack of time and energy due to long working hours and physically and/or psychologically exhausting work.

Some interviewees did not think it necessary to search for support, as they did not identify their work situation as exploitative.

Others believed they had signed a contract or agreed to the working conditions at the beginning and did not want to complain about a situation they took responsibility for.

“Each time at the end of the [French language] class, he [a staff member of a support organisation] explained to us the rules, he explained the laws, he told us to ‘gather proof for everything’, and it was when I was listening to this that I realised everything that was going wrong. But at that moment, I said: ‘Well, what do I do now? I already accepted, I already signed my contract. What can I do?’”

(Belgium, female focus group participant from Central America, domestic worker, regular migrant)

Seeking assistance

Drivers

- Knowing one’s rights and being able to identify one’s work situation as exploitative
- Support through informal channels and third parties getting actively involved or empathetically offering support
- Easily accessible information on where to seek support
- Support available in a language the workers easily understand and speak
- Desire for justice and to prevent future exploitation

Barriers

- Lacking trust that an organisation will attend to the issue and really support the worker
- Fear (especially among workers of irregular status) of being reported, which might result in their removal
- Fear of the employer
- Hostile attitudes of employers, but also of society in general, towards foreign workers (of specific nationalities)

Kind and quality of support received

As **Figure 13** shows, workers interviewed received legal advice most often from victim support organisations, general support organisations, lawyers, trade unions, consulates, inspectorates and individuals. It included, for instance:

- the provision of information on workers’ rights;
- explanations on the content of their work contract;
- referral to a lawyer (who spoke the language of the interviewee);
- information on evidence needed;
- information on whether or not it was advisable to take a case to court;
- assistance in preparing and going through court proceedings.

Victim support organisations also accompanied interviewees to court. A majority (85 %) of the interviewees

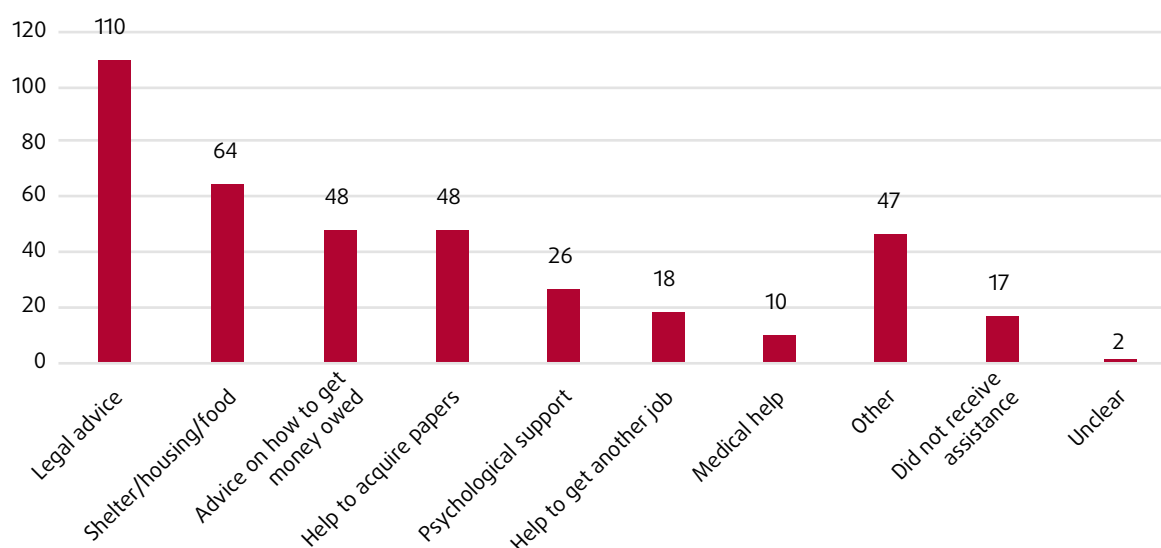
rated the legal advice received as helpful. Slightly fewer than half of the interviewees received support in finding shelter, housing or access to food, which was especially important for those interviewees who lived at the workplace or at premises owned or controlled by the employer. The vast majority (92 %) assessed this kind of support as helpful.

About one third of the interviewees indicated that they had received advice on how to get the money owed by the employer and on how to acquire papers to regularise their residence or work status. More than half of the interviewees rated support in getting the money owed by the employer as very helpful. How this kind of support is assessed might depend on whether or not the interviewee actually recovered the money owed by the employer.

Trade unions and NGOs played an important role in supporting interviewees to end their exploitative work relationships, negotiate with employers and get their money back. In addition, trade unions supported workers who went on strike to obtain a residence permit (France) or to receive the money owed by the employer (Italy).



Figure 13: Kind of support workers interviewed received (absolute numbers)



Notes: Question: 'What kind of assistance did you actually receive?'. The graph summarises the answers given by 160 respondents; an additional two respondents did not know/did not reply and are excluded from the chart.

Source: FRA, 2018

Promising practice

Trade union support in strikes and negotiations

An employer exploited an African female worker without a residence permit and her colleagues in a hair salon in France. The workers had to work long hours under difficult conditions, and the employer paid late and very little. After some time, the employees decided to call on the Central Confederation of Labour (*Confédération générale du travail*, CGT) for help. The CGT took the lead on the negotiations with the owner of the hair salon, whom the employees did not know. The CGT also helped with organising and supporting a strike and with getting the workers' residence status regularised through the prefecture. At the time of the interview, the interviewee and her colleagues had been financially compensated by the *prud'hommes* (labour tribunal) and had received residence permits.

Some interviewees received psychological advice and the great majority (92 %) assessed this kind of support as quite/very helpful.

Material assistance, such as clothes and money, was mentioned, as well as access to showers and washing machines. Interviewees also highlighted translation services, being accompanied to relevant authorities or medical services, and training they received.

Victim and migrant support organisations played a key role in supporting interviewees in deciding how they wanted to proceed with their case and in guiding them through the process of reporting a case. Interviewees perceived it as very positive when staff of support organisations had time for them, showed interest in their case and were committed to supporting them. Focus group participants (especially in Belgium, France, Italy, the Netherlands and Portugal) generally regarded trade unions and support organisations as respectful, helpful and kind.

"The lady [employee of support organisation] is even in close contact with my wife and she constantly writes to the employer and demands that he sends our time-sheets. That's what the support looks like. She stands up for us by claiming what we want."

(Germany, male interviewee from Eastern Europe, agriculture, EU national)

Interviewees appreciated clear explanations, especially concerning the legal situation, and advice on next steps to be taken and on measures aimed at preventing further exploitation, such as having work contracts checked before they are signed.

To a great extent (more than four in every five interviewees), interviewees said that they understood the assistance received. It seems that quite often interviewees were able to get advice in their native language or they were provided with an interpreter or received translations of important documents.

Negative experiences

Support organisations

Some interviewees reported bad experiences with organisations they contacted for support which stated that they could not help them. That was the case when, for instance, an interviewee who sought support from an organisation focusing on trafficking in human beings was not recognised as a victim of trafficking (Belgium).

Two posted workers (Belgium) reported experiencing degrading treatment. A social assistant at a public centre for social welfare told one interviewee that it would be better if he returned to Spain. A representative of a local association told the other interviewee that he had no right to be there and that he should return the same way he had arrived, which made the interviewee feel treated "like a rat".

Authorities

Interviewees with negative experiences described representatives of authorities as not being interested in their case, treating them in a degrading way and providing wrong information.

In Portugal, some interviewees – two domestic workers from South America and Africa, and one woman from South America working in manufacture – recalled bad experiences with the labour inspectorate they had turned to in order to obtain information about their rights.

"I felt really bad. I was treated badly, indeed. The lady who received me that day spoke very badly to me. 'I'm not going to deal with this problem.'"

(Portugal, female interviewee from Sub-Saharan Africa, domestic work, migrant in an irregular situation)

5.2. Police supporting workers in gaining access to justice

In relation to law enforcement, interviewees were asked if they had reported the exploitation to the police and what helped them in, or stopped them from, reporting it to the police. In addition, interviewees assessed how the police treated them and whether or not the police tried to help them.

Workers who had reported to the police

Fewer than half of the interviewees stated that they had reported their case to the police or were in the process of doing so. Workers were more likely to report violence

or threats of violence to the police than exploitative working conditions (Belgium, Portugal).

"I would go to the police if, for example, he had hit me, as I said, in the office, that day, that was the limit. [...]."

(Belgium, male interviewee from Sub-Saharan Africa, building maintenance, migrant in an irregular situation)

A frequent motive for reporting cases to the police was the aim of preventing similar experiences of exploitation for other workers.

In many instances, the decision to report to the police was not easily made, not least because of employers' threats about what would happen in that case. Support organisations had an important role in encouraging workers to report.

"I was very afraid [of] the police, but they [the association] told me it was okay. I told them that I'm afraid for my family, because he threatened me and my family, because sometimes I think that he will hurt my family, he will hurt my father, he will hurt my sister. And they told me: 'No, the police will look for them, but slowly, they will not make a big fuss. It's your right. If you want, we can go to the police, and if you don't want to, we respect your decision, and you will still have our help.'"

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation)

Reasons for not reporting to the police

More than half of the interviewees (57 %) did not report their case to the police. The most common reason for not reporting it to the police (mentioned by a quarter of the interviewees) was being afraid or scared of, for example, losing their job, of being arrested and returned to their country of origin, or of generally getting into trouble. The second most frequent reason for not reporting to the police (mentioned by a fifth of the interviewees) was a belief that the police would or could not help.

One of the main impediments to reporting to the police was a focus on (irregular) migration status rather than the fact of being a victim of severe labour exploitation and fear of being returned to their country of origin. This was mainly expressed by migrants in an irregular situation.

"I could not go to the police, because it's tough there ... Straight to Morocco! If I don't have a residence permit, I can't report to the police."

(France, male interviewee from Northern Africa, retail, migrant in an irregular situation).



"How can I go to the police? They can ask me 'Where do you live?' – and I don't have any documents that confirm my residence. 'Where do you work?' – and I don't have any employment contract. I was just afraid that I'd be found guilty in this case, that I'd be deported to Belarus even. If this happens, I'm forbidden to enter Poland for at least three years."

(Poland, male interviewee from Eastern Europe, hospitality, 'national seasonal worker', non-EU national)

Several interviewees were discouraged by the fact that they did not speak the official language.

"The two policemen came by car, because the workplace was too far away from the city, but we couldn't speak Portuguese and they couldn't speak English."

(Portugal, male interviewee from Southern Asia, regularly resident)

"Unfortunately, that is not possible, as I don't speak the language. The police needs translators and translators cost money, and I cannot afford that. That is why I don't go to the police."

(Germany, male interviewee from Eastern Europe, cleaning, EU national)

Several interviewees feared retaliation by the employer:

"The police came to have a drink at the restaurant. The boss offered beers to the people in the bar. So, you wonder. It is like an implicit agreement. Besides, if you talk to the police, they can give you fines. If you do not pay taxes, it is still tax evasion. And I would be afraid in the streets, if I denounce him [the boss]."

(Belgium, female worker from Southern Europe, hospitality, EU national)

Quite a few interviewees named other reasons such as not having collected enough evidence, as there were no witnesses of violence and exploitation.

The lack of trust in the police was sometimes related to previous experiences with law enforcement in countries of origin or other third countries the interviewees had worked in.

"The police, above all, is the only thing I do not dare, naturally. Even if I did nothing. When I think, at home, the police are synonymous with the culpable becoming the innocent and vice versa."

(Belgium, male interviewee from Sub-Saharan Africa, building maintenance, migrant in an irregular situation)

"She was really hesitant to go to the police, because in Qatar the situation is that if you complain, you would probably be the one in jail. [...] instead of getting what you want, you end up being the one in the jail. She was worried about that situation happening here in the UK. She doesn't know how the police is in the UK."

(United Kingdom, female interviewee from the South-eastern Asia, domestic work, regular migrant)

Reporting to the police

Drivers

- Having the possibility of being recognised as a victim of trafficking in human beings
- Support organisations, trade unions or lawyers accompanying workers to the police
- Experiencing physical violence

Barriers

- Fear of being arrested, being returned to their country of origin or, more generally, getting into trouble (especially when in an irregular situation)
- Not believing that the police would or could help them
- Lack of trust in services of the police, sometimes related to previous experiences in third countries
- Attitude of the police towards foreign workers
- Language skills
- Being afraid of losing their job and scared of the employer
- Not having collected enough evidence

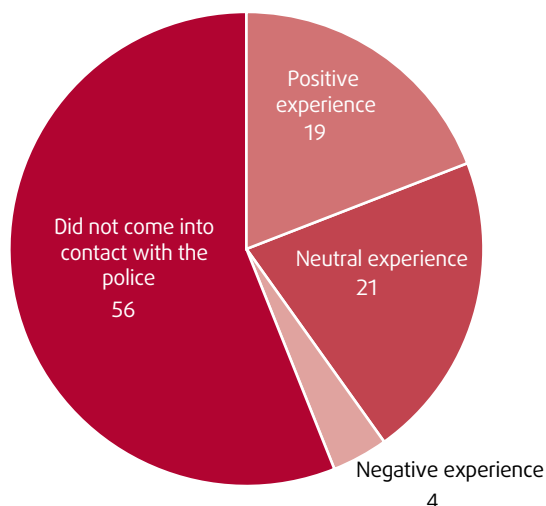
Treatment by the police

Nine in every 10 interviewees who had reported or were in the process of reporting to the police assessed their treatment by the police either as neutral or as positive (see Figure 14). Positive experiences with the police were quite often connected to support organisations,

trade unions or lawyers accompanying the interviewee to the police (France, Italy, the Netherlands and the United Kingdom). Exploited workers who are not provided with such support might have a different experience of the police. Only a few interviewees rated their experience with the police as negative. Negative treatment was reported in Belgium, France, the

Netherlands, Poland and Portugal, including rudeness, having the feeling of not being taken seriously or not being believed, or of being perceived as the perpetrator instead of the victim.

Figure 14: Treatment by the police (%)



Notes: Question: 'How did the police treat you?'. The graph summarises the answers given by 157 respondents; an additional five respondents did not know/did not reply and are excluded from the chart.

Source: FRA, 2018

Promising practice

Strong cooperation between victim support association and police

A victim support organisation in **France** had established very good relationships with the police, who now knew the organisation well and always provided the best service for victims reporting to the police.

Four interviewees described their experience with the police as very positive. They especially highlighted the feeling of safety and trust they were able to establish with the police officers, who were very understanding, but more especially because the police came to the association's office to take the report, dressed as civilians.

Focus group participants perceived treatment by the police in a more negative way. Participants reported cases in which they were maltreated by the police (Belgium, France, Germany, Italy and the United Kingdom), and recalled incidents of rape and abuse (United Kingdom), not being taken seriously (Germany, Poland and the United Kingdom) or not having received any assistance (Germany and Poland). The police were also viewed with mistrust due to their prejudicial/discriminative behaviour (Italy, Germany and the United Kingdom).

Action taken by the police

The vast majority of interviewees who had reported to the police stated that the police had started an investigation. In addition, the police started investigating six cases that interviewees had not reported to the police (in Poland, Portugal and the United Kingdom).

In France, five police investigations resulted in court proceedings. However, the cases were still pending at the time of the interviews.

Interviewees perceived it as negative when the police did not take any action to protect them or did not refer them to any other competent organisations when they needed food, clothes or accommodation.

"I was making a complaint, and did they try to help me? No, what did they do? They asked me for the phone number of my employer and told him, because they are acquainted, that I needed to go there [his house] to pick up my clothes. And I didn't have any support from the police."
(Portugal, female interviewee from South America, domestic worker, regular migrant)

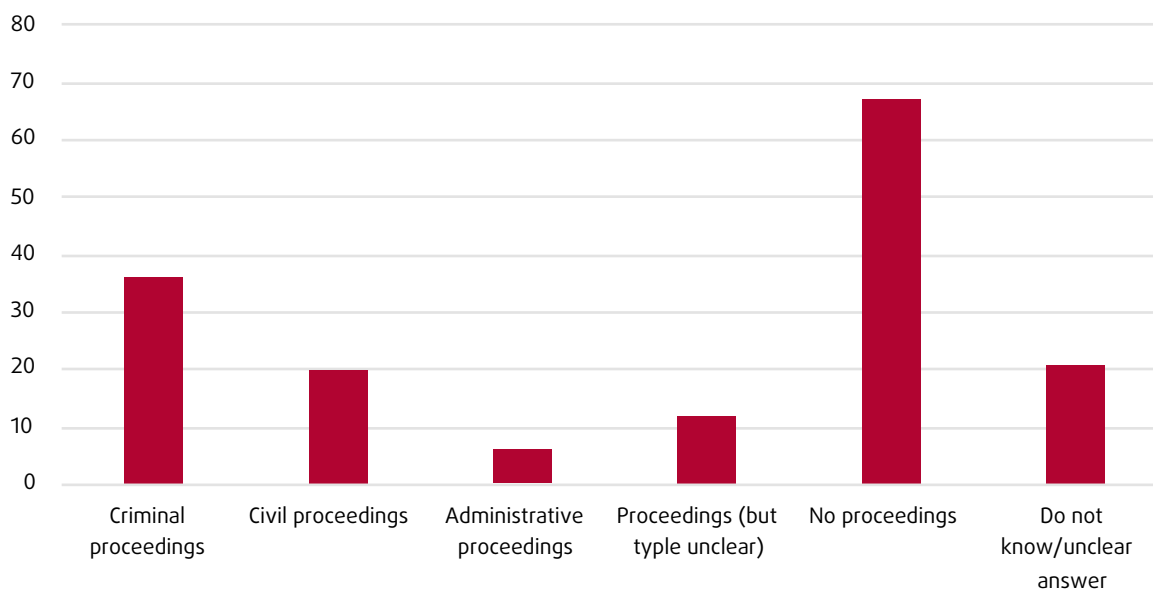
5.3. Role of courts in granting access to justice

Almost half of the interviewees indicated that their case ended in court proceedings (see [Figure 15](#)).

Motivations for initiating court proceedings included getting payments owed by the employer, achieving a regular residence status by pressing criminal charges or discouraging employers from exploiting other workers.

"I wanted justice. I was not alone, we were six persons. It was humiliating. The company thought, as we don't speak the language, they can do anything they like to us."
(Germany, male interviewee from Eastern Europe, logistics, EU national)

Figure 15: Numbers of interviewees indicating that their case was dealt with in proceedings with different authorities (absolute numbers)



Notes: Questions: 'Were there court proceedings? Which proceedings?'. N=162.

Source: FRA, 2018

According to the latest EU Commission report on the implementation of the Employers Sanctions Directive,⁵⁴ only 10 Member States (Austria, Germany, Greece, Spain, Hungary, Italy, Luxembourg, Slovakia, Slovenia and Sweden) had introduced by law the possibility of granting permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals in an irregular situation who are victims of severe labour exploitation, and the possibility of defining the conditions under which the duration of this permit may be extended until the migrant in an irregular situation has received any back payment.

Of crucial importance were victim support organisations that provided information on court proceedings and practical assistance. One interviewee mentioned the support she received from an employee of an NGO, who filled in the form for requesting the appointment of an attorney to her case, which had to be done in Polish. The interviewee would not have been able to fill in the form because of her lack of language skills and a general feeling of insecurity when engaging in legal action.

"[H]e [the employee of the NGO] was the one who filled all the documents on my behalf, because he knew how to do it."

(Poland, female interviewee from Eastern Europe, manufacturing, 'national seasonal worker', non-EU national)

Furthmore, interviewees emphasised the pivotal role of lawyers, who provided not only legal advice, but usually also translation, which made access to justice for the interviewees feasible. Most of the interviewees were accompanied by interpreters in court, but often left alone with written communication by courts in a language they did not understand.

Fewer than half of the interviewees stated that they had not initiated proceedings. Costs related to court cases (e.g. costs for lawyers, for translation, for travel costs, for trade union support) were a major barrier to participating in court proceedings.

"I was in a very difficult financial situation; during those seven months I got some money from the [employment office], but that wasn't even enough to pay the rent. So, I couldn't ... it was very difficult to go to the support organisation to provide them with evidence and so on, because, financially, I was really in a very difficult financial situation."

(Germany, male interviewee from Eastern Europe, manufacturing, EU national)

Interviewees reported that other workers had to leave the country during court proceedings, as they were not able to cover accommodation costs, and therefore

⁵⁴ European Commission (2014), *Communication from the Commission to the European Parliament and the Council 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(2014) 286 final, p. 8.

it was difficult to provide courts with evidence and to stay in touch with the support organisation or lawyer assisting them.

Providing evidence was also very challenging, as interviewees lacked essential papers such as work contracts or time-sheets reflecting the actual working hours, or witnesses to their work, or were not able to prove that they had not been paid, as they did not have a bank account and wages had been paid in cash.

"The lawyer wanted to go to the next level, but unfortunately there were no witnesses, the colleagues were not present and there were no witnesses who could prove it [...] The payslips said that I got EUR 200 for food, expenses; unfortunately I never got it."

(Germany, male interviewee from Eastern Europe, manufacturing, EU national)

"[I]f you are going to report, they say that you have to find somebody who you are working with [...] maybe you are working with Italians: then OK, find a witness to come to the court and sometimes they could ask you not [to take somebody who is] black [...] because if I am with him they say 'No, you are friends'. [...] Maybe you give one witness, but they say 'No, we need three witnesses.'"

(Italy, male focus group participant from Sub-Saharan Africa, agriculture, regular migrant)

Not knowing the legal system and the uncertainty of winning a case were also mentioned.

The uncertainty about the outcome of a case was further aggravated by discouraging experiences of acquaintances, who had lost their cases in court, and by word-of-mouth reports of challenges faced during trials. Among these were long proceedings, high costs and not obtaining justice.

Interviewees in Germany who had been part of civil proceedings in front of labour courts were quite angry and felt humiliated. Although the labour courts had often decided in favour of the complainants, interviewees reported not having received any payments even after the court had decided in their favour. They perceived the system as too weak to enforce the court decisions, which they perceived as an injustice.

Other interviewees considered civil law remedies generally not appropriate, as they would not prevent future exploitation of other workers. They wanted to see the employer held responsible and punished. One worker, who was owed EUR 15,623 by his employer, having worked in a warehouse in very poor working conditions, describes this:

"I am desperate, I don't see any justice despite the fact that all of this happened in Germany."

(Germany, male interviewee from Eastern Europe, warehouse, EU national)

In addition, receiving restitution from the offender was identified as an important element of what criminal justice should entail:

"[I]f the employer is punished with six months' imprisonment, where is your justice then? [...] So, if he receives six months, plus [has to pay] your money back, then the person feels better than [when the employer is] only [sentenced to] imprisonment."

(Netherlands, male focus group participant from Northern Africa, hospitality, migrant in an irregular situation)

A construction worker from Cape Verde also stressed the need for a dissuasive sanction. He observed that administrative authorities may help solve the worker's problem but that they do not punish or detain the abusive employer, so they hardly prevent the same behaviour by employers on future occasions.

Almost a quarter of the interviewees said that they had themselves not directly been involved in the proceedings, either because the proceedings had not started yet or organisations or lawyers had taken over the case and prevented the interviewees from participating in the court proceedings. Therefore, they could not assess the quality of their treatment during proceedings.

In Portugal, agricultural workers from Nepal stated that they were treated with respect by courts and appreciated the fact that they could give their testimony in Hindi, with the support of a Hindi-Portuguese interpreter arranged for this purpose. Furthermore, two of them described it as quite positive that the owners and/or managers of the company that exploited them had been placed in custody or had to wear electronic bracelets. These measures prevented the exploiters from continuing their exploitative practices.

In the Netherlands, although the complainants were not always confronted with their exploitative employer, the interrogation by the defendants' lawyers was perceived as intimidating.

"I went to court twice. They interrogated me [on] two days, total of five hours. That time I almost had a depression. Because the lawyer of the employer asked me many questions: why are you like this, why did you do this. I almost got a depression. It was so hard."

(Netherlands, female interviewee from South-eastern Asia, domestic worker, regular migrant)

Quite a large number of interviewees did not assess their treatment by courts. This may be related to the fact that they were not involved in the proceedings at



all or had not been involved by the time the interview took place, as the proceedings were still ongoing.

In France, most of the cases that were taken to court (see Figure 16) went through criminal proceedings pertaining to trafficking in human beings. In two cases, the employers were found guilty of employing migrants in an irregular situation and illegal employment, the employers appealed against the decisions and the cases were still pending at the time of the interview. In the other cases, investigations had just started at the time of the interviews. Another interviewee won a civil law case against his employer.

In Germany, six of the eight labour court proceedings resulted in a judgment, four in favour of the complainants. Although court proceedings awarded compensation or back pay, none of the interviewees actually received the payments owed by the employers. Reasons for not getting compensated were that employers disappeared, declared insolvency or just did not pay the amount claimed. Interviewees were disappointed by the apparent inability of authorities to enforce court decisions. Interviewees were desperate and sceptical, and found it hard to believe that access to justice was not granted in Germany.

"That is how the boss does it [...] He works with a company for six, seven months, then he declares insolvency and then the company belongs to his wife or girlfriend or someone he knows ... and insolvency again. [...] After I had sued, the company was moved from the premises and after two, three months it came back."

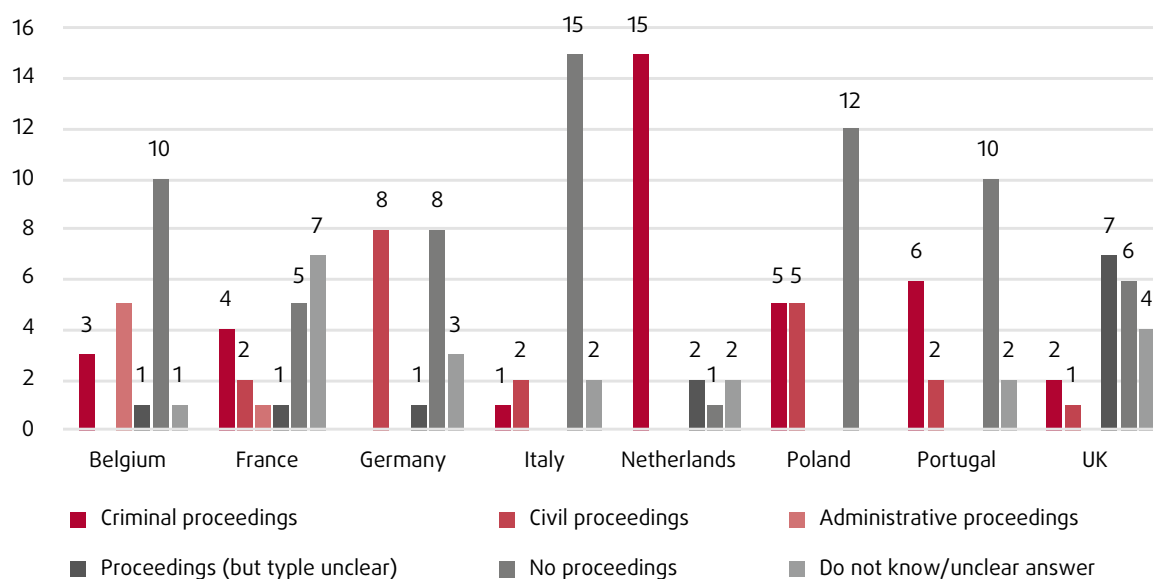
(Germany, male interviewee from Eastern Europe, manufacturing, EU national)

Interviewees in the Netherlands were not well informed about the status of their criminal proceedings and about whether or not civil proceedings aimed at gaining compensation had been initiated. Requests for assistance in acquiring compensation seem to have often remained unanswered.

In Poland, some interviewees participated in criminal proceedings, with the help of NGOs. Court proceedings were still pending at the time of the interviews. Four interviewees participated in criminal proceedings against their employers and testified to the Border Guard. However, none of the four interviewees was aware of the exact stage of their proceedings. The lack of knowledge had particularly detrimental effects for the Filipinas who had entered a victim support programme: their residence permits were valid only as long as the proceedings against their former employers continued. The lack of information on the current status of the proceedings directly translated into a feeling of uncertainty related to their residence status in Poland.

In Portugal, eight interviewees reported involvement in court proceedings. Six proceedings pertained to

Figure 16: Court and other kinds of proceedings by country (absolute numbers)



Notes: Question: 'Were there court proceedings?'. N=162.

Source: FRA, 2018

Taking a case to court

Drivers

- Getting a regular residence status when pressing criminal charges
- Wanting to deter other employers from exploiting their employees
- Civil society organisations providing information on the legal system and on court proceedings
- Social welfare system relieving workers of some of their economic need during court proceedings
- Lawyers providing legal advice and mitigating language issues
- Wanting payments owed by the employer

Barriers

- Being in an irregular situation
- Not knowing the legal system
- Uncertainty about the outcome of the case
- Costs such as for lawyers, translation, travel, trade union support
- Having to leave the country where the court proceedings take place
- Lacking language skills
- Lack of evidence because exploitative employers force workers to falsify documents or because of lack of documents
- Acquaintances' discouraging experiences of challenges or the outcome of a case
- Non-enforcement of judgments not preventing employers from continuing their exploitative practices
- Workers wanting to forget about the exploitative situation

trafficking in human beings. A construction worker from Cape Verde with Portuguese nationality had taken the employer to court because of abuse. One interviewee had pressed charges against the employer for money owed and physical violence. The interviewee, a domestic worker from Brazil, was not satisfied with the outcome of the proceedings, as her lawyer negotiated an out-of-court settlement with the employer, which resulted in her receiving less than the abusive employer had owed her and nevertheless having to drop all the charges. Interviewees were not well informed about the status of their proceedings, pointing to insufficient communication with the complainants.

In the United Kingdom, most of the court proceedings and investigations were not successful, because interviewees left the country or did not provide sufficient evidence. One interviewee reported that his gangmaster and his family were convicted and received prison sentences.

“His wife got [a prison sentence of] one year, his son got one year, and he got two years and eight months.”

(United Kingdom, male interviewee from Eastern Europe, manufacturing, EU national)

5.4. Interviewees' perspectives on their current situation

By the time the interviews were conducted, the vast majority of interviewees had left the exploitative work relationship. However, interviewees who had ended their exploitative work relationship were, in almost equal proportions, content and discontent with their current situation, and several interviewees were uncertain how to assess their current situation.

Reasons for workers being satisfied with their current situation

Satisfaction with the current situation was strongly influenced by the perception that the situation of labour exploitation had been totally or at least partially resolved – which was the case for about two fifths of the interviewees. Common reasons for being satisfied with the current situation were:

- having gained legal residence status;
- having accommodation of one's own;
- having a (declared) job, a better salary and/or better working conditions (even though the job might still be undeclared);

- receiving money owed by the employer;
- attending a language course;
- being able to return to the country of origin after having achieved a diploma, which would help to improve the working and living situation in the country of origin.

Approximately 80 % of the interviewees had a regular residence status at the time of the interview. Overall, the legal situations of the interviewees had improved at the time of the interview compared with during the exploitation. These changes might be related to the large number of interviewees receiving support from different kinds of organisations.

“Before, I had many, many problems in Toulouse, but now I don’t. I have my papers, I can work with a contract, not illegally, so it’s more happiness for me.”

(France, male interviewee from Northern Africa, construction, migrant in an irregular situation at the time of exploitation)

“My case will be solved if I will receive the [withheld] money. I continue to work more, because before it was informal, now it is declared. I have the right to work, even if my residence documents are temporary. [...] My salary is better than before.”

(Belgium, male interviewee from Sub-Saharan Africa, transport, logistics and warehousing, asylum applicant at the time of exploitation)

Reasons for workers being discontent with their current situation

While just under half of the sample reported that they were satisfied with their situation, the majority of participants reported the opposite. Different factors influenced the feeling of dissatisfaction with the situation at the time of the interview. Factors negatively influencing the perception of the current situation of the workers include:

- not having resolved the situation of labour exploitation;
- still being in an irregular situation;
- fear of the former employer;
- multiple and long-lasting financial, physical, psychological and emotional consequences of the exploitation suffered;
- experiences with a legal system not yielding results/positive outcomes for the workers (e.g.

getting the money back owed by the employer, preventing future exploitation);

- impunity of employers, resulting in their still running their businesses and exploiting employees.

All interviewees who were dissatisfied with their current situation reported that the situation of labour exploitation had, in one way or another, not been resolved.

A major concern was still being in an irregular residence situation, despite having escaped the situation of exploitation, as described by two interviewees who did not report the exploitation experienced. Eighteen per cent of the interviewees were still in an irregular situation. Interviewees in an irregular situation were especially afraid of police checks, a risk which followed them everywhere.

A focus group in the Netherlands, made up male and female agricultural workers from Poland, pointed to the weaknesses of the system when workers were not officially recognised as victims of labour exploitation.

Fear of (former) employers also had negative impacts on the current situation of workers. In Poland, a victim of severe labour exploitation from Eastern Europe was afraid of meeting his former employer, as he had not been arrested and continued exploiting migrant workers. The interviewee feared retaliation because the employer had threatened him before, and the employer might suspect that the interviewee had reported the exploitation to law enforcement agencies, as the raid took place shortly after the interviewee had left the employer.

Another issue raised was the multiple and long-lasting (financial, physical, psychological and emotional) consequences of labour exploitation, which are partly related to the fact that official channels are not capable of resolving issues at all or take a long time to resolve them. Some interviewees had the feeling that justice was not served, and the legal system did not take them seriously, as their rights were not protected because of their nationality, residence status or skin colour.

A construction worker described his feeling of frustration at the fact that the behaviour of his employer was not addressed in legal proceedings. Instead, his legal aid lawyer chose to bring a case against the state in relation to the rejection of his application for a residence permit.

“So, I was the victim, and they [the authorities] said ‘You are the culprit’, and nothing was done to the bosses; they take money and they sleep at night.”

(Belgium, male interviewee from Southern Asia, retail, regular migrant)

Another construction worker in Belgium, who suffered an injury in the workplace, voiced a similar sentiment, having found that the police did not file a report of the incident despite attending the scene of the accident. The interviewee reports being asked by a policeman why he had dared to come to the police station without papers.

Interviewees were disappointed when they were not able to get the money owed by the employer. The situation was aggravated when the interviewees ended up in new jobs with similarly poor pay to the job in which they had experienced labour exploitation, or when they were still unemployed after leaving their exploitative work situation.

“There is no reason to be proud or satisfied. The money that my employer owes me has not been paid, so I was exploited. There is no reason to be happy in such a situation.”
(Belgium, male interviewee from Northern Africa, hospitality, migrant in an irregular situation)

Two interviewees in Germany, who both won their cases in labour court, similarly still had not received the payment owed by their employers.

“What kind of justice is that? I want the employer to be punished and we are six persons already, who went to court. There has to be justice. That is the question: Who can help those six persons so that this court decision is enforced or that there is a result? How can the employer have disappeared if he is there every morning at 7.00?”
(Germany, male interviewee from Eastern Europe, logistics, EU national)

Impunity of employers and employers being able to continue with their exploitative treatment of workers added to the dissatisfaction of interviewees. Three female workers from the Philippines working in agriculture were quite disappointed that, although they had reported and delivered statements on the exploitative employer to the Border Guard, the employer continued exploiting other migrant workers.

Workers' views on short- and long-term needs of workers after intervention of authorities aiming to end the exploitative situation

Focus group participants had the opportunity to paint a broader picture of what workers in an exploitative situation might need in the short term or in the longer run after authorities have stepped in. These needs partially overlap with the factors identified above that had a positive impact on the interviewees' perception of their situation at the time of the interview and made interviewees feel safer in their situation of employment.

Across countries, focus group participants had common concerns, including the following:

- Victims of labour exploitation should be provided with opportunities to regularise their residence status.
- They should get assistance in looking for a fair and decent job.
- They should get assistance in obtaining back pay.
- All workers should receive a contract in a language they understand.
- Victims of labour exploitation should be provided with more effective support services in reporting to the police and, overall, in having access to criminal justice. The services should include accommodation and food.
- Easily accessible information on workers' rights and social services should be disseminated more widely.
- Workplace inspections should be more effective.
- Proceedings should be fair and inclusive.
- Judgments concerning back pay and restitution need to be enforced effectively.
- Training and other measures should ensure that exploited workers are taken seriously and treated as human beings in a respectful way, especially by inspection bodies, law enforcement and other relevant public authorities.
- Language courses should be offered, geared to the needs of migrant workers.
- Exploited migrant workers should have assistance when they want to return to their countries of origin.



Conclusions

In conclusion, the following points from research should be emphasised.

Acting on recruitment channels

Many victims of labour exploitation were recruited via recruitment agencies, gangmasters and labour market intermediaries. Whereas some are legally compliant organisations, others are involved in deceptive recruitment practices and severe forms of labour exploitation. The report shows that more needs to be done to combat fraudulent and deceptive recruitment practices.

EU Member States could improve the situation by setting minimum standards for employment and recruitment agencies, imposing penalties for non-compliance with and violations of these standards, and establishing an independent monitoring mechanism to oversee the activities of such agencies.

Given the prominent role of subcontractors, those standards should also apply when employment and recruitment agencies subcontract part of their activities to other agencies, with liability being clearly regulated in these cases.

At the same time, EU Member States should increase efforts to raise awareness of fraudulent recruitment methods among workers who are seeking jobs in foreign countries.

Enforcing the legal framework to protect workers' rights to fair and just working conditions

Despite the existence of EU and national legislation regulating pay, working conditions, health and safety, and social security, victims of labour exploitation experience systematic violations of labour standards, including lack of pay, excessive working hours and occupational hazards, this report finds.

EU Member States should increase efforts to enforce labour law effectively in order to protect workers' rights generally, including those of migrant workers, and adequately prevent and address situations of labour exploitation.

First and foremost, they should do this by reinforcing workplace inspections, prioritising sectors at risk of labour exploitation, such as agriculture, care, construction, extraction, fisheries and hospitality. This will imply, in particular, a serious overhaul of the oversight of domestic work, which is currently too often excluded from labour law monitoring activities.

Once established, the new European Labour Authority could play a crucial role in supporting joint inspections. It will be important to conduct unannounced inspections, in order to avoid employers being able to disguise the exploitation markers; and to ensure that labour inspectors are accompanied by interpreters in the languages spoken by the employees, so that the recording of the exploitative experience is not hindered by migrant workers and labour inspectors being unable to communicate with each other.

The proposed EU Directive on transparent and predictable working conditions, once in place, would improve the situation by introducing an obligation to inform workers of the essential aspects of their work, in a written form. In addition, workers would benefit from being provided with a written contract in a language they can understand, at least with regard to the basic terms of their employment.

Informing workers of their rights and the existence of labour exploitation

Knowledge of legal provisions and workers' rights, as well as where to turn in cases of labour exploitation, is one of the most important means to prevent labour exploitation, workers reported. Almost all interviewees reported not being aware of their rights when they arrived in the EU. When people do not know their rights as workers, it is more difficult for them to identify their employers' practices as exploitative.

A key obstacle to workers' understanding their rights is a lack of knowledge of the local language. First and foremost, interviewees reported their inability to understand the work contract. This emerged as strongly interconnected with the migrants' residence status.

Once established, the new European Labour Authority, whose mandate is expected to include facilitating individuals' and employers' access to information on their

rights and obligations in cross-border labour mobility situations, could play a pivotal role in this regard.

Avoiding situations of irregularity

One of the key risk factors for severe labour exploitation is vulnerability linked to residence status, primarily irregular residence status, the report finds. A migrant worker being in an irregular situation strengthens the employers' position of power, as they can easily use the threat of deportation to keep the victim in a situation of exploitation.

To reduce situations of irregularity, EU Member States should increase legal avenues for migration and create targeted labour migration programmes, especially for those sectors particularly at risk for labour exploitation, including domestic work, agriculture and construction.

At the same time, EU Member States should consider addressing protracted situations of irregularity, through much increased individualised regularisation schemes.

Avoiding dependency on employers

Policies that tie the residence permit to the existence of an employment contract, in some cases binding the worker to a specific employer, strongly increase the risk of labour exploitation. So do regularisation schemes which require workers to spend a set amount of time in an employment relationship. Migrant workers will tend to accept exploitative working conditions in return for employers' promises to apply for or renew their residence permits, this report finds. Migration schemes based on seasonal and temporary migration models may produce a form of dependency on the employer, which represents one of the greatest risk factors for labour exploitation. This is aggravated when the visas or residence permits of migrants are linked to one single employer.

Member States should prioritise measures to safeguard workers against dependency on a single employer. Residence permits and visas linking residency to one single employer should be phased out and replaced by residence permits and visas allowing migrants to quickly switch employers. Member States' authorities should clearly inform workers of their right to change employer.

Encouraging 'safe reporting'

Victims of labour exploitation should be encouraged to report severe labour exploitation to labour inspectors or the police. Reporting is facilitated when support organisations, trade unions and lawyers assist workers with it, the report finds. Hence, support services should be increased, and they should provide counselling and accompany workers to interviews with the police.

One of the main obstacles to reporting to the police or labour inspectors is, in the view of workers, the focus of these bodies on residence status (being in an irregular situation or being linked to a single employer), rather than the fact of being a victim of severe labour exploitation. That emphasis creates a fear of being returned to the country of origin. Labour inspections and authorities should prioritise protection of workers and labour rights over immigration enforcement.

Articles 13 and 6, respectively, of the Employers Sanctions Directive provide that victims of labour exploitation will quickly receive resident permits and back payment for unpaid wages. Establishing an administrative framework to do this, compensating workers for damages incurred during the exploitation and punishing the exploitative employers appropriately, in an attempt to ensure that other migrant workers will not be exploited by the same employer, would build trust among the migrant worker communities and thus encourage reporting.

EU Member States should pay due attention to ensuring that victims of severe labour exploitation receive back payment and compensation as a result of criminal proceedings without having to also engage in civil proceedings. In the same vein, EU Member States should pay due attention to the swift enforcement of judgments awarding exploited workers back payment for wages or damages.

Creating a culture of rights and empowerment

The report finds that informal networks, such as friends and co-workers, played a key role in victims' entering the system of support.

It is essential that workers at large be able to identify situations as exploitative and know where to find organisations that can support workers who are experiencing labour exploitation. Measures aimed at developing a culture of rights among relevant stakeholders in the labour market, but also among the population at large, could support workers in reporting their cases.



Annex I – Methodology

FRA collected evidence on severe forms of labour exploitation by carrying out comparative socio-legal research and analysis across the EU. This annex summarises the project’s development and oversight, its methodological approach and its content.

Development and oversight

The research conducted in 2017 involved desktop research and fieldwork (semi-structured face-to-face interviews and focus groups) in eight EU Member States (Belgium, France, Germany, Italy, the Netherlands, Poland, Portugal and the United Kingdom). The selected countries are among the 21 countries that FRA covered in its first report on severe labour exploitation published in 2015, so the findings complement FRA’s previous research. Additional considerations when selecting the eight Member States included the requirement that the labour market in the Member State attracts large numbers of foreign workers; that the selected Member States include some of those that have been most affected by the ‘migration crisis’ in the EU since 2015; that each selected Member State should be able to reach the sample number for interviews and focus groups; and that the selected Member State has made some progress in tackling labour exploitation/addressing or raising the issue at the national level. This last requirement ensured that the research could be of interest to other countries in terms of identifying transferable promising practices.

Working with experts

FRA developed the questionnaires for the interviews and focus groups and all other fieldwork material. The FRA research team received valuable input from a group of experts and practitioners in the field of labour exploitation.

Working with Franet

Data were collected through FRA’s multidisciplinary research network, Franet. This network is composed of contractors in each EU Member State who, upon request, provide relevant data to FRA on fundamental rights issues to facilitate the agency’s comparative analyses. The Ludwig Boltzmann Institute was contracted to assist FRA with the analysis and drafting of the overall comparative report.

Desktop research

Based on a set of detailed questions by FRA, publicly available information was gathered in each of the eight EU Member states using the available literature on the subject. The focus of the desk research was to ascertain what legal, institutional or other changes may have taken place in the Member State regarding policies and laws in relation to labour exploitation since FRA’s 2015 report was published, including any available information on political commitment of governments to tackling labour exploitation (i.e. any national action plans/strategies, public statements in favour of tackling labour exploitation, etc.).

Primary research

Primary data were gathered in each of the eight EU Member States in the form of interviews and focus groups. Interviews and focus group discussions collected accounts of exploitation from migrant workers (both EU and third-country nationals) whose situation of severe labour exploitation had come to the attention of a third party within the last four years, more specifically since January 2013. Overall, 237 adult migrant workers were reached via semi-structured interviews and focus group discussions. In total:

- 162 individual interviews were conducted;
- 16 focus group discussions took place.

Sample and identification of research participants

The target groups identified for this research were:

- posted workers: workers, both EU and third-country nationals, who, for a limited period, carry out their work in the territory of a Member State other than the state in which they normally work;
- seasonal workers: third-country nationals who retain their principal place of residence in a third country and stay 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;
- applicants for international protection as defined in Article 2 (b) and (c) of Directive 2013/32/EU, irrespective of whether or not they have been granted access to employment by the Member State concerned in accordance with Article 26 of Directive 2011/95/EU;
- regularly residing third-country nationals tied to one employer who sponsors them, for example in the domestic and agricultural sectors.

These categories were identified as relevant on the basis of the evidence FRA collected during FRA's first project on severe labour exploitation, which showed these groups to be at particular risk of having their right to fair working conditions infringed upon and of experiencing severe labour exploitation. The 2015 report highlighted that such categories of workers were at more risk of being severely exploited and of suffering, in most cases, from a combination of risk factors related to, for example, the personal situation of the worker, the administrative residence situation of the worker, legal and institutional risk factors, factors relating to the workplace or economic sector, and employers' actions. While FRA's 2015 report did not refer to the situation of applicants for international protection, FRA endeavoured to interview persons who had entered the EU in the course of the asylum/migration crisis (in the second half of 2015) and who are particularly vulnerable to severe labour exploitation while living in the EU.

Other characteristics were also considered in identifying research participants, including gender, nationality and involvement in criminal justice or other (e.g. civil or labour law) proceedings. The sector in which the exploitation occurred was also considered: interviews were required to take account of the three economic sectors where labour exploitation most often occurred in that Member State. For each Member State, Table 4 presents the three employment sectors at most risk of labour exploitation according to professionals interviewed for FRA's 2015 report on severe labour exploitation and the three most common employment sectors of exploited workers identified in the current report.



Table 4: Three main employment sectors for exploitation, per EU Member State, as identified by professionals in FRA’s 2015 report and where workers interviewed for FRA’s current report experienced labour exploitation

| | Three main employment sectors at risk of labour exploitation identified by professionals interviewed by FRA for its 2015 report (N=616) | Three main employment sectors of exploited workers interviewed by FRA for the current report – in order of prominence (N=237) |
|-------------|--|---|
| Belgium | <ul style="list-style-type: none"> • Construction • Hospitality • Administrative and support service activities (including cleaning services) | <ul style="list-style-type: none"> • Domestic work • Construction • Hospitality |
| France | <ul style="list-style-type: none"> • Construction • Agriculture, forestry and fishing • Domestic work | <ul style="list-style-type: none"> • Hospitality • Domestic work • Construction |
| Germany | <ul style="list-style-type: none"> • Construction • Hospitality • Domestic work | <ul style="list-style-type: none"> • Hospitality • Cleaning • Construction / domestic work |
| Italy | <ul style="list-style-type: none"> • Agriculture, forestry and fishing • Construction • Manufacturing | <ul style="list-style-type: none"> • Agriculture • Other • Construction / hospitality |
| Netherlands | <ul style="list-style-type: none"> • Agriculture, forestry and fishing • Transportation and storage • Hospitality | <ul style="list-style-type: none"> • Agriculture • Retail and other services • Hospitality |
| Poland | <ul style="list-style-type: none"> • Agriculture, forestry and fishing • Construction • Manufacturing | <ul style="list-style-type: none"> • Construction • Domestic work • Agriculture |
| Portugal | <ul style="list-style-type: none"> • Agriculture, forestry and fishing • Construction • Hospitality | <ul style="list-style-type: none"> • Domestic work • Agriculture • Construction |
| UK | <ul style="list-style-type: none"> • Agriculture, forestry and fishing • Manufacturing • Hospitality | <ul style="list-style-type: none"> • Domestic work • Other • Hospitality |

Notes: In FRA’s 2015 report, the economic sectors are classified according to NACE 2 (Statistical classification of economic activities in the European Community); in the current report, more specific categories of economic sectors have been used. ‘Hospitality’ includes work in hotels, restaurants, bars and cafes, usually as waiter, cook, dishwasher etc. ‘Retail and other services’ includes mainly working in shops (carwash, laundromats and beauty studios, for example).

Source: FRA, 2019

Table 5 presents all the economic sectors in which the research participants were exploited. The five most prevalent employment sectors of the exploited workers interviewed are domestic work (22 %), hospitality (16 %), construction (15 %), agriculture (14 %), and retail and other services (8 %).

Table 5: Economic sectors in which research participants were exploited (N = 237)

| Sector | Number of participants | % |
|---|------------------------|-----|
| Domestic work (private households) | 51 | 22 |
| Hospitality | 39 | 16 |
| Construction | 36 | 15 |
| Agriculture | 32 | 14 |
| Retail and other services (e.g. car wash) | 18 | 8 |
| Cleaning (not in private households) | 17 | 7 |
| Manufacturing | 11 | 5 |
| Transport, logistics and warehousing | 8 | 3 |
| Other | 25 | 11 |
| Total | 237 | 100 |

Source: FRA, 2019

In relation to nationality, approximately three quarters of research participants were third-country nationals whereas one quarter were EU nationals (see Table 6).

Table 6: Nationality of research participants (N = 237)

| Nationality at time of arrival | Number | % |
|--------------------------------|--------|-----|
| EU national | 62 | 26 |
| Third-country national | 175 | 74 |
| Total | 237 | 100 |

Source: FRA, 2019

In relation to regions of origin, one third (34 %) of the research participants were from Africa, almost a quarter (22 %) were born in an EU Member State, 14 % were from Asia or the Middle East and the remainder were from other (non-EU) European countries (11 %) and the Caribbean, Central and South America (10 %) (see Figure 17).

In relation to gender, 56 % of the research participants were male and 44 % female. However, relevant differences appear across economic sectors, as shown in Figure 18. Strong gender segregation is present in construction (where only men were identified) and domestic work in private households (where only women were identified).

In relation to age, one quarter (24 %) of the research participants were between 18 and 30, 61 % were between 31 and 50, and 13 % were over 50 (see Table 7).

Table 7: Age of research participants (N = 237)

| Age (years) | Number | % |
|--------------------------------|--------|-------|
| Under 30 | 58 | 24.5 |
| 31-50 | 144 | 60.8 |
| Over 50 | 32 | 13.5 |
| Unknown | 3 | 1.2 |
| Total of research participants | 237 | 100.0 |

Source: FRA, 2019

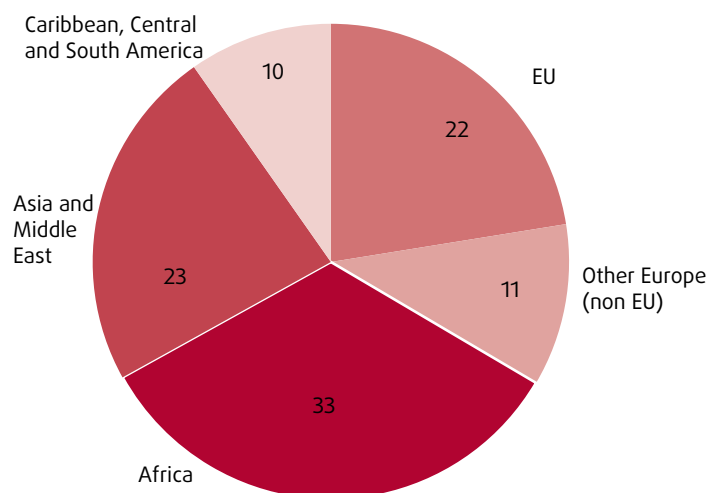
Contractors identified interviewees and focus group participants by using recruitment channels or gatekeepers, as Table 8 shows. Gatekeepers included victim support organisations, migrant/refugee support organisations, NGOs, trade unions, human rights experts, religious support organisations and the police. The three main recruitment channels were migrant/refugee support/advice organisations (34 % of the research participants were identified through them), NGOs (20 %) and victim support organisations (14 %).

Table 8: Organisations/authorities identifying research participants (N = 237)

| Organisation/authority | Number of participants | % |
|---|------------------------|-------|
| Victim support organisation | 33 | 13.9 |
| Migrant/refugee support/advice organisation | 81 | 34.2 |
| NGO | 48 | 20.3 |
| Trade union | 26 | 11.0 |
| Human rights expert | 10 | 4.2 |
| Police | 4 | 1.7 |
| Religious support organisation | 2 | 0.8 |
| Other | 28 | 11.8 |
| Unclear/not known | 5 | 2.1 |
| Total | 237 | 100.0 |

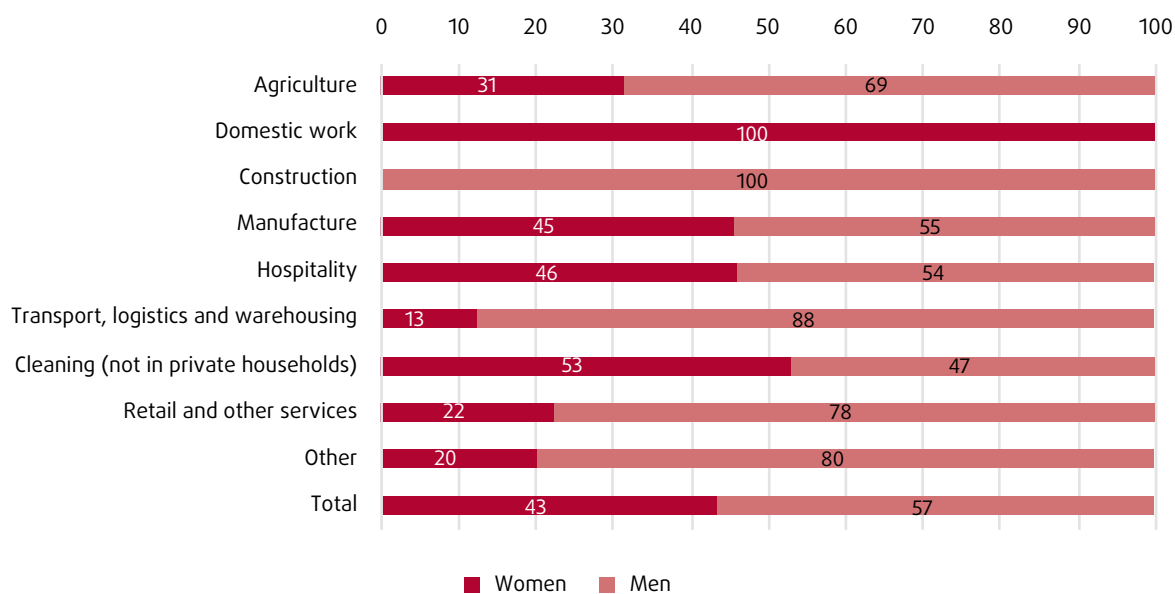
Source: FRA, 2019

Figure 17: Country/region of birth of research participants (%)



Notes: Question: 'What is your country of birth?'. N=237.
Source: FRA, 2019

Figure 18: Gender of research participants (%)



Note: N=237.
Source: FRA, 2019

In all Member States, gatekeepers raised issues with accessing severely exploited workers to interview. In some cases, workers did not want to be interviewed for fear of their employer, or because of their precarious migration status. In other cases, workers whom gatekeepers had previously assisted had already left the country. During the fieldwork, certain groups proved to be more difficult to access than others. The biggest challenge was identifying EU nationals. This was the case in Belgium, France, Italy and Portugal. Linked to this issue, in France and Italy no posted workers could be identified. In France, the gatekeepers highlighted the fact that they, and trade unions, had been increasingly struggling to access this group because they were confronted with "mafia networks".

Table 9 provides an overview of how long research participants had spent in the EU Member State where the interview was conducted, at the time of the interview. Almost a third of the research participants had been in the Member State where the interview took place for up to three years (31 %) or more than nine years (30 %), 18.6 % between three and six years and another 11.8 % between six and nine years.

Table 9: Years spent by participants in the EU Member State where the interview was conducted (N = 237)

| Time (years) | Number | % |
|--------------------------------|--------|-------|
| Up to 3 | 74 | 31.2 |
| Between 3 and 6 | 44 | 18.6 |
| Between 6 and 9 | 28 | 11.8 |
| 9 or more | 71 | 30.0 |
| Missing/unknown | 20 | 8.4 |
| Total of research participants | 237 | 100.0 |

Source: FRA, 2019

Table 10 provides an overview of the interviewees' residence status at the time of the exploitation. Results are available for individual interviewees only, not for focus group participants, as the latter included workers who had experienced labour exploitation and workers employed in sectors particularly at risk of labour exploitation. Among the third-country nationals interviewed (117, 72 % of those interviewed), the majority (74) were regularly staying. This category included asylum applicants, beneficiaries of international protection, seasonal workers, posted workers and other regular migrants, including migrants with a work permit/visa, those sponsored by an employer and those with types of visas other than a tourist visa. Slightly more than one in every four interviewees were third-country nationals in an irregular situation. One in every four were EU nationals, including three posted workers.

Table 10: Interviewee residence status at the time of exploitation, individual interviews (N = 162)

| Nationality | Interviewee residence status at the time of exploitation | | Number | % |
|------------------------------|--|---|--------|-----|
| Third-country national (117) | Regularly staying | Seasonal worker* | 9 | 6 |
| | | Posted worker | 5 | 3 |
| | | Asylum applicant | 13 | 8 |
| | | Beneficiary of international protection | 3 | 2 |
| | | Tourist visa | 3 | 2 |
| | | Other regular status | 41 | 25 |
| | In an irregular situation | | 43 | 27 |
| EU national (40) | Posted worker | | 3 | 2 |
| | Other EU national | | 37 | 23 |
| Missing/unknown | | | 5 | 2 |
| Total | | | 162 | 100 |

Note: * This includes seasonal workers under national schemes as well as under the EU Directive on Seasonal Workers.

Source: FRA, 2019

Semistructured interviews

Overall, 162 individuals were interviewed across the eight EU Member States. In each of the Member States where the fieldwork was carried out, 20 or 22 victims of severe labour exploitation were interviewed. The interview and focus group topic guides were translated into the following nine languages: Arabic (Modern Standard Arabic), Dutch, French, German, Italian, Polish, Portuguese, Romanian and Spanish. The interviews were conducted in the following 19 languages: Arabic, Bengali, Bulgarian, Dutch, English, French, Hindi, Italian, Nepalese, Pakistani, Polish, Portuguese, Romanian, Russian, Spanish, Tagalog, Turkish, Ukrainian and Vietnamese. The interview topic guide followed a mixed-method approach and included both open and closed questions. For closed questions, interviewees chose responses from a list provided by the interviewer. Interviewees were asked to describe their experience of severe labour exploitation in relation to problems with pay, work contracts and documentation, housing/accommodation, work tasks, threats or violence, isolation, work inspections and what made such exploitation possible. Interviewees were also questioned about the process of seeking help. This section of the interview included questions concerning whom the interviewee approached for help, the kinds of assistance they received and their views on the usefulness of this assistance. Similarly, interviewees were questioned about their experience of reporting to the police. Interviewees were also asked about their knowledge of workers' rights, their satisfaction with their current situation, and possible preventative measures and ways forward.

Interviews were semi-structured and were conducted face to face using a guide that FRA developed. In some exceptional cases, interviews were conducted over the phone or by Skype. The FRA research team provided Franet contractors with training and detailed instructions on the selection of interviewees and the questions for the field research – both the individual interviews and the focus groups – as well as basic training on the subject matter, before the fieldwork phase began. Interviews lasted an average of one hour.

Focus groups

Sixteen focus group discussions were conducted, two in each Member State, with a total of 75 participants. Discussions lasted approximately 1.5–2 hours and followed guidelines and a template designed by the FRA research team. Participants were asked about situations of labour exploitation (causes and solutions), seeking assistance, what victims of exploitation require after the situation of exploitation has ended, and preventative measures and ways forward. Focus group discussions were recorded, notes were taken and the recordings were then transcribed in full in the original language and summarised in English. Full English translations of the majority of focus group discussions were provided for analysis.

Informed consent and data protection

Interviews and focus group discussions were audiorecorded with the written, signed, informed consent of interviewees, and with appropriate data protection measures in place.

Data analysis

Summaries of all interviews and focus group discussions were drafted as an intermediate step to analysing the data, and one third of the interviews were translated in full into English for analysis. Qualitative data were analysed through content analysis with the aim of identifying recurrent themes and patterns and searching data to answer the research questions. Data were first analysed at the national level. National reports were drafted based on the fieldwork research, as well as the desktop research. Subsequently, a comparative report was drafted based on the national reports. Quantitative data were coded and analysed with the software SPSS version 25.

Quality checks

One third of the interviews were fully transcribed and translated, and random checks were carried out to ensure that the English summaries of the interviews were comprehensive enough and reported all the relevant information that emerged in the interviews. As part of the quality checks, FRA organised a training session for the national researchers at FRA's premises and attended focus group discussions in Member States involved in the fieldwork. On the basis of the training that FRA provided, further training sessions were organised at the national level for researchers and interviewers.

Annex II – FRA opinions on severe labour exploitation

This Annex includes all FRA opinions published in past FRA reports on severe labour exploitation.

I. Opinions from FRA report “Severe labour exploitation: workers moving within or into the European Union” (2015)

FRA opinion 1: EU Member States should increase awareness among the general public of the existence of severe labour exploitation of people moving either within or into the EU and increase efforts to promote a climate of zero tolerance of exploitation of such workers, including exploitation in private households.

FRA opinion 2: EU Member States must ensure that staff members of organisations who come across labour exploitation are aware of the various forms of severe labour exploitation and their root causes, and are trained to react in an appropriate manner. Labour inspectors and police officers should be briefed and trained to give the rights of victims of severe labour exploitation priority over objectives relating to the management of migration. The European Police College (CEPOL) and the European Agency for Safety and Health at Work (EUOSHA) are invited to support Member States in implementing training programmes strengthening the capacity of law enforcement officers and labour inspectors to identify and investigate cases of severe labour exploitation and to intervene in a spirit respecting the fundamental rights of exploited workers moving within or into the EU. Such initiatives could be supported by the work of the EU Anti-Trafficking Coordinator. Effective cooperation between public and private organisations is essential and should be based on a shared understanding of the problems caused by labour exploitation, of the fundamental rights at stake and of the interventions required.

FRA opinion 3: EU Member States should encourage trade unions and other private organisations to provide information to workers before their departure, as well as when they arrive in their country of destination. The role of embassies in providing information before departure or on arrival should be considered.

FRA opinion 4: EU Member States should ensure that the basic terms and circumstances of an employment relationship are transparent, well documented and comprehensible throughout the term of employment. In particular:

- all workers should be given a written contract in a language they can understand, at least as regards the basic terms of their employment;
- wages should be paid in a transparent manner and at regular intervals but at least once per month and not only at the end of a season or project.

FRA opinion 5: EU institutions and Member States are encouraged to enable consumers to better assess the risk that a product or service offered was created involving severe labour exploitation. The provision of such information could include:

- effective and reliable systems of certification and branding for products of companies that respect the rights of workers;
- public registers of employers and recruiters convicted of labour exploitation, unless they have adopted sufficient measures to reliably prevent further cases of exploitation from occurring.

In providing guidance and in reporting on the implementation of the amended Disclosure Directive, the Commission could pay due attention to the disclosure of policies concerning equality of working conditions for workers and safeguards countering risk factors for exploitative working conditions, both general and sectoral. Particular attention could be paid to those sectors of the economy that are particularly prone to labour exploitation.

FRA opinion 6: When implementing the legislative package adopted in February 2014 concerning public procurement procedures, EU Member States are called on to pay particular attention to the necessity of avoiding supporting labour exploitation by contracting companies engaged in – or subcontracting enterprises involved in – the exploitation of workers. EU institutions, bodies, offices and agencies implementing public procurement procedures are encouraged to lead by example and to pay due attention to preventing labour exploitation committed by subcontracted companies.



FRA opinion 7: EU Member States must ensure a comprehensive system of inspections of working conditions that is effective enough to comply with recognised standards. • To this end, legislation must be in place clearly tasking a public authority with monitoring the working conditions of workers moving within or into the EU and with carrying out a sufficient number of inspections.

- This authority must be staffed and trained to carry out inspections in a targeted and effective manner, including having the means to overcome language barriers. It should either have its own powers and means of securing evidence relevant in criminal proceedings or be in a position to rely on effective cooperation with the police.
- Staff engaged in monitoring must be trained to understand and assess risk factors for severe labour exploitation in practice, should adjust and organise their work in line with these risk factors and should regularly review their system of risk management. The strategic orientation of workplace inspections should be based on all available evidence concerning relevant risk factors.
- EU Member States should revise regulations that have the effect of exempting workplaces entirely from inspections, in particular as concerns private farms and domestic work.
- EU Member States should design more effective and targeted strategies to bring cases of severe labour exploitation to light and offenders to justice.
- EU Member States should enhance the monitoring of recruitment agencies and ensure that legal regulations prohibiting the collecting of fees from the workers are enforced.
- EU agencies including EU-OSHA, Europol (the European Police Office) and Eurojust (the European Union’s Judicial Cooperation Unit) are invited to contribute to enhancing cross-border cooperation among Member State authorities tasked with monitoring, investigating and prosecuting in cases of labour exploitation involving more than one Member State.

FRA opinion 8: EU institutions and Member States should review relevant EU directives and criminal law provisions with a view to granting to all workers equal and effective protection against severe labour exploitation. Comprehensive and effective criminal law provisions should ensure the responsibility of business enterprises as legal persons acting as employers; sufficiently dissuasive sanctions against legal entities should be stipulated by national law and effectively implemented. In addition, EU Member States should review the effectiveness of legal provisions allowing for:

- the closure or the withdrawal of licences of establishments that have been convicted of severe labour exploitation;
- the possibility of publishing a list of employers convicted of severe labour exploitation.

FRA opinion 9: EU institutions and Member States should review the mandate of institutions tasked with addressing trafficking or coordinating such action with a view to extending their tasks to address other offences, including those covered by the Employer Sanctions Directive. Instruments and mechanisms established to address trafficking – such as referral mechanisms or temporary residence permits – should be reviewed with a view to broadening their scope of application to cases of severe labour exploitation that do not involve trafficking.

FRA opinion 10: EU Member States should adopt measures encouraging victims of severe labour exploitation to come forward and to report – without risk of expulsion – to a monitoring authority or to the police. This should include measures allowing EU Member States to grant, in the event of serious violations of the worker’s rights, a residence permit, on the basis of clear legal terms. In addition, Member States should consider the suggestions on how to encourage victims and witnesses to report a crime without fear of being apprehended included in point 9 of the 2012 FRA guidance on ‘Apprehension of migrants in an irregular situation – fundamental rights considerations’. EU institutions are called on to consider revising 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 irregular immigration, who cooperate with the competent authorities. The rights of individuals to be effectively protected from trafficking under Article 5 of the Charter as well as the right of victims of trafficking to have access to justice under Article 47 of the Charter impose unconditional obligations on EU Member States which are in no way premised on the victim cooperating with the police, supporting investigations or performing any other services in the public interest. Such change would also require adaption of the wording of Article 11 (6) of the Anti-Trafficking Directive and of Article 13 (4) of the Employer Sanctions Directive.

FRA opinion 11: EU Member States should ensure that:

- every victim of severe labour exploitation has targeted support services available to them, for example by extending the mandate of support services targeting victims of trafficking to include support service provision to victims of other forms of severe labour exploitation;
- mechanisms for the referral of victims to support services are available for victims of all forms of severe labour exploitation;
- victims of labour exploitation are not excluded from support services as a result of their irregular residence status;
- support services are equally accessible to EU and non-EU citizens.

FRA opinion 12: To enhance access to justice for all victims of severe labour exploitation, Member States should – within and beyond the scope of the Employer Sanctions Directive – enable third parties, including trade unions and private associations that support workers who have moved either within or into the EU, to act in support of or on behalf of victims.

FRA opinion 13: EU institutions should consider amending the Employer Sanctions Directive to include a provision similar to Article 17 of the Anti-Trafficking Directive, according to which Member States shall ensure that victims of trafficking in human beings have access to existing schemes of state compensation. EU Member States should ensure that criminal courts decide on all civil law claims of victims of severe labour exploitation, including claims for back payments, instead of referring victims to civil courts. Member States should consider the possibility that where judges lack the experience to decide on civil law claims they could consult civil law judges instead of referring the victim to civil court proceedings.

FRA opinion 14: As a means of improving the effectiveness of police investigations, EU Member States should assess the possibility of creating specialist police units and of establishing close links of cooperation between the police and monitoring authorities, such as labour inspectorates and financial police. In addition, the cross-border cooperation of law enforcement agencies should be enhanced and brought to the level of cooperation that has been achieved in other areas of organised crime.

II. Opinions from FRA report “Out of sight: migrant women exploited in domestic work” (June 2018)

FRA opinion 1: To ensure that domestic workers can effectively enjoy their fundamental right to fair and just working conditions and to prevent other fundamental rights abuses, Member States should prioritise measures to safeguard workers against dependency on a single employer. One option is to grant domestic workers the right to switch employers within the term of their visas, and clearly informing workers about this right.

FRA opinion 2: EU Member States which have not yet ratified the Domestic Workers Convention should do so, and should revise regulations that have the effect of exempting domestic workplaces entirely from inspections. In accordance with Article 17 of the Convention, and as highlighted in the 2016 European Parliament resolution on women domestic workers and carers, EU Member States, together with the social partners, should provide for labour inspections in the domestic work sector.

FRA opinion 3: Labour inspections in the domestic work sector should focus on monitoring the working conditions of workers, and on enabling and empowering workers to report their actual situations by establishing clear standards and procedures to inform them of their rights and enable safe access to victim support and justice mechanisms. With regard to third country nationals in an irregular situation, Member States should ensure that irregular residence or work does not obstruct the obligation of public authorities to acknowledge a severely exploited worker as a victim of crime, in line with 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 (the Victims' Rights Directive), which applies to all victims in a non-discriminatory manner, including with respect to their residence status.

FRA opinion 4: As the agency highlighted in its 2015 report, and reiterates here in light of the evidence gathered for this report, EU Member States should ensure that:



- every victim of severe labour exploitation has targeted support services available to them – for example, by extending the mandate of support services targeting victims of trafficking to include support service provision to victims of severe labour exploitation;
- mechanisms for the referral of victims to support services are available for victims of all forms of severe labour exploitation;
- victims of labour exploitation are not excluded from support services as a result of their irregular residence status;
- support services are equally accessible to EU and non-EU citizens.

FRA opinion 5: As FRA stated in its 2015 report on severe labour exploitation, EU Member States should ensure that workers have access to knowledge about working conditions and their rights. Member States should encourage trade unions and other private organisations to provide information to workers before their departure, as well as when they arrive in the country of work. Member State actors can also play an important role in providing information – for example, foreign affairs ministries or embassies. In line with the ILO Domestic Workers Recommendation, 2011 (No. 201), Member States should also provide for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies.

FRA opinion 6: As highlighted by FRA in its 2015 report, EU Member States should ensure that the basic terms and circumstances of an employment relationship are transparent, well documented and comprehensible to workers throughout the term of employment. With regard to domestic workers specifically, in line with the ILO Domestic Workers Recommendation, 2011 (No. 201), Member States should raise employers’ awareness of their obligations by providing information on good practices in the employment of domestic workers.

FRA opinion 7: As previously stated in FRA’s 2015 report on severe labour exploitation, Member States should strive to create a climate of zero tolerance among the general public of labour exploitation. As highlighted in the 2016 European Parliament resolution on women domestic workers and carers, Member States could organise campaigns to raise awareness of the important contribution of domestic workers to society and, in addition, as FRA’s findings underline, their rights as workers. Member States should also look at ways of formalising domestic work in their labour markets, which could include financial benefits for those who employ domestic workers in a formal way (for example, in the form of tax credits, as in Belgium and France).

III. Opinions from FRA report “Protecting migrant workers from exploitation in the EU: boosting workplace inspections” (September 2018)

FRA opinion 1: It is essential that EU Member States create safe conditions during workplace inspections that enable and empower workers to report their experiences of labour exploitation. For this to happen, labour inspectors need to give workers the opportunity to speak to them and be heard without their employers being present. Inspectors should also provide workers with clear information about their rights. This will serve to underpin existing legislation, including legislation addressing trafficking in human beings and particularly exploitative working conditions under the Employers’ Sanctions Directive (2009/52/EC), and ensure that it is enforced in practice. Suggestions put forward by workers in this research could be combined with suggestions by professionals to create a ‘checklist’ on how to improve inspections and empower workers to leave exploitative situations.

FRA opinion 2: To end the impunity of exploitative employers, workers need to be able to report situations of severe labour exploitation and be offered sufficient protection and have the right to an effective remedy in line with Article 47 of the Charter, without having to fear consequences such as losing their only source of money, a place to live, or being deported. When it comes to potential punishments and sanctions of exploitative employers, Member States could consider as aggravating factors strategies that have been utilised by employers to deceive monitoring bodies during inspections, and make it known that such behaviour will carry consequences.

FRA opinion 3: EU Member States should ensure that immigration law enforcement is conducted in full compliance with human rights standards and does not prevent access to justice for exploited workers and foster impunity for exploitative employers, as stressed in the agency’s 2015 report on severe labour exploitation. Authorities working

in the area of severe labour exploitation should prioritise the fundamental rights of victims of crimes of such exploitation over questions of immigration management. Member States should issue clear guidance to this effect to all authorities that deal with third-country national workers, ensuring that irregular residence or work does not obstruct the obligation of public authorities to acknowledge a severely exploited worker as a victim of crime – even when in an irregular situation of residence. Clear standards and procedures should be established to inform victims of their rights and to enable safe access to victim support and all justice mechanisms.

FRA opinion 4: EU Member States should clearly define in law what constitutes exploitative labour conditions and make detecting criminal forms of labour exploitation a key aim of workplace inspections, in line with their obligations under EU and international law. To apply the law, Member States should train staff engaged in monitoring workplaces to understand and assess risk factors for criminal forms of labour exploitation in practice – including how to question workers and inform them about their rights where they suspect such exploitation. Monitoring bodies should organise their work in line with these factors, allocating resources according to the level of risk identified in their risk assessment/analysis. Member States which do not currently conduct such risk analysis could consider looking at the practices of other Member States, such as Belgium and the Netherlands.

FRA opinion 5: Inspections at the workplace should always aim to protect workers' rights. They should also recognise that current evidence points to violations of fundamental rights to fair and just working conditions being quite widespread in certain economic sectors. Member States could consider establishing a joined-up response to tackling labour exploitation, allocating sufficient resources to involve competent bodies – such as labour inspectorates, health and safety or tax authorities and various branches of the police. These could incorporate a unified set of evidence-based risk factors to help them identify severe labour exploitation while carrying out workplace inspections.

FRA opinion 6: The 22 EU Member States which have not – as of 1 June 2018 – ratified the 2011 ILO Convention concerning decent work for domestic workers should do so, and should revise regulations that have the effect of exempting domestic workplaces entirely from inspections. In accordance with Article 17 of the ILO Convention, and as highlighted in the 2016 European Parliament resolution on women domestic workers and carers in the EU, EU Member States, together with the social partners, should develop measures to provide for labour inspections in the domestic work sector.

FRA opinion 7: Monitoring bodies in Member States should consider increasing their oversight of the construction and food services sectors with a view to detecting severe labour exploitation and protecting workers, in light of the fact that the majority of research participants exploited in these sectors had not witnessed or heard of any inspections.

FRA opinion 8: EU Member States should complement effective monitoring with raising awareness among relevant bodies – such as businesses, trade unions, hospitals and the general public – about the existence, nature and features of severe labour exploitation. They should also encourage them to report instances of such exploitation.

FRA opinion 9: Given the severity of exploitation that evidence shows can occur in the workplace, EU Member States should ensure that, where possible, employers – particularly in sectors where evidence demonstrates that workers are at higher risk of labour exploitation – are not informed about inspections in advance.

FRA opinion 10: EU Member States should consider practical measures to overcome language barriers during workplace inspections, allowing monitoring bodies to reach and inform workers. This could include issuing materials concerning labour rights in multiple languages. At the same time, monitoring bodies should not assume that workers cannot understand or communicate in the national language, and should attempt to communicate with them. Member States should cooperate where possible with specialised bodies and civil society organisations, such as services providing support to asylum seekers, as they may be able to provide inspectors with language and translation services.



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The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, both for commercial and non-commercial purposes.

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

This report is the EU Fundamental Rights Agency's fourth on the topic of severe labour exploitation. Based on interviews with 237 exploited workers, it paints a bleak picture of severe exploitation and abuse. The workers include both people who came to the EU, and EU nationals who moved to another EU country. They were active in diverse sectors, and their legal status also varied.

The report shows how exploitation often starts with false promises and fraud, describes the extreme conditions the exploited workers endure, and identifies the factors that facilitate exploitation. But it also outlines what can be done to help exploited workers access justice. We hope that our focus on this issue encourages the responsible authorities to recognise the reality of severe labour exploitation, and to take the steps necessary to counter this troubling phenomenon.



SUSTAINABLE DEVELOPMENT GOALS

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