

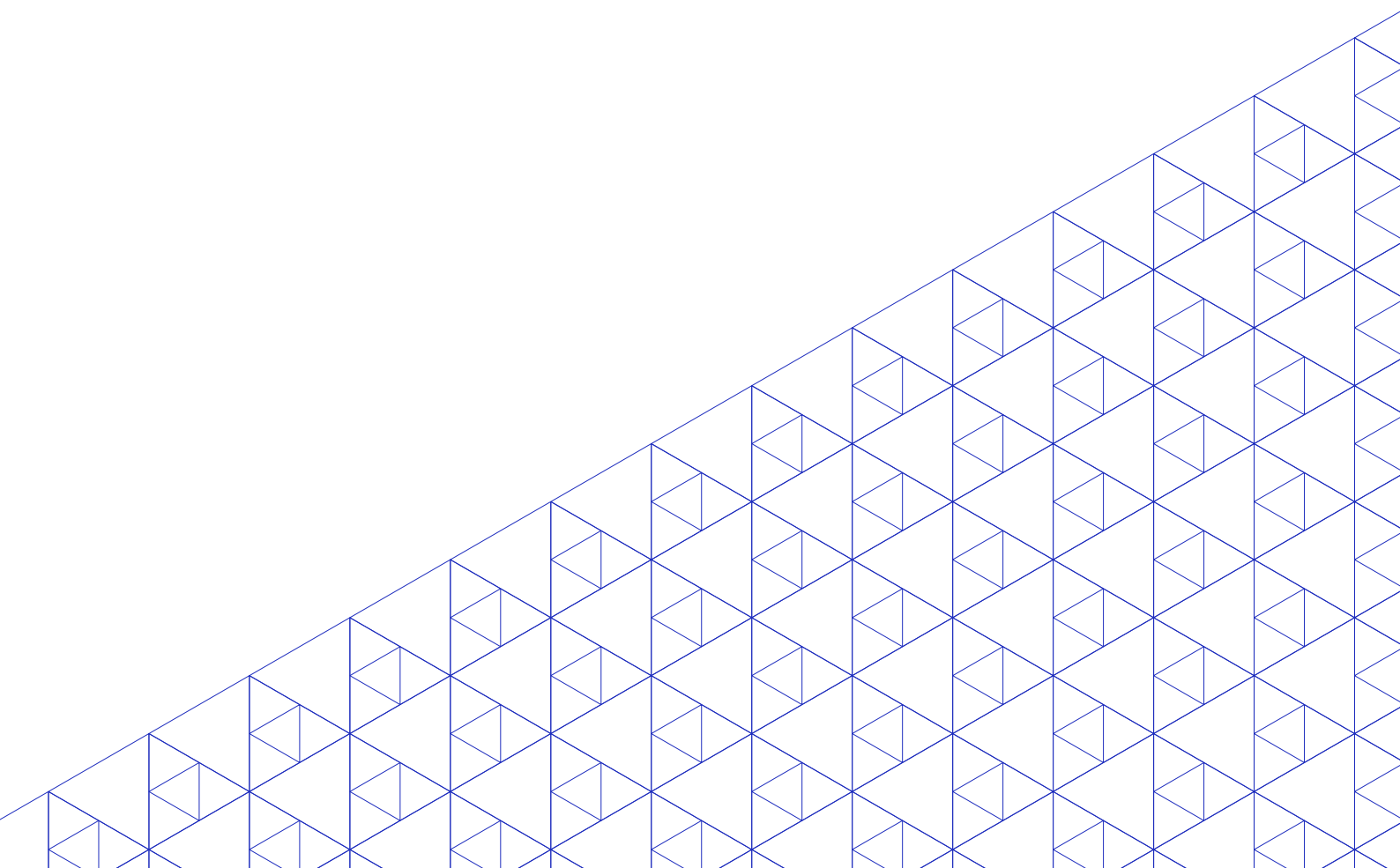


International
Labour
Organization

► Office for Italy and San Marino

► Policies to prevent and tackle labour exploitation and forced labour in Europe

Vallì Corbanese and Gianni Rosas



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International Labour Organization

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Preface

More than ninety years after the adoption of the Forced Labour Convention (No. 29) of the International Labour Organization, labour exploitation, forced labour and other forms of modern slavery still exist and continue to be a matter of concern for policymakers around the world.

Increased trade liberalization, global competition, international migration, challenges in the governance of national labour markets, discrimination and social exclusion are just few of the several factors that underpin the various forms of labour exploitation.

In order to prevent and tackle labour exploitation and apply the provisions enshrined in international legal instruments relating to labour exploitation, forced labour and human trafficking, several countries have adopted laws and other policy measures. The persistence of violations and the scale of the phenomenon, however, point to significant implementation gaps in the achievement of Sustainable Development Goal 8.7 of eradicating forced labour, human trafficking and child labour.

This publication reviews the policies and practices to prevent and tackle labour exploitation, forced labour and related practices, especially in the countries of the European Union, with the objective of distilling lessons for the design and implementation of policy actions to prevent and tackle labour exploitation in Italy. The review is based on the analysis of existing literature, national regulatory frameworks and country-level policy initiatives. The paper is organized around six chapters. Chapter one explores the main legal instruments that have been adopted at international, regional and national levels to tackle trafficking, forced labour and related practices. Chapter two explores the main prevention strategies put forward to prevent these practices, while chapter three examines measures to protect victims. Chapter four looks at the remedies that are available to victims of labour exploitation, forced labour, and human trafficking for labour exploitation and chapter five reviews enforcement challenges and how these are being addressed. Chapter six concludes and draws policy implications for preventing and tackling labour exploitation, forced labour and related practices at the national level. It advocates for a comprehensive framework on unacceptable forms of work under which the different dimensions of labour exploitation can be unfolded.

This review was conducted between the end of 2019 and the beginning of 2020 with the aim of supporting the development of Italy's first National Action Plan to tackle labour exploitation in agriculture. The findings were shared and discussed during a number of seminars and other events of the technical working groups that were tasked to develop the thematic priorities of the above-mentioned Plan.

This publication is a product of the project "Support to strengthening the inter-institutional governance in the field of labour exploitation in Italy" that is co-funded by the European Union via the Structural Reform Support Service and implemented by the Office for Italy and San Marino of the International Labour Organization with the Italian Ministry of Labour and Social Policies and in cooperation with the European Commission. The objective of the joint ILO-EC action is to support the Italian government in the design, implementation, monitoring and evaluation of coherent and coordinated policy interventions to prevent and tackle labour exploitation and forced labour in agriculture.

For the comments to the various drafts of this review, gratitude is expressed to the colleagues of the General Directorate for Immigration and Integration Policies of the Italian Ministry of Labour and Social Policies and of the General Directorate for Structural Reform Support (DG Reform) of the European Commission. Finally, appreciation goes to Mr Simon Hills, Technical Specialist for Europe and the Arab States of the Fundamental Principles and Rights at Work Branch of the ILO, for his suggestions for the finalization of this paper.

The views expressed in this publication are those of the authors and do not necessarily reflect those of the European Commission or the International Labour Office.

► 1 International and European frameworks

Introduction

There are several labour-related exploitative practices human beings may be subject to. These include violations of fundamental principles and rights at work and other labour rights, trafficking of human beings within or across borders for labour exploitation purposes, forced labour and slavery-like practices. Often, the boundaries between these different forms of exploitation are difficult to define as workers may be exposed to multiple abuses to the detriment of their freedom and dignity.

Global estimates of the ILO accounted for approximately 40 million victims of modern slavery in 2016.¹ This number includes nearly 25 million people in forced labour (of which 16 million people in the private economy) and 15 million individuals in forced marriage.² The largest share of workers in forced labour was recorded in the domestic work sector (24 per cent), followed by construction (18 per cent), manufacturing (15 per cent), and agriculture and fishing industries (11 per cent). According to ILO's estimates, forced labour in the private economy generates US\$150 billion in illegal profits annually. Roughly two thirds of this amount (US\$99 billion) derive from commercial sexual exploitation, while another US\$51 billion results from forced economic exploitation.³

In the countries of the European Union, the most frequent form of labour exploitation of victims of trafficking is sexual exploitation, although the share of trafficking for forced labour is on the rise, representing approximately 26 per cent of total exploitation. The majority of the registered victims of trafficking for labour exploitation (61 per cent) are found in the United Kingdom.⁴ Most victims of trafficking for forced labour (80 per cent) are male and European Union (EU) nationals, especially from Bulgaria, Hungary, Poland and Romania. Outside the European Union, sub-Saharan Africa remains the most frequent region of origin of trafficking flows (especially Nigeria and Eritrea) followed by Albania, Vietnam and China. Victims are exploited in construction, agriculture and forestry, manufacturing, catering industry, care services, cleaning services and domestic work, entertainment, fishing, hospitality, retail and transportation.

Based on the estimates of the Global Slavery Index, in 2018 there were approximately 1.3 million persons in modern slavery in European Union countries, with France, Germany, Italy, Poland, Spain and United Kingdom accounting for over 63 per cent of all estimated modern slavery cases (see Figure 1).

The estimated prevalence of the phenomenon in European Union countries ranges from less than two victims (e.g., Austria, Denmark, Finland, Ireland and Sweden) to nearly eight victims (Greece) every 1,000 people.

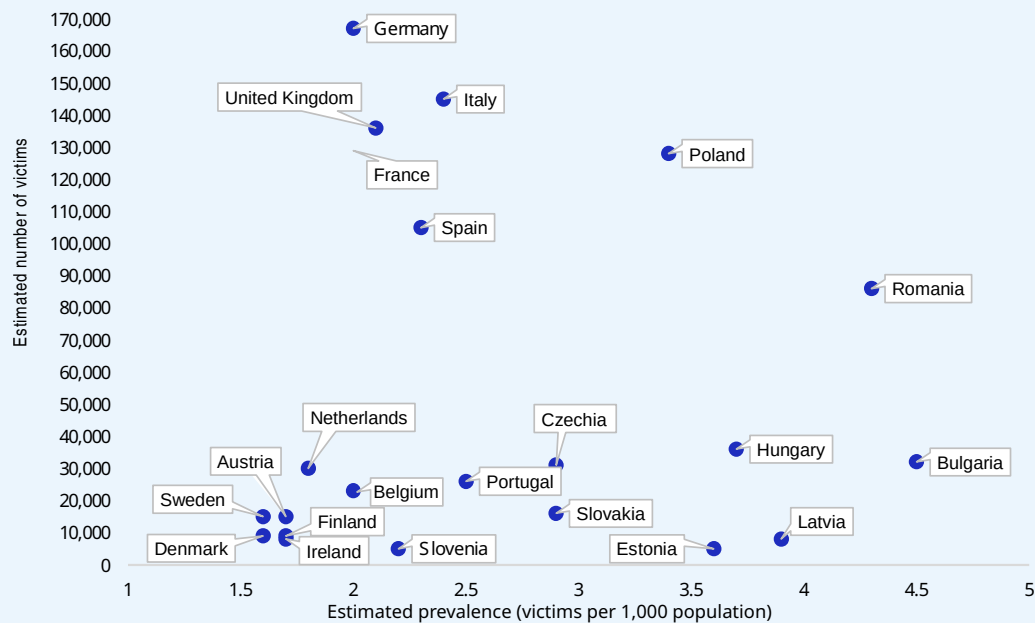
¹ Although there is no accepted definition of modern slavery, the term encompasses situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power. ILO: *Global estimates of modern slavery: Forced labour and forced marriage* (ILO, Geneva, 2017).

² ILO: *Global estimates of modern slavery: Forced labour and forced marriage* op. cit. 2017

³ ILO: *Profits and poverty: The economics of forced labour* (ILO Geneva, 2014)

⁴ European Commission: *Second report on the progress made in the fight against trafficking in human beings* (Brussels, 2018), Europol: *Situation report: Trafficking in human beings in the EU* (2017)

► **Figure 1. Estimated number of victims and prevalence of modern slavery, selected EU countries (2018)**



Source: [Global Slavery Index. Prevalence of modern slavery by country](#) (2018).

The data on cases of trafficking reported by EU member States show that in the last decade the proportion of victims trafficked for labour exploitation and forced labour has increased to reach approximately 40 per cent of all victims of trafficking. Over 70 per cent of adults trafficked for forced labour in agriculture and domestic work or manufacturing are in debt bondage.⁵

Most of the offenders prosecuted for trafficking for forced labour in EU countries are male (over 70 per cent) and nationals (41 per cent). Another 10 per cent of offenders are foreigners (but with citizenship of Western and Southern Europe). The remaining 49 per cent of perpetrators are citizens of countries of South-Eastern Europe (26 per cent), Africa and the Middle East (9 per cent) and South and East Asia (8 per cent).⁶

There are several factors that underpin the resurgence of labour exploitation, forced labour and trafficking.⁷ These can be grouped into four broad categories, namely: (i) the legal and institutional framework (impunity of perpetrators, weak workplace monitoring, migration regimes that restrict regular employment); (ii) workers' personal situation and background (extreme poverty in the country of origin, low levels of education, discrimination in the country of destination, difficulties in communicating in the language of the host country); (iii) workplace factors (work in sectors/occupations particularly exposed to labour exploitation, work in isolation); (iv) employers' demand and behaviours (drive to decrease production costs, lack of employment contract and/or information on entitlements, and dependency of workers for food, accommodation and transport).⁸

⁵ United Nations Office on Drugs and Crime (UNDOC): *Global report on trafficking in persons* (Vienna, 2018).

⁶ European Commission: *Second report on the progress made in the fight against trafficking in human beings* (Brussels, 2018), Europol: *Situation report: Trafficking in human beings in the EU* (2017)

⁷ ILO: *Strengthening action to end forced labour*, Report (IV)1, International Labour Conference 103rd session, 2014.

⁸ European Union Agency for Fundamental Rights (FRA): *Severe labour exploitation: Workers moving within or into the European Union. States' obligations and victims' rights* (FRA, Vienna, 2015)

1.1 Frameworks for the identification of labour exploitation

As mentioned in the previous section, labour exploitation is widespread.⁹ International law does not define “labour exploitation” and this makes it complex to distinguish the often-blurred boundaries between inadequate working conditions, labour exploitation and forced labour. In order to clarify the concept of unacceptable forms of work, the International Labour Office proposed in 2015 a multidimensional and dynamic model that includes twelve dimensions, each characterized by a series of indicators for the identification of the phenomenon and the formulation of law enforcement policies (see Box 1). This model is based on the corpus of over 400 international labour standards of the ILO and on the notion that unacceptable forms of work and labour exploitation are the antithesis of the concept of decent work.

The notion of unacceptable forms of work and labour exploitation includes all the conditions that deny the effective exercise of fundamental labour rights, which endanger the life, health, freedom, human dignity and safety of workers.¹⁰ Some indicators are based on the fundamental principles and rights at work that should be pursued by all nations (see section on international labour law), while others should be contextualized to national circumstances. The distinction between indicators relating to fundamental principles and supplementary indicators is intended to assist national decision-makers in implementing sequential interventions to combat unacceptable forms of work, depending on the economic, institutional and legal context of reference. For advanced countries, the reference should be the full set of indicators.

► Box 1. Dimensions and indicators of unacceptable forms of work

Dimension	Indicators
1. Forced labour	Worker subject to forced labour (including slavery, debt bondage, trafficking in persons, forced prostitution, forced overtime, etc.)
2. Health and safety	Risk to health and well-being (physical and mental)
3. Income	- Inadequate payment (too low to satisfy basic needs) - Insecure payments (e.g., wage arrears, irregular payments, unjustified deductions, performance of unpaid work, illegitimate/excessive recruitment fees, etc.)
4. [Employment] Security	- Day labour (casual contracts, zero hours contracts, etc.) - Insecure employment (no certainty of continuing employment, termination is possible without a valid reason or without procedural or other protections) - No prospects for promotion - No opportunities for skills development or training
5. Working time	- Excessive weekly hours - Weekly rest of less than 24 hours - Insufficient daily rest/family/community time - Forced overtime - Insufficient hours (too few to satisfy basic needs)

Continued...

⁹ International Labour Office (ILO): *Strengthening action to end forced labour*, Report (IV)1, International Labour Conference 103rd Session, 2014.

¹⁰ Judy Fudge e Deirdre McCann, *Unacceptable forms of work: A global and comparative study*, International Labour Office, Ginevra, 2015

... continues

Dimension	Indicators
5. Working time	• Excessive weekly hours • Weekly rest of less than 24 hours • Insufficient daily rest/family/community time • Forced overtime • Insufficient hours (too few to satisfy basic needs) • Unprotected night work (no health assessments, no capacity to transfer in essential circumstances, no additional compensation, etc.) • Paid annual leave of less than three working weeks • Unpredictable schedules • Lack of influence over working hours (including the flexibility to deal with family and community obligations) • Insufficient rest breaks during the working day
6. Representation and voice mechanisms	• The right to freedom of association, the right to organize and the right to collective bargaining are not respected • Lack of consultation, denial of participation, or failure to provide voice mechanisms
7. Child labour	• Child labour
8. Social protection	• Social protection that does not meet primary needs (health care, pension coverage, paid sick leave, unemployment insurance, etc.)
9. Equality, human rights and dignity	• Discrimination in working life (including access to education and vocational training) • Unequal pay for work of equal value • Abuse, violence and harassment • Lack of respect for human rights, including the lack of respect for privacy (e.g., restrictions on transfer of earnings, privacy violated in employer-provided housing, confiscation of possessions) • Lack of respect for national, ethnic and social identities and cultures
10. Legal protection	• Exclusion from legal protections • Inadequate implementation/enforcement of legal protections (ineffective inspection systems, unspecified allocation of responsibilities in multilateral relationships, etc.) • Inadequate regulation of the recruitment or placement of workers by employment agencies, labour providers • Lack of information on legal rights • No contract
11. Family and community life	• No entitlement to paid maternity leave of at least 14 weeks • No maternity protection • No parental leave • Work inhibits family or community life (e.g. engagements terminated because a worker has family responsibilities, no flexibility to deal with family or community obligations)
12. Work organization	• Lack of control over the work process (e.g. task, decision, timing, method) • Excessive workload • Intense physical and mental demands

Source: Judy Fudge, and Deirdre McCann, *Unacceptable forms of work: A global and comparative study*, International Labour Office, Geneva, 2015, pp 49–51.

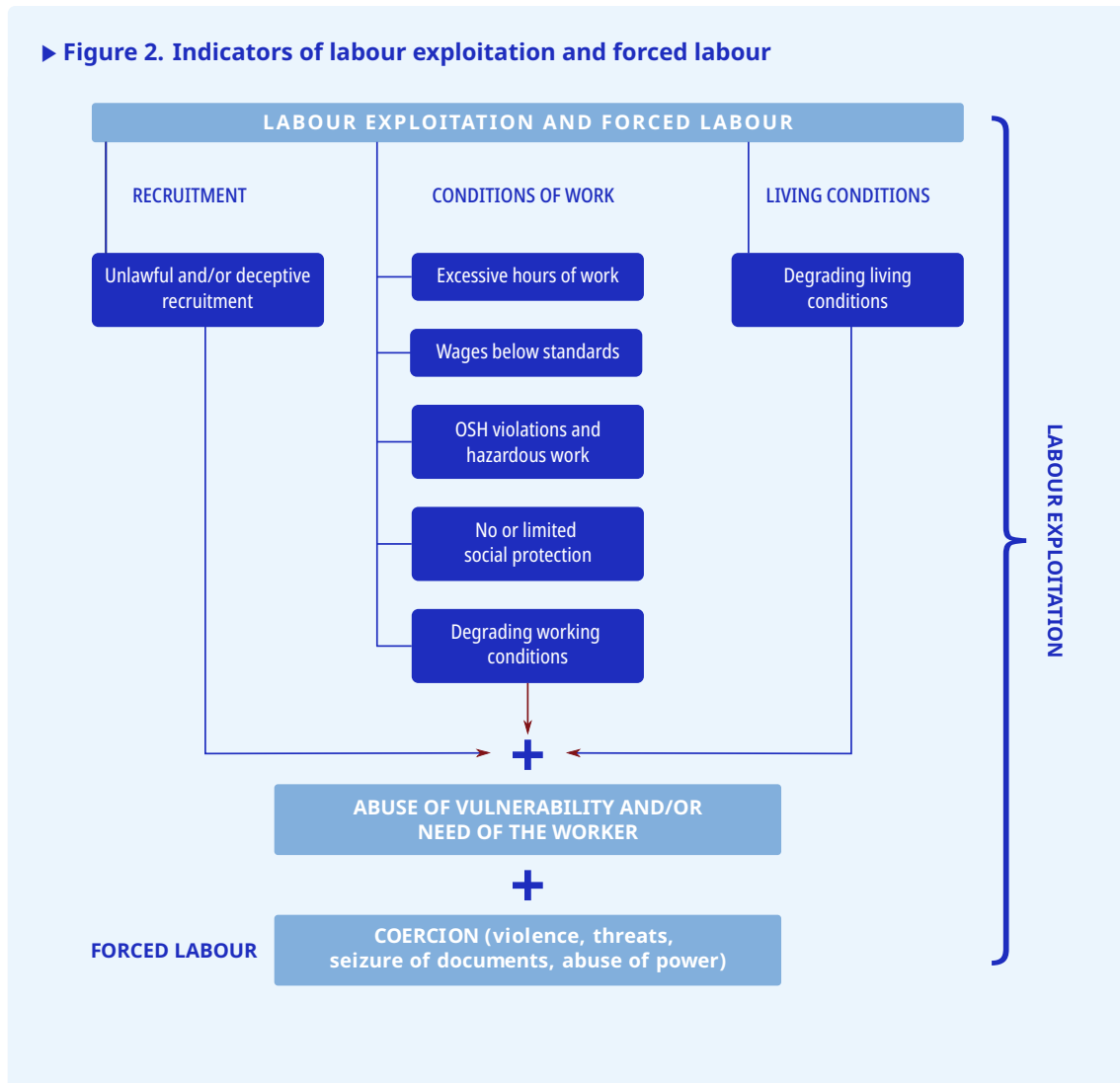
The European Union Agency for Fundamental Rights (FRA) has developed a reference framework that is based on the forms and severity of labour exploitation as defined by the Charter of Fundamental Rights of the EU and by a number of directives relating to the protection of workers.¹¹ This framework associates the various forms of labour exploitation with the applicable legislation (criminal or labour and civil law). In the context of the overall violation of the fair and just working conditions (article 31 of the Charter), FRA groups as violation of criminal law the prohibition of forced labour, servitude and slavery (article 5 of the Charter), and other severe forms of labour exploitation, — including the “particularly exploitative working conditions” defined by article 2 (i) of Directive 2009/52/EC that introduces minimum standards relating to sanctions and measures against employers who employ third-country nationals with an irregular situation. The other forms of labour exploitation are classified as violations of labour and civil law. These situations, including those relating to gender-based and other types of discrimination, may result in different conditions of employment of irregularly and regularly employed workers, which can affect the dignity, safety and health of workers. In practice, however, it may not always be possible to disentangle the different forms of labour exploitation and there may be a continuum among them, starting from less severe forms of labour exploitation and ending up in forced labour and slavery.

For operational purposes, the ILO and the European Commission developed a set of indicators of trafficking for labour exploitation based on the work of an international group of experts (Delphi Group). Figure 2 illustrates the conditions under which labour exploitation and forced labour may occur.¹² Although this list of indicators does not stem from international binding instruments, it has been used as reference by many countries for policy development, implementation and monitoring.

¹¹ European Union Agency for Fundamental Right, *Severe labour exploitation: Workers moving within or into the European Union. States' obligations and victims' rights*, Vienna, 2015, pages 34–36.

¹² International Labour Office (ILO): Indicators of forced labour (ILO, Geneva, 2012); International Labour Office (ILO), Department of Statistics: Guidelines concerning the measurement of forced labour (20th International Conference of Labour Statisticians Geneva, 10–19 October 2018); International Labour Office (ILO): *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (ILO, Geneva, 2012); ILO and EC: *Operational indicators of trafficking of human beings* (ILO, Geneva, 2009); European Union Agency for Fundamental Rights (FRA): *Severe labour exploitation: workers moving within or into the European Union: States' obligations and victims' rights* (FRA, Vienna, 2015).

► Figure 2. Indicators of labour exploitation and forced labour



Labour exploitation conditions are grouped in the following three areas or indicators of possible abuse, namely:

1. **Unlawful and/or deceptive recruitment.** This refers to the recruitment of workers to be assigned to third parties for work under conditions of exploitation. Exploitation also exists if the worker is deceived about the nature of the job, location and conditions of work (e.g. contract, time, rest periods, wages, identity of the employer), transport or accommodation.
2. **Conditions of work.** This indicator is broken down in a set of indexes that relate to the remuneration, hours of work, occupational safety and health (OSH), and degrading conditions of work. These indexes are:
 - **Excessive hours of work** concern the repeated violation of the regulations on hours of work set by national legislation or collective bargaining agreements and non-compliance with rest periods (daily and/or weekly rest and annual leave).
 - **Lack of remuneration or remuneration lower than the minimum wage** relates to the withholding of wages or the payment of low wages (i.e., below the national minimum wage). It applies also to situations in which the salary is paid “in kind” or is substantially reduced for the payment of board and lodging.

- **Occupational safety and health (OSH)** refers to exposure of workers to hazards that endanger their life and health without the use of protective equipment and/or the respect of regulations and prescriptions.
 - **Social protection** violations and abuses happen when, abusing the vulnerability of state of need of the worker, social security contributions are not paid.
 - **Degrading working conditions** occur when: (i) the worker is subject to pressing or degrading surveillance methods (constant physical presence of the employer; verbal abuse, harassment and threats); (ii) there is no possibility of communication among workers and with other persons; (iii) work takes place in adverse weather conditions, without adequate personal protective equipment; (iv) there are no adequate restroom facilities; and (v) transport to and from place of work is carried out in un-roadworthy or unsafe vehicles, that endanger the safety of workers.
3. **Degrading living conditions.** This indicator refers to the denial of free choice of one's place to live or being forced to live in unhealthy or overcrowded conditions or in places that do not meet minimum living standards (e.g., electricity, running water, toilet facilities).

Labour exploitation exists when at least one of the above-mentioned violations occurs and it is combined with the abuse of the vulnerability or the state of need of the worker. When coercion is involved (violence, threats, seizure of documents, restriction of personal freedom) labour exploitation becomes forced labour.

1.2 International legal frameworks

In the last three decades, the context and forms of forced labour have substantially changed. An increased number of individuals are in forced labour in the private economy, with certain groups of workers — especially migrants — being at higher risk of becoming victims. This has led to the adoption of international instruments to tackle trafficking, forced labour and related practices. This section reviews the main international legal instruments addressing labour exploitation.

The first international labour standard that dealt with forced labour was adopted by the ILO in 1930. The Convention No. 29 (Forced Labour Convention, 1930) defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. This definition:

1. applies to all possible forms of forced labour, including slavery and slavery-like practices, debt bondage and trafficking in persons;
2. covers all types of work, service and employment, in any activity, industry or sector, including in the informal economy; and
3. includes all forms of direct or indirect coercion, such as physical violence, psychological threats or non-payment of wages or the loss of rights or privileges.¹³

ILO Convention No. 105 (Abolition of forced labour Convention, 1957) deals primarily with forced labour imposed by State authorities. It prohibits the use of any form of forced or compulsory labour as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labour discipline, punishment for participation in strikes or discrimination.

¹³ International Labour Office (ILO): *Strengthening action to end forced labour*, Report (IV)1, International Labour Conference 103rd session, 2014

In the face of the persistence of forced labour practices across the globe, in 2014 the ILO adopted two new international labour standards on this matter with a view to bringing international instruments against forced labour into the modern era. Together with its accompanying Recommendation, the Protocol to the Forced Labour Convention, 2014 (No. 29) supplements existing international forced labour instruments and establishes the obligation of member States to prevent forced labour, protect victims and provide them with access to remedies (see Box 2).¹⁴ It also emphasizes the link between forced labour and trafficking in persons. In line with ILO Convention No. 29, the Protocol also reaffirms the importance of prosecuting the perpetrators and ending their impunity.¹⁵

► **Box 2. The Forced Labour Protocol of 2014 (No. 29)**

The Protocol on forced labour requires that Members adopt effective measures to prevent and eliminate forced labour and protect victims, including through access to appropriate remedies, and to sanction perpetrators. Such measures shall include specific action against trafficking in persons for forced labour and should be based on the following pillars:

- **Prevention:** Members must put in place preventive measures aimed at: (i) analysing and addressing the causes and factors that increase the risk of forced labour; (ii) training, information and advocacy on trafficking situations and forced labour; (iii) extending the coverage and application of labour laws to all affected workers and sectors; (iv) strengthening labour inspection and other departments responsible for monitoring and verifying the effective application of the laws; (v) protecting against abuses arising out of labour recruitment processes; and (vi) applying due diligence to both public and private sectors.
- **Protection:** The Protocol provides for protection measures with a view to: (i) taking effective action to identify, release, protect, recover and rehabilitate victims and (ii) protecting victims from consequences stemming from illicit activities carried out under coercion.
- **Remedies:** Redress and compensation systems for moral and material damage must be available in order to guarantee access of victims to appropriate and effective remedies, such as compensation, irrespective of their presence or legal status in the territory.

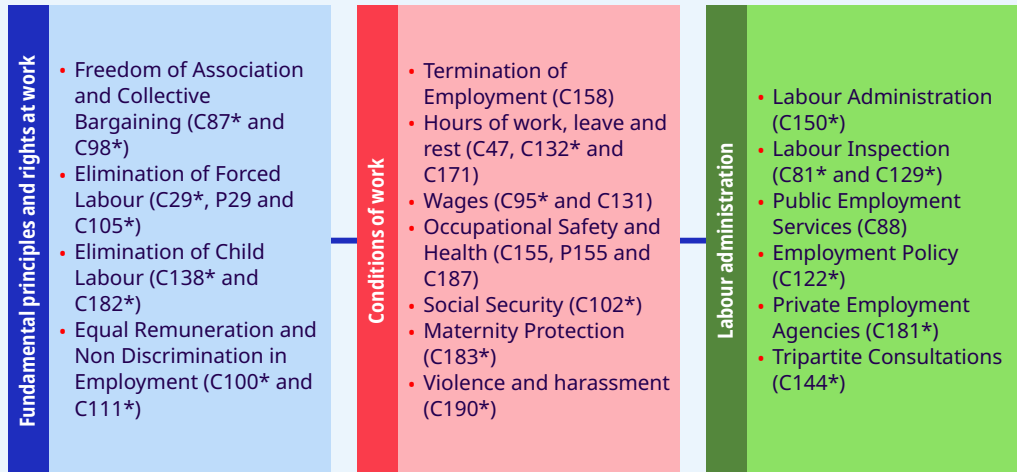
The Protocol requires that Members to put in place information and consultation processes with a view to: (i) developing a national policy and action plan in consultation with the representatives of employer and worker organisations and (ii) undertaking systematic action in coordination with these organizations and with other groups concerned. It also includes initiatives to strengthen international cooperation between States to prevent and eliminate forced labour.

Source: ILO, NORMLEX, P029 – [Protocol of 2014 to the Forced Labour Convention](#)

The full corpus of international labour standards contains provisions that aim to promote decent work and, therefore, prevent or counter labour exploitation. These standards include the above-mentioned specific instruments to tackle forced labour. Within this corpus and considering the most recurrent manifestations of labour exploitation, there are three sets of standards that are particularly relevant for the protection of workers against labour exploitation (see Figure 3).

¹⁴ See the [Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No. 203\)](#).

¹⁵ See International Labour Office (ILO): *Strengthening action to end forced labour*, Report (IV)1 (International Labour Conference, 103rd Session 2014).

► **Figure 3. Key international labour standards to protect workers from labour exploitation**

Note: * Conventions ratified by Italy.

The first set of ILO standards of Figure 3 are the ILO's fundamental principles and rights at work that have universal nature (i.e., they apply to all citizens of any State) and are grounded in international law on both labour and human rights. They include ILO conventions on freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. The second set of international labour standards covers topics relating to conditions of work (e.g., job security, regulation of hours of work, protection of wages, occupational safety and health, social protection, maternity protection and violence and harassment in the world of work). The final set of standards focuses on the institutions that are responsible for the governance and organization of the labour market (e.g., in the area of labour intermediation), the formulation, application and monitoring of labour legislation (i.e. labour administration and labour inspection) and the employment policy frameworks. Finally, there are a number of international labour standards that seek to protect specific categories of workers (e.g., migrant and domestic workers) as they are often in situations of higher vulnerability in respect of labour exploitation (see Box 3).

In 2000, the United Nations General Assembly adopted the Protocol to prevent, suppress and punish trafficking in persons, especially women and children (also known as the "Trafficking Protocol" or "Palermo Protocol"), supplementing the Convention against Transnational Organized Crime. The purposes of this Protocol are to prevent and combat trafficking in persons, paying specific attention to women and children; protect and assist victims; and promote cooperation among State parties to meet these objectives.

Another framework that identifies the duties of the State and the corporate responsibility to respect human rights is represented by the United Nations Guiding Principles on Business and Human Rights that were adopted by the Human Rights Council of the United Nations in 2011.¹⁶ Although they do not constitute international law, these Principles are grounded in the application of international

¹⁶ See United Nations Office of the High Commissioner on Human Rights. (2011). *Guiding principles on business and human rights. Implementing the United Nations "Protect, Respect and Remedy"*. New York and Geneva.

human rights law and are the most relevant international guidelines regarding the respect of human rights not only by States but also by businesses. The Principles are based on three pillars: (i) the State duty to protect human rights; (ii) the corporate due diligence obligation on human rights; and (iii) the access to remedy and compensation.

► Box 3. ILO standards protecting specific categories of workers from labour exploitation

Several ILO standards explicitly prohibit labour exploitation and protect specific categories of workers, including:

- **Migrant workers:** the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) identifies measures to tackle clandestine and illegal migration and sets out the general obligation to respect the fundamental rights of all migrant workers. It also extends the scope of equality of treatment between legally resident migrant workers and national workers beyond the provisions of Convention No. 97 (Migration for Employment (Revised) Convention, 1949) to ensure equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights, and individual and collective freedoms for persons who, as migrant workers or members of their families, are lawfully within the territory of a ratifying State. It also requires ratifying States to facilitate the reunification of the families of migrant workers legally residing in their territory.
- **Indigenous and tribal peoples:** the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which prohibits the exaction of compulsory personal services and requires ratifying States to ensure that indigenous peoples and tribal peoples are not subjected to coercive recruitment systems;
- **Child labour:** the Worst Forms of Child Labour Convention, 1999 (No. 182), which prohibits all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, including forced or compulsory recruitment of children for use in armed conflict;
- **Domestic workers:** the Domestic Workers Convention, 2011 (No. 189), which calls for measures to respect, promote and realize the fundamental principles and rights at work of domestic workers, including the elimination of all forms of forced or compulsory labour.

Source: ILO: *Strengthening action to end forced labour*, Report (IV)1, International Labour Conference 103rd Session, 2014; ILO: *The rules of the game: An introduction to the standards-related work of the International Labour Organization* (Centenary edition 2019), Geneva, 2019.

1.3 Legal frameworks in Europe

In Europe, there are several legal instruments that focus on different forms of labour exploitation. With respect to trafficking for labour exploitation, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings defines trafficking as to include recruitment and transportation by means of coercion or deception for the purpose of exploitation.¹⁷ Where coercion is used, the apparent consent of the victim to the exploitation is irrelevant. While the Convention's remit includes trafficking within national borders, much of it is devoted to border control and repatriation. This instrument includes the provision for compensation of victims from perpetrators and requires States to provide accommodation, psychological and material assistance, emergency medical treatment, translation and interpretation services, advice on legal rights, representation and access to education for children. The EU Council Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Human Trafficking Directive) focuses on the protection of victims, the

¹⁷ The Council of Europe comprises 47 member States of the European continent. For the list of Members see the [website of the Council of Europe](https://www.coe.int/en/web/council-of-europe)

prosecution of traffickers and the prevention of the phenomenon.¹⁸ It sets out minimum penalties for perpetrators and requires support for victims that is not conditional to prosecution. This support should include measures related to subsistence, accommodation, medical treatment, counselling, information and interpretation services. Although member States must ensure that victims of trafficking have access to existing schemes of compensation for victims of violent crimes, there are no provisions for compensation for excessive hours of work, unpaid wages or other distress.¹⁹

Several directives in the area of migration policy call for member States' action against labour exploitation. In this context and similarly to ILO's Migrant Workers Convention (see Box 3), there are three directives aimed at protecting migrant workers from abuses and exploitation.²⁰ The focus of Council Directive 2009/52/EC (Employers Sanctions Directive) is the general prohibition to employ third-country nationals who do not have the right to reside in the EU. This Directive recognizes the rights of workers to lodge complaints against employers and receive back payments. It goes beyond illegal migration and includes elements for the protection of workers' rights, such as the right not to be subject to particularly exploitative working conditions.²¹ The Council Directive 2011/98/EU (Single Permit Directive) sets down a single application procedure for issuing a single permit for third-country nationals to work in a EU member State and acknowledges the right of third-country nationals, admitted on the basis of the single permit principle, to equal treatment concerning working conditions, including pay, dismissal, occupational safety and health, freedom of association and membership of trade unions.²² The Directive 2014/36/EU (the Seasonal Workers Directive) determines the conditions of entry and stay of third-country nationals for the purpose of seasonal employment. Seasonal workers have the right to equal treatment in the host country in respect of terms of employment (e.g., minimum working age, pay, dismissal, working hours, leave and holiday) and safety and health regulations. They have also the right to access certain branches of social security (i.e., benefits linked to sickness, invalidity and old age), training, advice on seasonal work offered by employment offices and other public services.

The Council Directive 2004/81 deals with residence permits (Resident Permit Directive) issued to third-country nationals who are victims of trafficking. This Directive requires that these permits are subject to the following requirements: (i) the presence of the victim is necessary for the investigation of crimes of trafficking, (ii) the victim has shown a clear intention to cooperate; and (iii) the relations with perpetrators were severed. The Directive also envisages access of victims to accommodation, medical and psychological support and legal aid, when provided under national law.

The Council Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crimes (Victims' Directive) takes a victim-centred approach with provisions to ensure appropriate assistance, support and protection of victims, with special attention to children and victims of gender-based violence. In addition, this Directive recognizes the rights of victims to be informed and given support to participating in criminal proceedings.

¹⁸ This Directive replaces the 2002 Framework Decision on Combating Trafficking in Human Beings. This Decision provided a clear definition of trafficking of human beings. In addition, it set the obligation of member States to take the necessary measures to ensure that trafficking was punishable by effective, proportionate and dissuasive criminal penalties. See L. Rubio Grundell: *EU Anti-Trafficking Policies: from Migration and Crime Control to Prevention and Protection* (Policy Brief No. 9, Robert Schuman Centre for Advanced Studies, 2015).

¹⁹ N. Clark: *Detecting and tackling forced labour in Europe* (Joseph Rowntree Foundation, 2013).

²⁰ Some authors note that the inclusion of trafficking in the category of migration, especially irregular migration, is arguably one of the main reasons for the lack of success of EU anti-trafficking policies. Conversely, these policies should ensure a focus on exploitation — and not on the irregular border crossing — the harmonization of penalties and the guarantee that measures regarding protection are made compulsory, non-discriminatory, unconditional and adequate. See L. Rubio Grundell: *EU Anti-Trafficking Policies: from Migration and Crime Control to Prevention and Protection* (Policy Brief No. 9, Robert Schuman Centre for Advanced Studies), 2015.

²¹ See European Union Agency for Fundamental Rights (FRA): *Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights* (Luxembourg, 2015)

²² Ibid.

Similar to ILO Conventions, several EU directives deal with the regulation of work and employment and may be applied to protect workers from labour exploitation and forced labour. More specifically, the Working Time Directive (2003/88/EC) restricts working time to 48 hours per week, entitles workers to a four-week period of paid annual leave and requires daily and weekly breaks between periods of work. The Health and Safety at Work Directive (89/391/EEC) covers all workers (not just employees), although it excludes domestic workers.

1.4 National legal frameworks

In respect of labour exploitation of victims of trafficking, several countries of the EU amended their legislative framework and developed action plans against trafficking of human beings with a view to implementing the Palermo Protocol and the 2002 EU Framework Decision in Combating Trafficking in Human Beings (replaced in 2014 by the Human Trafficking Directive).²³ These plans usually contain specific sections on prevention, prosecution and victim protection. Denmark, for example, amended its Penal Code in 2002 to align the definition of trafficking to international and EU principles and introduced a term of imprisonment for up to ten years for perpetrators of human trafficking. Since 2002, it has implemented action plans that are centred on the prevention of trafficking, the identification and protection of victims, the prosecution of perpetrators and the promotion of partnership.²⁴ In 2015, Finland revised the provisions on human trafficking of its Criminal Code and introduced legal amendments for the assistance for victims of trafficking. These reforms were followed by the adoption of the Government Action Plan against Human Trafficking (2016–2017) focused on outreach to victims and groups at risk; law enforcement; training and awareness arising and cooperation at national level and across borders.²⁵ In Ireland, the Criminal Law (Human Trafficking) Act of 2008 introduced the crime of human trafficking in criminal law. This legislation provides for penalties up to life imprisonment and an unlimited fine for trafficking of persons for the purposes of labour or sexual exploitation or for organ removal.²⁶ In 2013, this provision was further amended to provide for two new forms of exploitation, namely forced begging and trafficking for the purposes of forced criminal activities. The second National Action Plan (2016) builds on the achievements of the first action plan and sets forth 65 non-exhaustive actions in the areas of prevention; protection; criminal justice response and prosecution; partnerships; response to child trafficking; and monitoring and evaluation.²⁷

With a view to expanding regulatory frameworks to different forms of labour exploitation and modern slavery, in 2015, the United Kingdom adopted the Modern Slavery Act. This law: (i) established the new offences of human trafficking, slavery, servitude, and forced or compulsory labour and it increased the maximum sentence for offenders to life imprisonment; (ii) made it easier for competent national authorities to confiscate the assets of exploiters and force them to pay reparation to victims; (iii) required the Secretary of State to issue guidance on assistance and support to potential victims of slavery and human trafficking and created a new statutory defence for victims compelled to commit other offences; (iv) contained new protections for victims to avoid secondary victimization, including the provision for independent child trafficking advocates and the protection of overseas domestic workers; and (v) made provisions for the eradication of modern slavery in supply chains. These provisions seek to achieve the three-pronged objectives of effectively preventing modern slavery, prosecuting perpetrators, and protecting victims. Developed to give effect to this law, the Modern Slavery Strategy aims to: (i) prosecute and disrupt individuals and groups responsible for modern slavery; (ii) prevent

²³ For a review of countries outside the EU that enacted laws and national action plans against trafficking, see ILO: *Strengthening action to end forced labour*, Report (IV)1, 2014.

²⁴ See for example the [2015–2018 Action Plan to combat trafficking in human beings](#) published by the Ministry of Children, Gender Equality, Integration and social Affairs.

²⁵ See Ministry of Interior: [Government Action Plan against Human Trafficking 2016–2017](#) (Helsinki, 2017).

²⁶ See the information available on the web page of the [Irish Department of Justice and Equality](#).

²⁷ See [Review of the National Action Plan To Prevent and Combat Trafficking in Human Beings \(2009–2012\)](#), and the [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#).

people from engaging in modern slavery, either as victims or offenders; (iii) strengthen safeguards against modern slavery by protecting vulnerable people from exploitation and increasing awareness of and resilience against this crime; and (iv) reduce the harm caused by modern slavery through improved victim identification and enhanced support.²⁸

In Italy, Law No. 199 of 2016 amended the criminal code to provide for two new offences: (i) unlawful labour intermediation that sanctions anyone who recruits persons for work with third parties in conditions of exploitation; and (ii) labour exploitation, which punishes anyone who uses, recruits or employs workers subjecting them to exploitation. This law identifies the indicators that define labour exploitation (repeated violations of hours of work and rest period regulations; no salary or salaries below those established by collective bargaining agreement; violation of occupational safety and health rules; and degrading living or working conditions). These indicators mostly reflect those enlisted in Figure 2 of this paper.

A number of initiatives are also being implemented outside Europe. Some of them are summarized in Box 4.

► Box 4. Policy initiatives to tackle modern slavery outside EU countries

There is a growing trend among governments to introduce anti-slavery laws and due diligence legislation requiring businesses to report on the risk of modern slavery linked to their operations and supply chains.

Since 2004, **Australia** has strengthened action against modern slavery by: (i) criminalizing modern slavery practices with penalties of up to 25 years of imprisonment; (ii) introducing the Modern Slavery Act in 2018 to harness business leverage and combat modern slavery in global supply chains; (iii) creating teams of experts in the Australian Federal Police to investigate modern slavery cases; (iv) delivering a government-funded victim support programme that provides individualized case management support, and (v) establishing a Human Trafficking Visa Framework to allow that victims and witnesses remain in the country, receive support and participate in investigations and prosecutions. The Government has also developed a National Action Plan to Combat Modern Slavery focused on twelve goals that address the full cycle of exploitation (from recruitment to reintegration) and give equal importance to the critical areas of prevention, enforcement and victim's support.

Following a major forced labour case in 1989, **Brazil** adopted various legislative and policy measures to tackle modern slavery. The labour inspectorate has been strengthened and, since 2004, the authorities have maintained a "dirty list" — a publicly-available list of employers and companies that exploited workers.

In 2020, the State of California (**United States**) introduced the Transparency in Supply Chains Act which aims to ensure that large retailers and manufacturers provide consumers with information about their actions to eradicate slavery and human trafficking from their supply chains.

Source: Government of Australia: *National Action Plan to Combat Modern Slavery 2020–24: Public Consultation Paper* (2019); Norwegian Agency for Development Cooperation (NORAD): *Mapping of modern slavery and recommendations for the Norwegian Government's development programme to combat modern slavery* (2019).

²⁸ United Kingdom Home Office: [2019 UK annual report on modern slavery](#) (October 2019).

► 2 Strategies to prevent labour exploitation

Prevention strategies aim to address the root causes and risk factors associated with labour exploitation and forced labour. Without effective prevention, the investment in other crucial areas (e.g., victim identification, protection and law enforcement) cannot fully solve the problem as new victims may simply replace former ones. Prevention, therefore, needs to be an integral part of any strategy to tackle labour exploitation, forced labour and related practices.²⁹

This section reviews the national policies that aim to prevent labour exploitation and forced labour through action in the following key areas: (i) risk factors related to workers and workplaces (ii) governance of labour recruitment; (iii) corporate responsibility; (iv) housing and transportation; and (v) awareness raising.

2.1 Addressing the risk factors

There are several risk factors that contribute to labour exploitation and forced labour. On the demand side, the functioning of supply chains and work organization, including contractual modalities (e.g., outsourcing and subcontracting), may heighten the risk of exploitation. Gaps in the governance of these situations (e.g., weak monitoring and enforcement of labour standards, lack of regulations on disclosure and transparency) may also lead to exploitative labour practices. In agriculture, for instance, globalization has brought about new arrangements for the commercialization of products in the national and international supply chains, with large commercial companies that purchase products from national and local markets. The disproportion in the bargaining power between producer and seller often leads to fierce competition and low margins of profit for small producers. A further flexibility for the bargaining of the product price is represented by the fast perishability of goods. Similarly, the organization of work in the construction sector is increasingly organized through the recourse to several contracting arrangements that involve large, small and micro-enterprises in the implementation of the same project and/or realization of the same product. The imbalance in the bargaining power between the main contractor (usually a large company) and the sub-contractors, including small enterprises and, in some cases, self-employed individuals, can ensure better contractual conditions (e.g., costs and timing) for the former compared to the latter and/or among different sub-contractor. Both cases can result in the compression of labour costs, which can trigger workers' exploitation.

On the supply side, the factors that shape the vulnerability of individuals to labour exploitation include poverty, discrimination, lack of labour protection and restrictive migration regimes. There is solid statistical evidence showing that those at the bottom of the income ladder are more likely to face multiple risks, such as poor health, food insecurity and lack of education, which in turn increases the vulnerability to labour exploitation and forced labour. Individuals living in poverty are more likely to borrow money to support their families and this dependence on other individuals can lead to manipulation, coercion, exploitation and deception, especially when the creditor is a recruiter or trafficker.³⁰ ILO research on migrant workers showed a clear correlation between the need to borrow money for the payment of recruitment fees and the risk of ending up in forced labour.³¹

²⁹ ILO: *Strengthening action to end forced labour*. Fourth item on the agenda. International Labour Conference, 103rd Session, 2014, Report IV(1).

³⁰ G. Le Baron: *Confronting root causes: forced labour in global supply chains* (Open Democracy and the Sheffield Political Economy Research Institute, University of Sheffield, 2018).

³¹ ILO: *Profits and poverty: The economics of forced labour* (ILO, Geneva, 2014).

Holding a specific occupation also has an impact on the possibility of a worker to end up in forced labour. Modern slavery is more common in unskilled occupations in agriculture, fishing, construction, domestic work, manufacturing, and other work requiring low levels of education and skills. Education and literacy are key factors: educated individuals are less likely to be in basic forms of manual labour and in informal work. They are also more likely to know their labour rights. Literate individuals can read contracts and recognize situations that could lead to exploitation and coercion. The choice of destination countries, the legal status of migrant workers and the knowledge of the host country language also play a significant role in the exposure to labour exploitation. Migrants in an irregular situation and with little or no understanding of the host country language are more at risk of labour abuses (see Box 5 for a summary profile of victims of labour exploitation in the United Kingdom).³²

The ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No 203) highlights the importance of skills training programmes for at-risk groups as a tool to enhance employability and income-earning capacity. Training programmes can be especially important for prospective migrants as they improve the employability in the domestic labour market and reduce employment pressures to migrate, although also other factors can influence the migration decision. Education and training can also help facilitate good job matching for migrants in destination countries and prevent labour exploitation, forced labour and other abusive job situations.³³

2.2 Governance of labour recruitment

Increasingly, the recruitment of workers, especially migrant workers, is carried out through private intermediation. Globally, there are roughly 260,000 private recruitment agencies. Private intermediation can play an important role in matching labour supply with demand, thus improving the functioning of the labour market. In some cases, particularly when there are gaps in regulation and enforcement, this type of intermediation can lead to exploitation and abuse of workers. The abuses include the charging of recruitment fees, pushing workers into debt bondage, deception about the nature and conditions of work, withholding of personal documents, illegal wage deductions and the threats of losing the job or being expelled from the country.

³² Ibid.

³³ ILO: *Ending forced labour by 2030: A review of policies and programmes*, op. cit.

► **Box 5. Stories and risk factors of labour exploitation in the United Kingdom**

In 2017, over five thousand potential victims of modern slavery were referred to the National Referral Mechanism of the United Kingdom. Albanians, British and Vietnamese were the most reported nationalities of victims. Most victims were irregular migrants who often used the services of smugglers. Offenders (mostly British and Romanian males aged 35–45 years) targeted mainly vulnerable persons. Persons with drug and alcohol dependency were particularly vulnerable to labour exploitation, as well as those who were homeless, poor, or uneducated. Recruitment occurred during face-to-face meetings both overseas and in the country. Job advertisement were disseminated primarily or solely online. Social media were used for job advertising. Several victims were recruited through word-of-mouth, including from friends, family or associates. Employment agencies and individuals both in the UK and overseas requested money for the arrangement of work of foreign nationals. On occasion, fees of agencies overseas were shared with UK agencies (up to 40 per cent of the fee). There could also be charges made for services, including commissions, annual translation costs and a security deposit. Large groups of people entered in the country by airplane. Minibus and coach services provided routes from Lithuania, Romania and Bulgaria. Travel was frequently paid for by the potential exploiter, with the worker accruing a debt to which labour was bonded. Several potential victims were charged a daily rate for transportation to and from work. If the sum could not be paid in cash, some agencies deducted a larger sum from the wage. Many workers were not paid for their travel time to work. Living conditions provided by the exploiter were generally poor. Seasonal workers in the agriculture sector were often accommodated at caravan parks/sites. Identity documents were taken from victims and wages and bank accounts were often controlled by the exploiter who paid for workers' costs and withdrew money from workers' wages/accounts until their debt was paid.

The economic sectors most involved in labour exploitation were agriculture; nail bars; food service, hotels and restaurants; car washes; warehouse and distribution; food processing; manufacturing (especially textiles); recycling and waste disposal; cleaning services; and construction. The agricultural sector relied heavily on gangmasters to supply manual labour for a fee of £50–100 per worker. Agencies overseas were offering employment in agriculture to workers without English language skills, often partnering with UK-based agencies. Hand car washing was one of the largest industries in which labour exploitation occurred. Workers lived in the car-wash premises, including within adjoining properties, caravans and converted buildings. Several car washes were linked to organized crime (e.g., money laundering, handling stolen goods, drug supply, human trafficking). In the construction sector, the gangmasters were involved in the movement of workers internationally, particularly within Europe, providing labourers wherever there was demand. This sector employed approximately three million people and was at high-risk of labour exploitation. The use of self-employment was the preferred contracting arrangement.

Source: Gangmaster and Labour Abuse Authority (GLAA): *The nature and scale of labour exploitation across all sectors in United Kingdom* (Problem profile 2017).

A recent ILO review indicated that only few national regulations and measures dealt with labour recruitment issues in a comprehensive manner.³⁴ While most regulations prohibit the charging of recruitment fees and related costs, governance gaps persist in the regulation of both national and cross-border recruitment, enforcement of provisions and sanctioning and in the coverage of the entire recruitment chain, including labour intermediaries and sub-contractors (see Box 6 for a snapshot of the Fair Recruitment Initiative that aims to eliminate fraudulent recruitment, labour exploitation and forced labour).

National regimes governing labour recruitment regulate private recruitment agencies that operate in the country. It is less frequent they deal with actors operating within the same recruitment chain. Moreover, even in the few instances where recruitment regulations extend across borders, jurisdictional issues can make enforcement difficult. This underscores the central importance of collaboration

³⁴ ILO: *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities* (ILO, Fair recruitment initiative: Geneva, 2015)

between countries of origin and of destination through bilateral agreements that share responsibility in dealing with recruitment issues. While recent years have seen a resurgence of different types of bilateral agreements, many of them do not deal with labour recruitment and the costs incurred by workers.

► Box 6. The ILO Fair Recruitment Initiative

In today's globalized economy, workers are increasingly looking for job opportunities beyond their home country in search of decent work and better lives. Public and private employment agencies, when appropriately regulated and monitored, play an important role in the efficient and equitable functioning of labour markets by matching available jobs with qualified workers.

Concerns have been raised, however, about the growing role of unscrupulous employment intermediaries and informal labour operators acting outside the legal and regulatory framework. Reported abuses include deception about the nature and conditions of work; retention of passports; illegal wage deductions; debt bondage linked to repayment of recruitment fees; and threats for workers who want to leave the employer. The combination of these abuses may amount to human trafficking and forced labour. Despite the existence of international labour standards relating to recruitment, national laws and their enforcement often fall short of protecting the rights of workers generally, and migrant workers, in particular.

In response to these challenges, the ILO launched the global Fair Recruitment Initiative to: (i) help prevent labour exploitation, human trafficking and forced labour; (ii) protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment process (including pre-selection, selection, transportation, placement and the possibility to return); and (iii) reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination.

Within the framework of the Fair Recruitment Initiative, the ILO developed the *General principles and operational guidelines for fair recruitment*, which provide a comprehensive approach to realizing fair recruitment through the development, implementation and enforcement of laws and policies aiming to regulate labour recruitment and protect workers' rights.

Source: ILO: *General principles and operational guidelines for fair recruitment* (Fair recruitment initiative, 2019).

In the European Union, there are few directives that regulate temporary agency work and protect the rights of workers. The Directive on temporary agency work (2008/104/EC) aims to guarantee a minimum level of protection to workers by recognizing temporary work agencies as employers. It does not prescribe whether provisions should be transposed through a licensing system, leaving it open for member States to apply or introduce legislative, regulatory or administrative provisions which are more favourable to workers. Within EU countries, private employment agencies can recruit workers in one country and post them in another. This is regulated through the Posting of Workers Directive (96/71/EC) and its subsequent Enforcement Directive (014/67/EC). The first Directive aims to protect the rights and working conditions of posted workers throughout the EU and avoid that labour recruiters of one State undercut those of another State. The Enforcement Directive clarifies the definition of "posting" and specifies the obligations of posting companies with a view to combatting fraudulent practices. This Directive also envisages that member States may take additional measures to ensure that in subcontracting chains the contractor can be held liable by the posted worker with respect to any outstanding remuneration.³⁵

³⁵ ILO: *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities* (ILO, Fair recruitment initiative: Geneva, 2015).

Because of these directives, law and practice in EU member States are relatively homogeneous. These States have strengthened the regulations that protect agency and posted workers, especially with regard to equal treatment and liability. The regulations related to private employment agencies of these countries share three key features, namely: (i) the requirement for private agencies to have a license; (ii) the prohibition to charge any recruitment fee to workers, and (iii) the application of equal treatment to all workers recruited and employed by private employment agencies.

In the United Kingdom, the government established in 2005 the Gangmaster Licensing Authority (GLA), which is tasked to license and inspect intermediation in horticulture, agriculture, shell-fishing, and food processing. The licensing requirements include acting in a proper and fit manner; compliance with wage, labour and tax rules; prohibition of physical or emotional mistreatment; safe accommodation (if included); entitlement to breaks, rest and annual leave; adequate health and safety, including management, control and prevention of injuries; roadworthiness and safety of transport vehicles; and prohibition of fee-charging to workers. The monitoring and enforcement approaches of GLA include: (i) licensing of labour market intermediaries based in a foreign country and wishing to supply workers in the United Kingdom (extraterritoriality); (ii) pre-screening and continuous monitoring based on licensing requirements; and (iii) intelligence-led approach to inspections. In 2016, the *Immigration Act* transformed the GLA into the Gangmasters and Labour Abuse Authority (GLAA) and expanded its scope of operations. The Authority was equipped with additional policing powers through the appointment of a Labour Abuse Prevention Officer, tasked with investigating cases of labour exploitation across the United Kingdom. The Authority has the power to increase its remit (beyond the agriculture and fishing industry) to tackle labour exploitation. The Director of Labour Market Enforcement also steers the inspection activities of the GLAA, the National Minimum Wage Unit and the Employment Agency Standards Inspectorate.

The United States *Migrant and Seasonal Agricultural Worker Protection Act* (MSPA, 1983) provides for the obligation of the employer to pay for travel and visa costs for migrant farm labourers. The *Seasonal Agricultural Workers Programme* (SAWP) is based on a bilateral agreement between Canada and Mexico that allows Mexican workers to work in Canadian farms up to a period of eight months a year. This agreement envisages: (i) the active participation of the Mexican government in both recruiting workers and negotiating wages and other labour conditions, (ii) the involvement of farm employers in the programme's design and implementation, and (iii) the provision of health insurance for temporary migrant workers.

2.3 Business and human rights

There are two regulatory frameworks for enterprises to comply with the obligation to protect human and labour rights. The first relates to liability schemes that hold two or more parties liable for the violation of labour rights. Sharing responsibility encourages enterprises to closely monitor their contractors and suppliers, and avoid the financial burden of damage claims. The second is mandatory due diligence that requires enterprises to demonstrate they are taking all necessary measures to identify, prevent and mitigate abuses of labour rights in their operations and supply chains. These two systems often go together, with due diligence applied to enterprises over a certain size and to their supply chain, and joint liability to remedy violations and deter future abuses.

2.3.1 Liability schemes

The sharing of responsibility for compliance with labour standards across the supply chain aims to improve conditions of work and counter labour exploitation and forced labour. Joint liability schemes make employers liable to fraudulent or abusive labour practices. This is particularly relevant for labour-intensive industries that rely on subcontracting (e.g., construction, food processing and agriculture) and when engaging own workforce is considered uneconomical compared to the services of subcontractors. In this context, labour market intermediaries may also act as subcontractors, providing workforce to the principal contractor or another subcontractor.³⁶

There are two types of liability: (i) joint liability through which the principal (the employer) is responsible with the contractor for any violation of labour rights; and (ii) chain liability that shares the liability among all the employers and contractors of the entire supply chain.³⁷

In the EU, only six countries (Austria, Finland, Germany, Italy, the Netherlands and Spain) implement a system of general joint liability for certain aspects related to recruitment, wages and/or labour conditions. Since 2012, Belgium has established a system of joint liability for unpaid wages, while France applies it in respect of undeclared work.³⁸ Liability mechanisms are more common in areas such as occupational safety and health, employment of third country nationals with an irregular situation and public procurement.³⁹ In most EU countries, liability is limited to the contract partner (i.e. the direct contractor), while in others (Austria, Estonia, Germany, Greece, Italy, the Netherlands and Spain) there is a chain liability system according to which the liability applies to all employers, contractors and subcontractors.⁴⁰

The Netherlands has a joint liability system that combines public and private initiatives. A non-governmental entity, the *Labour Standards Foundation*, offers voluntary but stringent certification for private employment agencies (NEN 4400 standard) and Dutch law partially exempts firms from joint liability when they contract labour through a certified labour provider. The NEN 4400-1 is a national standard that sets requirements for temporary work, businesses and (sub-)contractors of work that have the legitimacy of employment and whose office is registered in the Netherlands with respect to the payment of taxes and social security contributions. The aim of the standard is to limit the risk of recovery and penalties for employers from the Dutch Tax and Customs Administration and other government agencies. The NEN 4400-2 standard targets companies that have their registered office outside the Netherlands. This standard includes requirements to check any company and contractor or subcontractor who administers workers. Both standards were developed in cooperation with private companies and the social partners with the aim of combating fraud and illegality in recruitment and employment.⁴¹

In 2012, Belgium amended its *Protection of Workers' Wages Act* to establish a system of joint liability for unpaid wages. Under Article 35.2, outsourcers, contractors and subcontractors are jointly and severally liable for the payment of compensation to workers. This relates to employers that — in accordance with Article 49/1 of the Penal Code — were informed in writing by labour inspectors of the serious failure of their contractors or subcontractors to meet the obligation to pay workers on time.

³⁶ European Parliament: *Liability in subcontracting chains: National rules and the need for a European framework* (Policy Department for Citizens' Rights and Constitutional Affairs, Brussels, 2017).

³⁷ European Parliament: *Liability in subcontracting chains: National rules and the need for a European framework* (Policy Department for Citizens' Rights and Constitutional Affairs, Brussels, 2017).

³⁸ Y. Jorens et al.: *Study on the protection of workers' rights in subcontracting processes in the European Union* (2012).

³⁹ The application of joint and several liability on the employment of third country nationals in irregular situations is sanctioned in the European Union by the Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (Directive 2009/52/EC).

⁴⁰ Y. Jorens et al.: *Study on the protection of workers' rights in subcontracting processes in the European Union* (2012).

⁴¹ Ibid.

Joint liability schemes are also common in North America. In Canada, for example, employers and labour market intermediaries shall not: (i) require foreign workers to pay an immigration consultant; (ii) misrepresent employment opportunities; (iii) supply false information about employer and employee rights and responsibilities; (iv) reduce wages or change any other term or condition of employment undertaken in the recruitment of a foreign worker; (v) threaten deportation; (vi) and take possession of a foreign worker's identity documents and work permit. Several Canadian provinces have imposed additional requirements on private employment agencies that recruit workers internationally. These include disclosing all partners, affiliates or agents in or out of the Canadian province; listing all countries they intend to recruit from and/or the names of any agency or individual they intend to work with in foreign countries. Some provinces have also required that employers be held jointly liable for any recruitment fee charged to workers when they are recruited through an unlicensed recruiter in the country of origin or in Canada.⁴²

2.3.2 Due diligence

Mandatory due diligence legislation requires enterprises to demonstrate they are taking all necessary measures to prevent, identify and tackle labour exploitation and forced labour in their operations and in supply chains. These laws create a win-win situation as they increase the likelihood that enterprises in the supply chain do not recur to exploitative practices and preserve their image vis-à-vis their customers. At the same time, they deter contractors to resort to these practices.

Some EU countries (e.g., Belgium, France and the Netherlands) adopted specific due diligence legislation. In 2017, France adopted a law on corporate "duty of care" (Law No. 2017-399 "*devoir de vigilance*") for parent and subcontracting companies. This law requires French companies with more than 5,000 employees in France or more than 10,000 employees globally to develop a due diligence plan that identifies and addresses adverse human rights impacts in their operations, supply chains and business relationships. The vigilance plan needs to include: (i) a mapping that identifies, analyzes and ranks risks; (ii) procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship (iii) appropriate actions to mitigate risks or prevent serious violations; (iv) an alert mechanism that identifies potential or actual risks, developed in partnership with the trade union representatives of the company concerned; and (v) a monitoring scheme to follow-up on the measures implemented and assess their efficiency. This law establishes a mechanism to ensure compliance with the duty of care and a civil liability regime in case of actual harm to fundamental freedoms, safety and health or the environment. Following an unsuccessful formal notice, every person with *locus standi* may require the competent jurisdiction to order a company, subject to a penalty, to establish the vigilance plan, ensure its publication and account for its effective implementation. Furthermore, for businesses failing to comply with their vigilance plan or with an inadequate vigilance plan, victims can request the liquidation of damages for negligence. The duty of care sets a standard of conduct and the lack of its implementation is a breach of legal obligations.⁴³

In the Netherlands, the Senate adopted in 2019 the Child Labour Due Diligence Law (*Wet zorgplicht kinderarbeid*). This law requires companies selling goods or services to Dutch consumers to: (i) identify whether child labour is present in their supply chain and, in case, develop a plan of action to address it, and (ii) issue a due diligence statement. The law applies to companies that sell or supply goods or services to Dutch end-users, including companies registered outside the Netherlands. In order to exercise the due diligence, a company must determine whether there is a reasonable suspicion that a product or service involves child labour. If this exists, the company has the obligation to develop and implement an action plan. Like other human rights due diligence legislation, the law requires

⁴² B. Andrees et al.: *Fair recruitment initiative: regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges and opportunities* (ILO, Geneva, 2015).

⁴³ S. Cossart et al.: "The French law on duty of care: A historic step towards making globalization work for all" in *Business and Human Rights Journal*, vol 2, 2017: 317-323.

companies to produce a statement which declares that the company has conducted the due diligence. Two features make the Dutch law distinct from other mandatory due diligence legislation. First, it orders the appointment of a regulator that has to publish the corporate human rights due diligence statements in an online public registry. Victims, consumers, and other stakeholders cannot use the law to sue a company, but they can file a complaint with the regulator based on evidence of non-compliance. They can only do so after the company itself has dealt with the complaint or if the company has not responded to the complaint six months after filing. Second, it is the first legislative instrument of a EU country to introduce criminal sanctions for failure to exercise human rights due diligence. If a company fails to produce the statement, carry out the investigation or set up an action plan — or if the investigation or action plan are inadequate —, the regulator may first impose a fine of €4,100. In cases of recurrence within five years, non-compliance becomes an economic offence under the Economic Offences Act. The representatives of the company may face criminal penalties and up to four years of imprisonment, community services or a fine up to €83,000.⁴⁴

In February 2019, the German government drafted a bill on mandatory human rights due diligence for German companies and their supply chains.⁴⁵ Compared to the French and Dutch due diligence laws, the German bill:

- applies to companies with over 250 employees and more than €40 million annual turnover. The specific sectors mentioned in the bill include agriculture, energy, mining, textile, leather and electronics;
- requires companies to carry out internal supply chain risk assessments, appoint a compliance officer and establish an effective complaints mechanism for foreign workers; and
- assigns responsibility for enforcement and monitoring to the Labour Inspectorate, the German Federal Institute for Occupational Safety and Health and the national Human Rights Commissioner. Potential sanctions include fines of up to €5 million, imprisonment and exclusion from German public procurement procedures.

Due diligence laws are being proposed also in Belgium, Denmark and Finland, and the European Commission plans to introduce a due diligence directive in 2021.⁴⁶

The Modern Slavery Act requires commercial entities — which supply goods or services with their business or part of their business in the UK and whose annual turnover is £36 million or above — to sign a slavery and human trafficking statement for each financial year.⁴⁷ This statement needs to detail what companies are doing to ensure that slavery and human trafficking are not taking place in their supply chains and in any part of their business. Under this law, if a company fails to produce a slavery and human trafficking statement for a particular financial year the Secretary of State may seek an injunction to comply before the High Court. If the company fails to comply, it may be punished with a fine to be set by the tribunal.

Outside Europe, national due diligence practices differ in terms of types of companies, requirements, enforcement mechanisms and access to remedies for victims (see Box 7 for the Australian legislation).

⁴⁴ A. Hoff: *Dutch child labour due diligence law: a step towards mandatory human rights due diligence* (June 2019).

⁴⁵ See Business and Human Rights Resource Centre: “[Will Germany become a leader in the drive for corporate due diligence on human rights?](#)” (online article, February 2019).

⁴⁶ European Commission: *Study on due diligence requirements through the supply chain. Final report* (Luxembourg, Publications Office of the European Union, 2020).

⁴⁷ See [UK Modern Slavery Act](#)

► **Box 7. Mandatory due diligence reporting on modern slavery in Australia**

The 2018 Modern Slavery Act of Australia defines modern slavery as encompassing slavery, servitude, the worst forms of child labour, forced labour, human trafficking, debt bondage, slavery-like practices, forced marriage and deceptive recruiting for labour or services. Entities need to report when they carry out business in Australia with a minimum annual consolidated revenue of 100 million Australian dollars (€60 million). The Modern Slavery Statement to be produced by enterprises has to describe: (i) entity's structure, operations and supply chains; (ii) potential modern slavery risks in the entity's operations and supply chains; (iii) actions taken to assess and address the risks, including due diligence and remedy processes, and (iv) assessment of the effectiveness of the actions. The legislation gives power to the responsible Minister to send enquiry letters to non-complying entities, order certain acts of remediation for non-compliance and publish the list of names of entities that have not complied with the legislation. While there are no financial penalties for non-compliance, the impact on reputation is likely to generate a high degree of compliance. The Australian State of New South Wales passed its own legislation, making additions to the national law by creating an independent anti-slavery commissioner to monitor implementation and promote action against modern slavery. The law also creates a range of monetary penalties for companies with employees in New South Wales that fail to comply with the modern slavery statement requirements (up to the equivalent of €660,000).

Source: [Australia Modern Slavery Act](#) and [New South Wales, Modern Slavery Act 2018](#)

2.3.3 Corporate social responsibility

Private corporate governance is led by enterprises, employers' organizations, or industry associations and relates to the responsibility of a business to respect human and labour rights in the operations and supply chains. Corporate social responsibility (CSR) is commonly used as a broader term for enterprises' voluntarily self-regulation on social, environmental or economic issues.⁴⁸

Private compliance initiatives (PCIs) are private mechanisms that are voluntarily established by lead firms or groups of enterprises to monitor compliance with codes of conduct or other standards. They may include codes of conduct and social auditing, certification initiatives or other self-reporting mechanisms.⁴⁹ The garment and footwear sector, for example, is one of the most advanced regarding the implementation of PCIs.

Since 2016, the Italian "COOP" — one of the largest agricultural food retailer — has implemented a PCI that involves 800 suppliers and over 70,000 producers. To date, the initiative has audited thirteen different supply chains (fruits, pressed tomatoes, juices, milk, wine, cheese and coffee, among others) and over 600 firms, eleven of which were excluded from the supply chain. The audit process was entrusted to an Italian branch of a private multinational firm. The audit includes intelligence gathering, field visits to enterprises and farms, interviews with managers and workers, and inspection of housing conditions.

⁴⁸ An example of CRS in the Italian food industry in Italy is Ferrero's "[In respect of quality, human rights and the environment](#)" through which the company committed to the elimination of child labour in hazelnut harvesting in Turkey.

⁴⁹ ILO: *Decent work in global supply chains*, Report IV, Fourth item on the agenda, International Labour Conference, 105th Session, ILC.105/IV Geneva, 2016.

A report funded by the Dutch government analyzed the potential of blockchain technology in respect of tracking a permanent, immutable record of contracts, transactions, documents, supply chain movement for the agricultural industry. More specifically, the use of this technology is expected to: (i) allow consumers to know how a product was grown/raised and get information on the various passages within the supply chain (handler, distributors, transport and working conditions); and (ii) increase consumers' trust in food growers and suppliers, and eliminate fraud in certification and labelling.⁵⁰

Industry-led initiatives, certification and labelling initiatives are different from unilateral, stand-alone private compliance initiatives pursued by lead firms in global supply chains that aim to align requirements and standards for multiple business actors and lead firms. In some cases, they extend consultations and participation to other operators of the supply chains. *Fairtrade International*, for example, provides a label for products that meet specific social, environmental and economic production and trade standards. Auditing of compliance is carried out separately and aims to certify more than twenty different products, including bananas, tea, sugar, cocoa, coffee, cotton. One set of standards looks at the payment of decent wages, freedom of association, occupational safety and health, and adequate housing.⁵¹ These standards are based on the body of ILO's conventions on fundamental principles and rights at work, protection of wages, hours of work, occupational safety and health, maternity protection and other standards.

The *Ethical Trading Initiative* (ETI) involves lead producers, retailers and enterprises and aims to influence the responsibility of businesses and promote decent work. Based on ILO conventions, the Base Code is a code of conduct that identifies nine principles to be used for social audits and for the development of ethical trade action plans.⁵²

Social labelling programmes operate as voluntary verification systems for the social (or environmental) performance of enterprises. They use a physical label to describe the action taken by enterprises to improve social and labour conditions of a product or service.⁵³ Labelling initiatives are often independently managed and certified by external bodies. If companies comply with the standards, they earn the right to use the label or mark as a proof of compliance. Labelling is mostly used by export driven trades or for particular production processes (e.g., tea, coffee).⁵⁴ Examples of social labels are those of *Fair trade* (food and cotton) and the *Clean Clothes Campaign* (garment industry).

In Italy, "Funky tomato" established a new method for the production of tomato sauce, involving workers, consumers, producers and distributors with a view to ensuring environment-friendly production processes combined with compliance with regulations on workers' rights (e.g., wages, hours of work and rest, social protection). The funds for the production process are gathered through annual pre-buying campaigns, where consumers purchase the products at pre-established prices.⁵⁵ Another example of social labelling developed in Italy is the "NoCap" label, which allows tracing of products across the food supply chain. This label is granted through a double screening process: first by the association NoCap and then by an independent certifying body, the Department for Agri-food Quality (*Dipartimento Qualità Agroalimentare*), accredited by the Ministry of Agriculture and the Italian accreditation entity (ACCREDIA, *Ente Italiano di Accreditamento*).⁵⁶

⁵⁰ L. Ge et al: *Blockchain for agriculture and food* (University of Wageningen, 2017).

⁵¹ This set of standards makes specific reference to several International Labour Convention (on freedom of association and collective bargaining, discrimination in employment, elimination of child and forced labour, protection of wages, social security and maternity protection). See [Fairtrade standards for hired labour](#) (2015).

⁵² See the [ETI Base Code](#)

⁵³ J. Diller "A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives", *International Labour Review*, Vol. 138 (1999), No. 2, 99–128

⁵⁴ C. Farnworth et al: *Creating food futures: Trade, ethics and the environment* (Routledge, London, 2008).

⁵⁵ See [Un'altra filiera è possibile: come rendere trasparente e senza sfruttati la "catena del pomodoro"](#).

⁵⁶ See [La prima filiera etica italiana contro il caporalato. 100 lavoratori assunti. Sugli scaffali prodotti con bollino Nocap.](#)

2.4 Decent housing and transportation

Access to decent housing and safe transportation are two of the most challenging aspects that workers, especially migrants, are confronted with. These challenges are usually addressed through publicly funded programmes, national legislation or industry-led initiatives with a view to preventing labour exploitation and forced labour.

The United States *Migrant and Seasonal Agricultural Worker Protection Act* (MSPA, 1983) protects migrant and seasonal agricultural workers by establishing employment standards that include wages, housing and transportation. The MSPA requires farm labour contractors, agricultural employers and agricultural associations that recruit, transport, or house agricultural workers to meet certain requirements. As far as housing is concerned, persons who own houses made available to migrant agricultural workers must ensure that the facilities comply with the Federal and State safety and health standards (including water supply; toilet facilities; laundry, handwashing, and bathing facilities; electrical lighting; garbage disposal; cooking and eating spaces; fire, safety, and first aid facilities). Houses cannot be occupied until they have been inspected and certified. In California (Napa County), there are both farmworkers' centres and affordable housing projects that are publicly-funded. Designed to serve short-term unaccompanied male residents, the centres charge US\$12 per day for lodging and three daily meals. The gap in the actual costs incurred for managing the centres is shouldered by the fund of the County's Housing Authority.⁵⁷

In order to fight labour exploitation and the victimization of foreign agricultural workers, many Italian regional authorities are organizing dedicated on-demand transport services. In Apulia, for instance, there are two dedicated transport services that provide foreign workers with free-of-charge transportation to and from the fields during the harvesting period. The same authority is also financing a pilot project that loans bicycles to migrant workers. The Basilicata and Piedmont Regions established shelters for migrant agricultural workers that include on-demand free-of-charge transport services to and from the rural areas. The Lazio Region has developed an IT application (*FairLabor*) that combines labour intermediation with the provision of a free-of-charge public transport card. As far as transport safety is concerned, the US legislation requires that vehicles used to transport migrant or seasonal agricultural workers must be properly insured and operated by a properly licensed driver. Vehicles must also meet Federal and State safety standards. In addition, the MSPA requires that vehicles used to transport farm workers be registered with US Department of Labour.⁵⁸ A similar initiative was established in the United Kingdom in respect of caravan accommodation (see Box 8).

2.5 Raising awareness

Awareness-raising initiatives are commonly part of prevention strategies. Most of them are implemented through campaigns targeting enterprises, workers and the general public. Country-level awareness raising efforts use a broad spectrum of traditional and non-traditional communication channels (e.g., radio and television spots, documentary films, theatre productions, lectures and film discussions, social media, video testimonials by victims, and printed information in different languages). Many campaigns focus on human trafficking and forced labour, while those targeting other forms of labour exploitation are less common. Border crossings and airports are key points where migrants can be reached with information and many countries have developed brochures and similar material to distribute to workers when travelling. Cyprus, for example, distributes multilingual information material at airports and border crossings.

⁵⁷ Final Report: 2012 Napa County Farmworker Housing Needs Assessment, 2013

⁵⁸ Despite the strictness of the MSPA, a key issue remains enforcement since the Wage and Hour Division of the State Department of Labor of the US Administration has 976 investigators to police them. The Division detected over 1,600 cases of transportation violations between 2012 and 2017, but these are deemed to cover only a fraction of all abuses. United States Department of Labor: [Migrant and Seasonal Agricultural Worker Protection Act](#)

There are several awareness raising campaigns on trafficking for labour exploitation that are currently implemented by EU countries. These campaigns target the public at large, law enforcement officials, service providers, the social partners and other actors. The “Used in Europe”, for example, is a campaign to raise awareness of labour exploitation in Europe. It is organized by “La Strada International”, the European Network against Trafficking in Human Beings, and thirty partner organisations across Europe.⁵⁹ The “Don’t become a victim abroad!” is an information and awareness raising campaign organized by the European Job Mobility Portal (EURES), the Department on Crime Prevention and Witness Protection of the National Police of Hungary and the Consular Service of the Ministry of Foreign Affairs. This project developed an information website with lists of recommendations and resources to prevent labour exploitation of Hungarians working abroad with links to websites and material disseminated by the Network of EURES and the Hungarian police. The website includes databases of employment centres where advisers provide information on living conditions and work circumstances, including information on the prospective employers and recruitment agencies registered abroad.

► Box 8. Guidelines for caravan accommodation in the United Kingdom

The Fresh Produce Consortium, in collaboration with the Accommodation Working Group and the Ethical Trading Initiative, developed in 2016 a set of guidelines for caravan accommodation for temporary workers. These guidelines are based on regulatory requirements, recommendations from the Chartered Institute of Environmental Health (CIEH), the Association of Labour Providers (ALP) and local authority guidance on caravan sites. They cover the following thirteen areas:

1. External site (adequate drainage, reasonable distance from the place of work, distance among units);
2. Room space (length and width of bed, storage for personal belonging, floors, integrity of structure);
3. Heating, lighting and ventilation (good repair, appropriate heating and ventilation, maintenance of gas installations, electrical sockets, emergency lightening);
4. Sanitary and toilet facilities (constant supply of hot/cold water, lockable doors, ventilation);
5. Laundry facilities (washing and drying machine every twenty workers);
6. Cooking facilities (fire resistant material, storage, space for food preparation, refrigerated space);
7. Potable water (drinking water in line with standards, water storage free from contamination);
8. Wastewater and solid waste (link to the communal sewage system, regular waste collection);
9. Pest control (monitoring conducted on regular basis, prevention of infestation);
10. Security of accommodation (protection of workers’ property and personal documents);
11. Health and safety, fire and other hazards (fire extinguishers, fire exit and escape routes clearly marked, alarms and detectors);
12. First aid and medical facilities (availability and regular stoking of kits, trained staff);
13. Leisure, social and telecommunication facilities (indoor facilities during bad weather, transport once a week if public transport is not available).

Processes and mechanisms to report any issue regarding accommodation are communicated to workers.

Source: Fresh Produce Consortium (FPC): [*Guidance on provision of caravan accommodation for temporary workers in the UK*](#) (3rd edition), 2019.

⁵⁹ See the [“Used in Europe” website](#)

► 3 Protection and assistance of victims

Protection and remedies are pillars of the policies and measures put in place by several EU countries to ensure that victims of labour exploitation and forced labour can rebuild their lives rather than getting trapped into a spiral of labour abuses (see the Annex to this paper that describes the rights of victims and the obligations of States that are included in international and regional instruments in respect of access to protection and remedies). They also aim to bring perpetrators before the judicial system. Although these measures target primarily victims, they can also have an important preventative function: better identification and protection can prevent re-victimization, while higher rates of prosecution can deter offenders.⁶⁰ The protection of victims of labour exploitation and forced labour has multiple dimensions. It begins with the identification and release of workers in situations of labour exploitation and forced labour and encompasses measures for immediate assistance and long-term recovery, rehabilitation and support. Protection also means that victims should not be prosecuted or punished for the offences committed as a direct consequence of their situation.

3.1 Identification of victims

The identification of victims of labour exploitation is the first step for ensuring their access to justice and support. The identification of victims may pose several challenges, which need to be taken into account while designing protection and assistance strategies. The first challenge relates to the remoteness and/or concealment of production sites where labour exploitation and forced labour occur. This may be due either to escape sanctioning to the nature of production itself (agriculture, logging, mining). Another challenge relates to the reluctance of victims to come forward and seek help due to lack of trust or, in the case of irregular migrant workers, fear of deportation or prosecution. Lack of awareness may also imply that some forms of exploitation are not recognized by the victims.⁶¹ Finally, a lack of coordination and intelligence-sharing among various enforcement bodies with different roles and mandate (labour conditions such as wages and safety and health, immigration, tax and customs) may undermine the identification and protection of victims.⁶²

A particularly important strategy for strengthening victim's identification is the active engagement of all the frontline actors who may come into contact with victims. The ILO's Forced Labour Protocol and its accompanying Recommendation highlight the critical role of labour inspectors: their access to workplaces means that they are often among the first to encounter situations of labour exploitation. Police officers and other law enforcers are also instrumental to detect labour exploitation and forced labour. It is critical these officers have the mandate and training to effectively identify and protect victims.⁶³ The introduction of specialized investigation units in labour inspectorates and the organization of joint inspections can be particularly effective in ensuring the identification of exploited workers. The availability of sector-based risk assessment tools allows inspection authorities to prioritize economic sectors for monitoring activities and targeted inspections. The use of labour exploitation and forced labour indicators and the development of inspection guidelines plus training of staff can help uncover

⁶⁰ ILO: *Ending forced labour by 2030: A review of policies and programmes*, Geneva, 2018.

⁶¹ Ibid.

⁶² When labour authorities prioritize the verification of workers' immigration status, this diverts attention from looking after working conditions. There have been instances in EU countries where the irregular situation of third country nationals has taken precedence over labour exploitation. See European Union Agency for Fundamental Rights (FRA): *Protecting migrant workers from exploitation in the EU: Boosting workplace inspections*, Luxembourg, 2018.

⁶³ ILO: *Ending forced labour by 20130: A review of policies and programmes*, op. cit.

cases where workers have not been given proper information and/or they are in working or living in conditions that are hazardous and isolated.⁶⁴ In the EU, countries have begun to introduce systematic risk assessment to guide inspection activities with a view to detecting labour exploitation and forced labour (see Box 9).

► Box 9. Labour inspection in selected EU countries

In **Finland** the Occupational Safety and Health Inspectorates of the Regional State Administrative Agencies have appointed several dedicated labour inspectors to monitor the use of migrant labour. These officers conduct inspections (particularly in the restaurant, cleaning, construction and agricultural sectors), focusing on companies that employ migrant workers. Since 2012, the inspectors operate according to guidelines issued by the Ministry of Social Affairs and Health for the identification of victims of human trafficking, including referral of potential victims to the official assistance system for victims of trafficking.

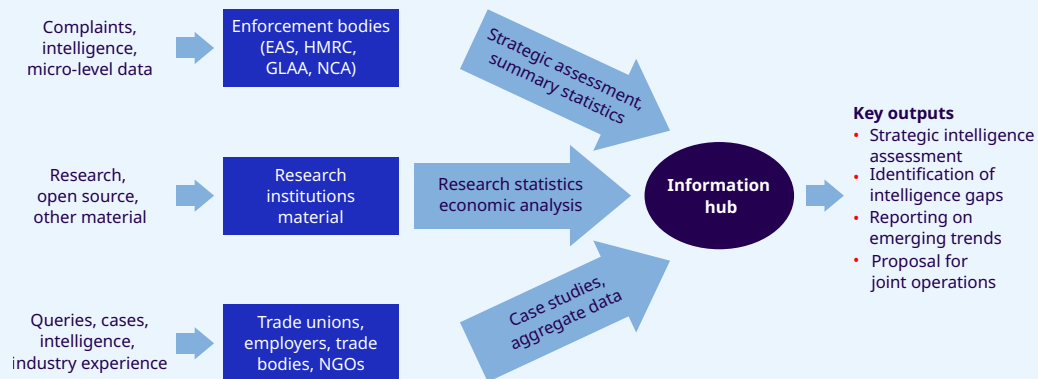
In **Italy**, unlawful labour intermediation and labour exploitation is the subject of a provision of the penal code (article 603bis). This provision enlists labour exploitation indexes (on wages, hours of work, health and safety, supervision and living conditions). In order to ease the identification of victims, the National Labour Inspectorate has issued a set of guidelines to help inspectors define whether a particular situation falls under the scope of this law.

In the **Netherlands**, the labour inspectorate uses risk analysis to focus on sectors and categories of workers that are at high risk of trafficking for labour exploitation. Labour inspectors have been trained to identify victims of labour exploitation and trafficking by applying a set of indicators. They are supported by specialists tasked to deal with these cases. The proactive work of the labour inspectorate is also increasing because of an investigative unit searching for breaches of law, including in the ambit of labour exploitation. The Inspectorate coordinates with the police and the Anti-trafficking Coordination Centre (CoMensha) that provides after-care following a raid involving a potential situation of labour exploitation. Accommodation and legal advice are also arranged for victims before raids, ensuring they have immediate access to assistance and support services. The roles and responsibilities of law enforcement and protection and assistance in preparation of and following a raid are governed by written procedures that are regularly evaluated.

Source: *Identification and support of victims of trafficking for labour exploitation in the Netherlands, the UK and Romania* (Focus on Labour Exploitation); FRA: *Protecting migrant workers from exploitation in the EU: boosting workplace inspections*, op.cit.; Ispettorato Nazionale del Lavoro: *Linee guida intermediazione illecita e sfruttamento del lavoro — attività di vigilanza* (Circolare n. 5/2019).

A crucial starting point for the identification of victims of labour exploitation revolves around targeting workplace inspections where these may be most needed, especially when the resources of inspection authorities are limited. This is usually done by several EU countries using evidence detectors and monitoring operations. In Belgium, for example, specialized police units regularly investigate non-risk sectors to identify possible new risk factors for labour exploitation. These units conduct research to identify trends and prioritize inspection in critical areas. They investigate and cooperate with other institutions, such as inspection bodies and Europol, the law enforcement Agency of the European Union. Another example is the Intelligence Hub established in the United Kingdom that has the role of improving the overall evidence on labour exploitation and promoting coordination across enforcement bodies (see Figure 4).

⁶⁴ The ILO Committee of Experts on the Application of Standards has provided guidance on the development of forced labour indicators to guide inspection activities. This guidance is summarized into six overarching indicators of forced labour (physical violence, restriction of freedom of movement, threats, debt and other forms of bondage; withholding of wages or no payment of wages, retention of identity documents). See ILO: *Forced labour and human trafficking: Handbook for labour inspectors* (ILO, Geneva, 2008).

► **Figure 4. Flow of information through the UK's Information Hub**

Source: United Kingdom Government: [United Kingdom Labour Market Enforcement Annual Report 2017/18](#) (March 2019).

In collaboration with enforcement agencies (the Employment Standards Agency, Her Majesty's Revenue and Custom, the National Crime Agency and the Gangmaster and Labour Abuse Authority), the Hub has developed robust evidence by pooling intelligence and resources across the spectrum of labour exploitation situations. It was able to produce several intelligence-based outputs, including reporting on non-compliance trends disaggregated by sector and geographical region; analysis of the intelligence that provides an overview of the scale and nature of non-compliance; and identification of information gaps and additional intelligence requirements.

Complaint's mechanisms that enable persons in situations of labour exploitation to self-identify and seek protection and remedies are a way to increase the number of identified victims. Several countries have set up hotlines and text-message services that allow individuals to register anonymous complaints (see Box 10).

The posting of labour attachés in consular offices to advise and support migrant workers abroad is an established practice of several labour-sending countries, including European ones (e.g., Bulgaria, Romania). The services that labour attachés may provide include legal advice and assistance to victims of labour exploitation in seeking redress and information to potential job seekers about the labour market and employment legislation in the destination country, including in respect of regulation, practice and reputation of private labour intermediaries.⁶⁵ Labour attachés may also facilitate cooperation between labour inspectors of the country of destination with their counterparts of the country of origin. This may be useful, for example, when checking on private intermediaries operating in the country of destination and registered in their country.⁶⁶

⁶⁵ The Council of the Baltic Sea States has issued in 2011 a [Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking](#).

⁶⁶ European Institute for Crime Prevention and Control: *Guidelines to prevent abusive recruitment, exploitative employment and trafficking of migrant workers in the Baltic Sea region* (Helsinki 2014).

► **Box 10. Hotlines in Europe and the United States**

In **Estonia**, the non-governmental organization “Living for Tomorrow” runs a hotline service funded by the Social Security Department of the Ministry of Labour for people who are planning to go abroad for work or study and for individuals who have been abroad and experienced some form of labour exploitation. The aim of the hotline is to inform people about opportunities, conditions, rules, and risks of work, study and marriage abroad and to provide assistance. It offers free legal counselling and advice on work arrangements, work permits and labour law and helps verify whether a contract or promised wage is legal. The hotline also supports individuals in contacting organizations that assist victims abroad or helps them contact Estonian authorities. The hotline service is available in Estonian, Russian, Ukrainian and English.

In **Italy**, the national anti-trafficking toll free number was established by the Department for Equal Opportunities of the Prime Minister's Office. It provides 24-hour assistance to victims of trafficking and exploitation and puts them in contact with local support and assistance services. The hotline can be used also by social workers, law enforcement officials and whistleblowers. The service is available in multiple languages (English, Albanian, Russian, French, Spanish, Romanian, Hungarian, Arabic, Chinese and Nigerian). In 2018, the Italian Confederation of Workers' Unions (CISL) established a free-toll number to provide counselling and support to victims of labour exploitation and illegal recruitment in the agriculture sector.

In the **United States**, the Trafficking in Persons and Worker Exploitation Task Force of the Department of Justice established a toll-free complaint line to report instances of worker exploitation or trafficking. This line offers foreign language translation services in most languages and tele-interpreting services. It is a tool to report labour exploitation to investigative authorities. The National Human Trafficking Hotline is open to victims and survivors of all forms of human trafficking, friends or family members of a victim or survivor, social or legal service providers, law enforcement and government agencies' officials and frontline professionals. It offers crisis assistance and support; referral to local social and legal services; technical assistance for law enforcement, service providers, and frontline professionals working with victims of trafficking. The hotline can be contacted through a toll-free telephone number (in English, Spanish and other 200 additional languages using a tele-interpreting service), email, and web-based forms.

Source: For Estonia, see GRETA: *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia* (2018); for Italy see [Osservatorio interventi tratta](#) and [CISL: SOS Caporalato](#); For United States, see [National Human Trafficking Hotline](#) and [Department of Justice](#).

3.2 Referral

A national referral mechanism is a modality through which public authorities fulfil their obligation to protect the rights of workers who are victims of labour exploitation. It offers the tools to respond to diverse and multiple needs of victims and to ensure coordination among several actors and service providers, as well as to introduce standardized procedures for identification, protection and reintegration of victims. Not all EU countries have an established national referral mechanism. However, even the countries without such mechanism have established a government agency or an inter-ministerial institution with the task to coordinate action against exploitation and to deliver assistance to victims.⁶⁷ In these countries, it is more common that both referral and coordination mechanisms deal with labour exploitation stemming from trafficking of human being and/or forced labour rather than with victims of all forms of labour exploitation.

⁶⁷ As already mentioned, most national referral mechanisms were established to assist victims of trafficking for sexual exploitation. It is only recently that these mechanisms have been expanded to encompass also other forms of labour exploitation.

In the Netherlands, potential victims can be referred to the Anti-trafficking Coordination Centre (CoMensha) by the police, the labour inspectorate, the Public Prosecution Service, shelters, social workers, municipal officers, health care workers, lawyers, and the Chamber of Commerce. Care coordinators organize accommodation and other social services on the basis of the needs of victims and in cooperation with municipal governments and support providers.⁶⁸ This referral mechanism provides for comprehensive support that includes: a period of reflection of maximum 90 days (for the victim to decide whether to press charges); housing; income support; medical and psychosocial support; legal advice and access to residence permits (during the reflection period), which can be transformed into a work permit during the social re-integration period. Assistance to victims is available for a maximum of three years.⁶⁹

In Italy, the national referral mechanism for victims of trafficking is managed by the Equal Opportunities Department of the Prime Minister's Office. It consists of a set of standardized procedures for all actors involved in the caseload of victims of human trafficking, including for the purpose of labour exploitation. The standard procedures provide guidelines for the identification, protection, long-term support and social inclusion of victims, as well as for criminal and civil proceedings.⁷⁰ These procedures are accompanied by tools for frontline respondents to ensure adequate victim support (e.g., minimum requirements for interpreters and cultural mediators; data to be collected; individualized needs assessment; individual assistance planning; checklist for voluntary returns).

The national referral mechanism of the United Kingdom consists of a system that identifies potential victims of forced labour, trafficking and other slavery-like labour abuses with referral to appropriate support services. Only statutory and non-statutory first respondent organizations have the authority to refer a potential victim of modern slavery to the Mechanism. First responders include the police, the visa and immigration authority, border force, immigration enforcement, the National Crime Agency, local authorities, the Gangmasters and Labour Abuse Authority, and several non-governmental organizations (e.g., Salvation Army, Migrant Help and Refugee Council, among others). First responder organizations have the responsibility to: (i) identify potential victims of modern slavery; (ii) gather information; (iii) refer victims to the national referral mechanism via the online registration process; and (iv) provide a point of contact for the Single Competent Authority to assist the victims. Individuals who are recognized as potential victims have access to specialist support for a period of at least 45 days while their case is considered. Support, mainly delivered by the Salvation Army, includes access to legal advice; accommodation; protection; independent emotional and practical help. First responders are also responsible to refer to the police the cases notified to the national referral mechanism — either on behalf of the victims that give consent — or as a third-party referral when victims do not give consent. Potential victims, however, are under no obligation to cooperate with the police.⁷¹

As already mentioned, standardized guidelines and procedures are an important element to guide law enforcement, immigration, and social services personnel in the identification of potential victims of labour exploitation and forced labour. In the United Kingdom, for example, the Home Office has issued guidelines for frontline staff and for the staff of the Single Competent Authority responsible to decide whether there are the grounds of modern slavery. The guidance for frontline staff revolves around the identification of potential victims (indicators of modern slavery, components of human trafficking, child victims); modalities to address urgent health needs; referral of potential victims to the national referral mechanism; interviewing techniques; and criminal proceedings (timeline, discretionary leave for foreigners and asylum seekers).

⁶⁸ *Identification and support of victims of trafficking for labour exploitation in the Netherlands, the UK and Romania* (FLEX, Fairwork, and ADPARE, 2015); see also the [website of the national referral mechanism](#).

⁶⁹ The reflection period entails that the Dutch Immigration and Naturalisation Service will suspend the departure of the suspected victim during this period, see Section 8(k) of the Aliens Act of 2000.

⁷⁰ The standard operational procedures are [appended to the National Plan against trafficking of human beings \(2016–2018\)](#).

⁷¹ See UK Government: [National referral mechanism guidance: adult \(England and Wales\)](#).

3.3 Assistance and long-term recovery

An ILO's review of country practices on policies and programmes against forced labour highlighted that many countries prioritize immediate assistance (i.e., temporary shelter, health care and psychological counselling) over longer term support (i.e., labour and social integration programmes and financial assistance) that is essential to ensure the reintegration of victims and prevent re-victimization.⁷²

In countries where both immediate assistance and longer-term support are available, services are often focused on trafficked persons and less on victims of diverse forms of labour exploitation. Where they exist, the delivery of services and programmes for social and employment reintegration is usually carried out by civil society organizations that are part of the national referral mechanism. The aim is to offer a continuum of care from the moment of the identification to the return to independent life. Access to labour market integration measures provided by the Public Employment Service (PES) often depends on the type of residence status of victims and on whether this status allows them to work.

The immediate assistance services available to victims of labour exploitations are similar across the countries of the EU. The service portfolio includes food and shelter, first and specialist health care, legal assistance, psychological support, material and financial assistance (cash benefits) and repatriation services. In most of these countries — except for Austria, Bulgaria, Ireland and Italy — victims are given the statutory right to a period of reflection (ranging from 30 to 90 days from the identification) to allow their recovery, plan their future and decide whether to cooperate with criminal investigations. The assistance services during the recovery period are determined through the preliminary assessment of individual needs that is carried out immediately after the identification of the potential victim. In countries where there is a national referral mechanism, the assessment of needs is done at intake. This preliminary assessment is then reviewed during the recovery period — and once the formal identification process is concluded — by the caseworker and the victim with a view to supporting the latter in making the transition to services for longer-term socio-economic inclusion.

In the Netherlands, the immediate assistance by the national referral mechanism for victims of human trafficking (CoMensha) includes shelter, assistance in obtaining a residence status, medical and mental health support, legal assistance and repatriation support. There are various types of accommodation facilities that meet the specific needs of victims (e.g. minors, adults, migrants in an irregular situation, women victims of trafficking). Victims are usually referred to one of the shelters, while those without legal residence status are supported by the *Accommodation and Assistance for Victims of Trafficking in Human Beings*. In the absence of a residence permit, victims may be granted a temporary permit for the duration of the criminal investigation and proceedings. This may be transformed in a permit of continued residence on humanitarian grounds. CoMensha also works with different organizations to assist victims willing to return to their home countries. Where possible, a support organization is contacted in advance in the country of origin to support the reintegration upon repatriation. An extensive international social map is available for this purpose. Victims of human trafficking in need of legal assistance are assigned a lawyer by the Legal Aid Board.⁷³

In the United Kingdom, entry into the national referral mechanism gives the entitlement to immediate housing and subsistence support, followed by referral to a range of services including psychosocial support, legal advice, and employability and employment support.⁷⁴ These latter include English language training; guidance on writing the curriculum vitae, job search and job interviews skills training; training on labour rights; and job placement in local enterprises, community renovation projects and charity shops.⁷⁵

⁷² ILO: *Ending forced labour by 2030: A review of policies and programmes*, op. cit. 2018

⁷³ *Identification and support to victims of trafficking for labour exploitation in the Netherlands, the UK and Romania*, op. cit.

⁷⁴ Ibid.

⁷⁵ Ibid.

The Victim Protection Programme, established in 2005 by the Ministry of Interior of Czechia, targets victims of trafficking both in cases of foreigners trafficked in the country and Czech victims in foreign countries. The main aims of the Programme are to ensure support and protection of human rights and the dignity of victims, motivate them to cooperate with law enforcement authorities and enable them to safely return to their countries of origin. Foreign victims of trafficking are granted a 60-day period of reflection during which they receive accommodation, health care, financial assistance, psychological, social and legal assistance services, as well as support for voluntary repatriation. Victims who cooperate in criminal proceedings are granted temporary residence and work permits for the duration of the same proceedings. Long-term support includes social assistance, social integration, vocational training and assistance to job search and employment.⁷⁶

The labour and social integration of victims after the recovery and reflection period differs across EU countries. This is due to the specificities of the national governance structures and to the residence status of the victim (regular residence permit, international protection claimant). Claimants requiring international protection are directed to specialized services, usually managed by immigration offices or specialized units of the Ministry of Interior. After the protection period, victims with a regular residence permit are directed towards the public services managed by local authorities, which delegate this task to the social/welfare or the immigration services (for migrants and refugees), except for Sweden, where the Public Employment Service has the mandate to coordinate the integration programme for migrants and refugees. Only in Croatia, Italy, and Portugal, longer-term labour and social integration services are part of the victim protection system. Despite the differences in the governance structures, the type of integration services and programmes available to victims are similar across countries. They cover language training, skills assessment and recognition of learning, vocational training, work experience schemes, job subsidies and business start-up incentives.

The countries that provide both immediate and long-term assistance are facing the challenge of ensuring quality support to victims. In the United Kingdom, for example, complaints about sub-standard care by service providers has led the Government in 2017 to incorporate the obligation to comply with the *Trafficking Survivor Care Standards* in the contract for the provision of immediate and longer-term support. These are professional standards for the delivery of care, healthcare, shelter, legal advice, housing and financial compensation.⁷⁷

⁷⁶ See European Commission, [Together against trafficking in human beings. Implementation of the anti-trafficking policy in the Czech Republic](#)

⁷⁷ *The Slavery and Trafficking Survivor Care Standards 2018* (Human trafficking Foundation, 2018)

► 4 Remedies

Together with protection and assistance, remedies to material (e.g., medical costs, unpaid wages, legal fees, and loss of earnings and earning potential) or moral damages are key to support the recovery and prevent re-victimization.⁷⁸ They play the important function of helping the reintegration after removal from labour exploitation and forced labour and can also provide more self-confidence to report to the authorities. Imposing perpetrators to pay compensation to the workers they harmed can also have a punitive function and serve as a deterrent.

4.1 International and regional legal instruments

Workers who are victims of labour exploitation should have access to justice (procedural rights such as access to information and legal assistance, recognition of residence status) and compensation (substantive rights such as compensation for injury, wage arrears or other material and moral damages) to remedy situations of labour exploitation and forced labour. Likewise national workers, migrant workers need to be able to file grievances with the competent labour authority (e.g., labour ministry, labour inspectorate, labour or civil courts) without fearing intimidation or retaliation and irrespective of their migration status. Workers with an insecure immigration status should be able to reside in the country throughout the duration of the investigation and until the process is completed.

The ILO Forced Labour Protocol requires States to ensure that all victims of forced labour have access to justice and other appropriate and effective remedies, such as compensation, irrespective of their presence or legal status in the country. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons requests that States ensure compensation for damages for victims of trafficking (see Annex).⁷⁹

At regional level, there are instruments that focus on access to justice and compensation for victims of labour exploitation that were trafficked (see Annex). These include the EU Anti-Trafficking Directive and the Convention on Action against Trafficking in Human Beings of the Council of Europe.⁸⁰ Another instrument that establishes access to remedies is the Victims of Crime Directive of 2012 which applies to situations of labour exploitation that involve crimes. Under this Directive, victims have the right to obtain a decision in criminal proceedings on compensation from the offender.⁸¹ As part of the provisions to protect migrant workers in irregular situations, the Employers Sanctions Directive contains measures to ensure access to justice and compensation of exploited workers, including back payment of salaries, taxes and social security contributions.⁸²

⁷⁸ ILO: *Ending forced labour by 2030; A review of policies and programmes*, op. cit.

⁷⁹ See article 6.6 "Assistance to and protection of victims of trafficking in persons" of the [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#) (known as Palermo Protocol) adopted with Resolution 55/25 of the UN General Assembly of 15.11.2000.

⁸⁰ See [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA](#) and the [Convention on Action against Trafficking in Human Beings](#) adopted on 16.05.2005 by the Council of Europe.

⁸¹ See article 16 of the [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](#).

⁸² See Article 6 of the [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](#).

4.2 Access to justice and compensation

In most countries, victims of labour exploitation have different ways to access justice and compensation. The three most common modalities include: (i) criminal proceedings; (ii) civil proceedings, including before labour courts, for physical and moral damages and for payments of wage arrears; and (iii) labour inspection and other administrative proceedings for compensation arising out of violation of labour rights and for orders of payment of wage arrears. In many instances, there is a coexistence of criminal offence with other labour and administrative violations. For this reason and although infrequent, criminal orders can include compensation for wage arrears. It is more common these courts defer the decision on payment of wages to civil and labour courts, even though civil proceedings are more onerous for the victims who need to recruit a lawyer and actively engage in the enforcement of the order.⁸³

Although the right to compensation is embodied in the legal systems of EU countries, the number of victims of labour exploitation receiving any form of compensation is generally low.⁸⁴ This is due to several factors, including: (i) the low number of convictions and confiscation orders, owing to the difficulty to gather evidence; (ii) the limited number of free legal aid and third party representation to manage compensation claims on behalf of victims; (iii) the extremely long, complex and challenging proceedings of civil litigations; and (iv) the requirements established by national compensation schemes for claims (maximum claim period after the event, collaboration with the authorities, access conditional to the conclusion of criminal proceedings). For exploited workers, the uncertainties in respect of time and results of grievances (and the fear of being deported in the case of irregular migrant workers) constitute a deterrent in respect of access to justice and other forms of compensation.

4.3 Back payment of wages

Together with the above-mentioned difficulties, the need for victims to sustain themselves and their families makes most of them favour back payment of un- or under-paid wages compared to other forms of remedies. For workers with insecure migration status, this priority may also be accompanied by the need to obtain a residence permit and formal employment. For these reasons and priorities, a more transformative approach to labour exploitation — that goes beyond trafficking and forced labour — should focus on redressing the “wage theft” and allow for exploited workers to getting a fair share of the benefits of their labour through redress mechanisms, including back payments and compensation.⁸⁵ Preventing and tackling this abuse should not be a matter of secondary concern as it would improve the conditions of the workers’ missing middle (i.e. those who experience common forms of exploitation and violation of labour rights), reduce the likelihood for more severe forms of exploitation to happen and give more confidence to report violations.⁸⁶ This approach could also help calibrate the types and intensity of the protection services and support to victims according to the violations and the needs and expectations of exploited workers.

Despite the general recognition by the legislation of EU countries of the right to receive back payments in cases of un- or under-paid wages, taxes and social security contributions, less than a fourth of EU member States provides for the right of workers with irregular migration status to claim outstanding wages, including through simplified procedures that do not require these workers to introduce claims or that allow third parties (e.g., inspection authorities, employer organizations, trade unions and

⁸³ European Union Agency for Fundamental Rights (FRA), *Severe labour exploitation: into the European Union. States’ obligations and victims’ rights*. Luxembourg 2015.

⁸⁴ Ibid.

⁸⁵ Harkins, B., “Base Motives: The case for an increased focus on wage theft against migrant workers”, *Anti-Trafficking Review*, issue 15, 2020: 42–62, <https://doi.org/10.14197/atr.201220153>

⁸⁶ Ibid.

organizations of migrant workers) to submit these claims.⁸⁷ Three member States (Belgium, France and Greece) have put in place specific mechanisms for the said workers to receive their dues, including after having returned to their countries of origin. In France, for instance, the Office of Immigration and Integration can issue enforcement orders for receiving back payments on behalf of migrant workers and, in case the latter have returned to their countries, instruct the French consulates to refund the beneficiaries in their home country. The public authorities with the power of inspection (e.g., labour inspectorates) of 12 EU member States have the task to support victims of labour exploitation in receiving back payments. The inspection authorities of Czechia, France, Poland, Portugal and Slovakia can issue direct orders for the exploiter to effect back payments.⁸⁸

Even in countries where simplified procedures for payment of wage arrears do exist, it is not always easy for workers to get refunded. Often victims do not have the information and details relating to the offender or this latter may be insolvent or unwilling to pay. In cases of insolvency, the legislation of a number of EU member States foresees: (i) the joint liability of the contractors and subcontractors of the supply chain in which the insolvent enterprise operates; and/or (ii) the recourse to wage guarantee funds established by the State.

The joint liability legislation (see also section 2.3.1 of this paper) establishes that direct contractors and subcontractors — also intermediate (sub-)contractors in some countries — can be liable to pay wage arrears, taxes and contributions together with, or in lieu of, the employer. For instance, the Austrian legislation extends the liability to pay due wages to enterprises that contracted out services to other enterprises in cases of insolvency and when the first did enquire and notify the irregular employment situation. Similarly, in Hungary, Lithuania and Sweden, contractors are jointly liable with the subcontractor for back payment of wages, taxes and contributions in cases of insolvency of the subcontractor and when they could have known, through due diligence obligations, about the irregular employment situation. In the Netherlands, the chain liability legislation provides for workers to initiate civil proceedings for unpaid wages when the direct employer disappears and does not pay. The liability applies to the enterprises that operate in the supply chain. The initiation of such proceedings is also granted by the Belgian legislation to prosecutors of labour courts. Most of this legislation was introduced to transpose the joint liability provisions of article 8 of the Employers Sanctions' Directive.⁸⁹

In cases the victims of labour exploitation are unable to get compensation for un- or under-paid wages from the employer, in some EU countries the restoration can be made effective through access to State compensation or wage guarantee funds.⁹⁰ In Czechia, France, Germany, Malta, Portugal, Romania and Spain any worker can request compensation to the State for un- or under-paid wages when the employer does not pay. In Portugal, for instance, Article 336 of the Labour Code provides for workers to request payment of wage arrears to the Wage Guarantee Fund in cases of insolvency or other serious economic reasons of the employer. In a few other countries (e.g., Belgium, Cyprus and the Netherlands), access to the fund for payment of wage arrears is only possible for labour exploitation that involved violent crimes. In the Netherlands, victims may obtain compensation through the Violent Offences Compensation Fund, which provides a one-off payment (up to €35,000) as financial compensation for any damage.⁹¹ In Finland such payments are envisaged for cases of labour exploitation arising out of trafficking of human beings. In Italy, only victims of labour exploitation who were trafficked can request compensation from the State fund for victims of trafficking in case compensation cannot be obtained from the offender or when the perpetrator is unknown. Article 6 of the Italian Legislative Decree No.

⁸⁷ For more information in respect of the transposition of the Employers Sanctions Directive see the European Commission, [Communication from 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, Brussels, 2014.

⁸⁸ European Union Agency for Fundamental Rights (FRA), *Severe labour exploitation: into the European Union. States' obligations and victims' rights*, op. cit.

⁸⁹ For more detailed national legislation on joint liability in respect of un- or under-paid wages see also European Migration Network (EMN) [Illegal employment of third-country nationals in the European Union](#), Brussels, 2017.

⁹⁰ See European Union Agency for Fundamental Rights (FRA), *Severe labour exploitation: into the European Union. States' obligations and victims' rights*, op. cit.

⁹¹ See the website of the Dutch [Violent Offences Compensation Fund](#).

24 of 2014 on the right to compensation for victims of trafficking establishes a lumpsum of €1,500 that is granted upon request by victims. This request should be submitted within five years from the final judgement that recognizes the right to compensation or one year from the termination of the criminal proceeding if the perpetrator is unknown.⁹²

⁹² [Legislative Decree no. 24/2014 “Prevention and repression of trafficking in persons and protection of the victims”](#) was adopted to transpose the provisions of Directive 2011/36/EU.

► 5 Law enforcement

Effective law enforcement is essential to protect the human rights of persons in labour exploitation and forced labour, punish the perpetrators and deter future offence. The effective administration of labour justice is equally important to prevent labour and human rights violations that may degenerate into labour exploitation and forced labour.⁹³

Enforcement is based on two main elements: (i) a legal framework that bans labour exploitation, forced labour and trafficking and provides for a persuasive sanctioning mechanism and victims' protection; and (ii) adequate enforcement capacity that includes legal mandate of enforcement agencies, resources and continuous training of enforcement officials.

5.1 Legal frameworks

The three main categories of regulations covering exploitative labour practices that apply to countries of the European Union (international Conventions and Protocols of the United Nations System; Council of Europe Conventions; and European Union instruments) were examined in Chapter one of this review. The principle that forced labour and trafficking in persons should be banned and punished is recognized by all the legal instruments that were reviewed by this paper.

At the national level, enforcement of legislation varies according to the measures available to tackle labour abuses, whether through employment, human rights, immigration or criminal law. Otherwise put, offences should potentially be contested in these different branches of law. This may create practical problems, particularly when there is no or little coherence among the different pieces of policy that deal with the same issue, although from different angles. There may also be another challenge that relates to the coordination among the authorities that should take action but also decide which grounds are most likely to secure a result that supports victims and, at the same time, punishes the perpetrators and prevents future offence.

Criminal law is concerned with the punishment of those who committed a wrong that affects the security or well-being of the public for which there is an interest in its suppression. With respect to labour exploitation and forced labour, the key function of criminal proceedings is the punishment of the perpetrator.⁹⁴ The standard of proof in criminal proceedings is normally higher than in civil litigations. This requires the prosecutor to prove each element of the crime. National legal systems deal with the rights of the defence and of the victims in different ways.

Civil proceedings have compensation for wrongs as objective. Remedies are based on both contractual and non-contractual rights. The civil courts can provide compensation for breaches of contract or statutory requirements. For the victims, the redress through civil courts is often more satisfactory than criminal prosecution as they receive compensation for the wrong suffered. In civil law countries, victims have the possibility of joining a civil action for compensation to a criminal case. Provided that the accused is found guilty and the prosecutor requests compensation, the victim can receive compensation for the damage suffered. In common law countries, judges may have discretion to grant compensation to victims as part of the sentence.

⁹³ ILO: *Ending forced labour by 2030*, op. cit.

⁹⁴ ILO: *Human trafficking and forced labour exploitation. Guidelines for legislation and law enforcement*, Geneva, 2005.

Labour law provides another mechanism and sanctions that go beyond criminal and civil law. Rulings by labour courts result in a variety of outcomes, including compensation for victims and reinstatement of rights. Hence, these decisions may have a wider implication for labour relations. Administrative orders under labour law can also provide an entry point to redress labour exploitation and forced labour. Most countries with a civil law tradition have established labour codes that are grounded on international labour standards. In countries with a common law system the legislator has also tended to intervene through the enactment of labour legislation.

In general, most EU countries tackle forced labour and trafficking for labour exploitation mainly through criminal law and less frequently through civil and labour law. In France, for example, the Penal Code bans slavery (Article 121-1) and conditions of work and lodging contrary to human dignity (Article 225-4-1). In the Netherlands, the Penal Code provisions derive from the Palermo Protocol and the EU Framework Decision on trafficking, as well as the national legislation against sexual exploitation.⁹⁵ Interpretation, however, has largely been left to the judges who use case law to define what constitutes vulnerability, taking advantage of vulnerability and exploitation. In Belgium, Article 433 *quinquies* of the Criminal Code defines trafficking, including trafficking for the purpose of work or services in conditions contrary to human dignity.⁹⁶

In order to facilitate prosecution, several countries have adopted laws that prohibit forced labour and criminalize it as a stand-alone offence. In the United Kingdom, for example, a new criminal offence on forced labour and servitude was introduced by section 71 of the *Coroners and Justice Act* of 2009. The accompanying legal guidance explains that, although specific offences for trading in slaves and trafficking for both sexual and labour exploitation already existed, the Act seeks to give further and specific protection to victims of forced labour. The guidance also notes that the Act covers situations where the victim has not been trafficked or when the trafficking element could not be proved. In 2013, Ireland amended its *Criminal Law (Human Trafficking) Act* of 2008 introducing a definition of forced labour in line with ILO Convention No. 29 (“work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily”) and allowing the courts to exercise jurisdiction over offences committed outside Ireland. This is possible when such crimes have been committed by Irish citizens or persons resident in the country or against Irish citizens overseas.⁹⁷

An effective national legal framework requires adequate penalties, not only to punish criminal conduct but also to deter potential offenders.⁹⁸ The legislation of EU countries varies considerably and sanctions for forced labour and trafficking for labour exploitation range from five years of imprisonment (the minimum requirements under the EU Anti-trafficking Directive) to life imprisonment. The 2013 amendment to the Irish *Criminal Law (Human Trafficking)* foresees that offence of forced labour is punishable on indictment by life imprisonment.

All EU member States, except for Romania, have put criminal law provisions in place corresponding to Article 9(1)(c) of the Employers Sanctions Directive for offences related to the employment of third-country nationals in irregular situations and in particularly exploitative working conditions. However, in at least four countries (the Czechia, Greece, Latvia, and Luxembourg) the offence is punishable with a maximum sentence of less than two years.

Even though nearly all EU countries have definitions of forced labour and trafficking for labour exploitation that are in line with international and EU instruments and a strong sanctioning system, prosecution and conviction rates remain low. In 2016, for example, over 4,500 individuals were investigated for trafficking offences in Western and Southern Europe, but just over 1,850 persons were prosecuted and 310 convicted.⁹⁹

⁹⁵ Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA).

⁹⁶ See European Union Agency for Fundamental Rights: *Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights*, Vienna, 2015.

⁹⁷ See [Criminal Law \(Human Trafficking\) \(Amendment\) Act 2013](#).

⁹⁸ ILO: *Strengthening action to end forced labour*, Report IV, op. cit., 2014

⁹⁹ United Nations Office for Drug and Crime (UNODC): *Global report on trafficking in persons 2018* (UNODC, Vienna 2018).

5.2 Enforcement capacity

Laws alone are not sufficient if not accompanied by effective enforcement. The complexity of enforcing legal provisions against labour exploitation and forced labour relate to: (i) difficulties inherent to the identification of labour exploitation situations; (ii) complexities of gathering robust evidence and securing victim testimony; (iii) limited cooperation among law enforcement agencies with different mandates; (iv) scant use of technology and special investigative techniques (surveillance drones, undercover agents); and (v) insufficient investment in the training of prosecutors, police officers and front-line personnel.¹⁰⁰

As already noted, several countries developed labour exploitation indicators to facilitate the identification of forced labour and labour exploitation by law enforcement officials and for persons who may come into contact with potential victims. Typically, these indicators build on the list of indicators of trafficking for labour or sexual exploitation developed by the ILO and the European Commission that are a benchmark for national enforcement practices.¹⁰¹ In EU countries, these indicators are also used in criminal proceedings (see Box 11). Despite increasing investments in the training of different enforcement actors, the low numbers of prosecutions and convictions relative to the prevalence of labour exploitation and forced labour suggest that much remains to be done in this regard.¹⁰²

Law enforcement officials investigating labour exploitation face several challenges in ensuring successful prosecution. First, the location where victims are recruited, harboured and exploited are often straddled over multiple police jurisdictions, which causes difficulties in deciding which force should lead the investigation, the execution of search and arrest warrants, and the managing of the legal process of disclosure. Criminal activities that span long periods, involve multiple victims and perpetrators and cover diverse offences (e.g., trafficking, exploitation, violence and harassment) make the definition of a coherent case difficult, especially in terms of multi-agency coordination, staffing needs, and costs. Second, the engagement with vulnerable individuals who do not self-identify as victims and their cooperation during court proceedings is a challenge. Third, vulnerable individuals may have difficulties in understanding and responding to prosecution. Witnesses may also pose credibility issues, which requires law enforcement to review extensive records. Finally, the effects of psychological manipulation are not always understood. Despite appalling working and living conditions, many victims remain in labour exploitation situations for long periods, make no escape attempts and do not make use of opportunities to disclose abuse.¹⁰³ This situation is often used by the defence as proof of lack of exploitation.

¹⁰⁰ See EuroJust: *Prosecuting trafficking of human being (THB) for the purpose of labour exploitation* (EuroJust Report, 2015).

¹⁰¹ In United Kingdom and Italy for example, labour inspection authorities have developed guidance notes on the identification of labour exploitation victims, see GLAA: *Labour exploitation. Spotting the signs* (London, 2017); Ispettorato Nazionale del Lavoro: *Art. 603 bis c.p. intermediazione illecita e sfruttamento del lavoro — attività di vigilanza — Linee guida* (Circolare n.5/2019)

¹⁰² See HM Government: *2019 UK Annual Report on Modern Slavery* (London, 2019), data tables appended to the report.

¹⁰³ See E. Cockbain, E. Brayley-Morris "Human trafficking and labour exploitation in the casual construction industry: An analysis of three major investigations in the UK involving Irish traveller offending groups" in *Policing: A Journal of Policy and Practice*, Volume 12, Issue 2, June 2018: 129–149.

► **Box 11. Labour exploitation indicators: Case law in EU countries**

In 2015, Eurojust carried out an analysis of national case law (Austria, Czechia, Denmark, Finland, Ireland, Italy, the Netherlands, Norway, Spain, Sweden and United Kingdom) from which it emerged that the following indicators were used by tribunals to assess labour exploitation in trafficking cases:

1. **Poor working and living conditions:** (i) reduced salaries (or absence thereof) and excessive working hours (e.g. night work and during weekends with little or no rest periods); (ii) withholding of salaries for the alleged purpose of safekeeping or as penalties for unsatisfactory work (iii) nature and/or intensity of the work shall be evaluated vis-à-vis the specific conditions of the victim; (iv) hygiene and safety conditions are always considered when assessing the 'labour exploitation purpose'; (v) accommodation in the workplace as it increases the probability of excessive periods of work; and (vi) crime against the rights of workers. For foreign citizens, specific indicators of the crime include recruitment under misleading conditions, without work permit or under conditions that would hinder or reduce labour rights.
2. **Coercion and limitations on freedom of movement:** the fact that a person is not deprived of freedom or under threat of retaliation does not preclude the crime of trafficking for labour exploitation.
3. **Language limitations:** the fact that the victim does not speak the language of the host country might be an important component of vulnerability to exploitation that becomes particularly evident when the employee receives the contract in a language he or she does not understand.
4. **Seizure of identity documents by or on behalf of the employer:** allowing the victim to have access to his or her documents only to make cash-transfers to the country of origin after which the documents are again seized by or on behalf of the employer is an indicator of labour exploitation.
5. **Illegal or irregular entry to or residence in the forum State:** illegal immigration is considered as trafficking when its aim is to potentially create a situation of exploitation. Illegal immigration of workers and labour exploitation are not crimes automatically linked: the former is evidenced through the mere fostering of entry to the country of labour force, regardless of accomplishing the purpose of labour exploitation (if at all in existence). Trafficking for labour exploitation includes managing and facilitating the travel of victims. Labour exploitation implies employing foreign citizens without a work permit and on labour conditions that hinder or reduce labour rights.
6. **Debt bondage:** the existence of a debt from the victim towards the perpetrator does not justify or allow the seizure of identification documents.
7. **Lack of or limited medical insurance and social security contributions.** The lack of a labour contract or registration with Social Security Services unveils the economic loss of the victim and correlated economic advantage of the perpetrator. The infringement in the payment of social contributions does not suffice to prove labour exploitation without abusive working and living conditions.

Source: Eurojust: *Prosecuting trafficking of human being (THB) for the purpose of labour exploitation* (Eurojust Report, 2015).

In the United Kingdom, the analysis of three major investigations on labour exploitation in the construction industry resulted in a set of tangible measures to be considered by law enforcement agencies when investigating and prosecuting labour exploitation (see Box 12).

► **Box 12. Addressing investigation challenges of labour exploitation and forced labour cases**

Key challenge	Measures to be considered
Geographical dispersion	• Improved information-sharing to build a coherent intelligence picture and avoid duplication. • Early cross-force collaboration to identify the best placed to lead an investigation. • Identification of patterns in offenders' movements that could guide investigative strategies. • Cross-force collaboration in executing simultaneous action across the country. • Liaison with overseas authorities in cases involving cross-border trafficking.
Securing and maintaining victims' cooperation	• Use of the 'reception centre' model to provide a centralized, safe environment to process victims, conduct interviews and ensure they gain access to facilities and services (e.g., showers, contact with housing officers). • Building rapport before interviewing victims to increase the likelihood of early disclosure of offences. • Separate teams of investigative and victim support officers to meet victims' welfare needs without compromising the integrity of the investigation. • Interviewers' training on human trafficking, labour exploitation, forced labour and their effects. • Application of special measures for victims testifying in court. • Consideration of how to deploy victim liaison officers to support victims in the lead up to and during trial. • Awareness of risk of witness intimidation and implementation of appropriate protective measures.
Witness credibility	• Use of covert methods to gather corroborative evidence and reduce reliance on witness testimonies. • Document control methods used (e.g., retention of identity documents, emotional abuse, threats of violence). • Involvement of environmental health officers in inspections to substantiate when victims' dwellings are unsafe. • Use forensic medical examinations to document health issues and support victims' accounts (e.g., evidence of malnutrition or past injuries consistent with claims of assault). • Use of dedicated officer to manage disclosure and detailed log-keeping by all to help dispel claims of improper conduct. • Expert testimony about the impact of psychological control mechanisms, including the role of so-called 'alpha victims' in the recruitment, grooming, and control of other victims
Cases' complexity and resource intensity	• Early involvement of prosecution services to identify charging strategy and inform approach to evidence gathering. • Use of surveillance footage to prepare for inspections by familiarizing officers with individuals and site layout. • Use of surveillance to document assets used in the commission of crime (e.g., vehicles) that may be liable for seizure.

Source: E. Cockbain, E. Brayley-Morris "Human trafficking and labour exploitation in the casual construction industry: An analysis of three major investigations in the UK involving Irish traveller offending groups" in *Policing: A Journal of Policy and Practice*, Volume 12, Issue 2, June 2018, pp 129–149.

Confronting labour exploitation and forced labour through criminal law may overlook the valuable and complementary role of labour inspection. Enforcement of labour law through inspections and labour courts can be a valuable strategy to address labour exploitation and forced labour. Labour inspectors, in particular, are well placed to provide early warnings before instances of forced labour and labour exploitation become entrenched practices of abuse. Inspectors also enjoy easier access to workplaces than police and prosecutors. They also perform an important monitoring function for possible judicial action. Inspectors further benefit from having a role as conciliator, which allows them to carry out a range of measures from prevention and advisory services to broader awareness raising.¹⁰⁴ In addition, strategies that strengthen workers' rights and the role of labour inspectorates may be more suitable to address the continuum of labour exploitation situations that start with less severe violations and end up in trafficking or forced labour. The combination of labour, migration and criminal justice approaches are considered more effective.

Migrants with an irregular status are particularly vulnerable to labour exploitation. In several instances, non-payment of wages or illegal wage deductions are combined with other coercive measures, such as threats of violence, psychological abuse, restriction of freedom of movement or retention of identity documents. Migrants, and in particular those with an irregular status, can thus end up in a situation of forced labour from which it may be difficult to escape. Labour inspectors have a key role to play in facilitating access to assistance and in collaborating with criminal justice authorities to enforce sanctions. This requires adequate resources, including staffing and its capacity. With respect to staffing of labour inspectorates, this is usually proxied by the number of inspections carried out annually and the ratio of labour inspectors per 10,000 workers.¹⁰⁵ Table 1 provides some data from selected EU countries.

A rising challenge for effective labour inspection is the request to conduct immigration enforcement activities as part of the workplace inspection agenda. This challenges the effective enforcement of labour standards as it may intimidate migrant workers, especially those most vulnerable to abuses because of their precarious legal status. This practice does not consider the distinctions between universal enforcement of labour standards and targeted policing functions for other legal matters.¹⁰⁶ In this respect, article 15(c) of ILO Convention No. 81 on labour inspection provides for labour inspectors to "treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions". Countries that have ratified this Convention should have firewalls between labour and immigration or other laws.

¹⁰⁴ ILO: *Labour inspection in Europe: undeclared work, migration, trafficking* (ILO Geneva, 2010).

¹⁰⁵ This is the minimum threshold established by the ILO to measure the capacity of national Labour Inspectorates.

¹⁰⁶ ILO: *Human trafficking and forced labour exploitation. Guidelines for legislation and law enforcement* (ILO, Special Action Programme to Combat Forced Labour, 2005).

► **Table 1. Labour Inspectorate key indicators (2018 or latest available year)**

Country	Labour inspectors	No. of inspections	Ratio inspectors per 10,000 workers
Austria	322	62,405	0.75
Czechia	514	22,995	0.97
France	2,031	167,600	0.80
Germany	5,834	706,859	1.39
Italy*	1,895	142,385	1.19
Poland	1,492	80,194	0.91
Portugal	303	38,287	0.62
Spain**	1,786	305,256	1.00
United Kingdom	985	18,112	0.30

Source: ILO [Labour Statistics on safety and health at work](#)

Note: * For Italy, data is sourced from the 2019 annual report of the National Labour Inspectorate. The number of inspectors reported in the table includes the officers of the specialized unit of Carabinieri on labour protection, but it excludes the inspectors of the National Social Security Institute and of the National Institute for Insurance against Occupational Injuries. ** Data for Spain refers to 2015.

An important aspect of law enforcement capacity is the training of the staff of the various enforcement agencies to recognize and address labour exploitation and forced labour. Most EU countries provide some type of training to law enforcement officials and many provide training also to other relevant government actors. In Austria, for instance, tax inspectors receive regular training on identifying potential victims (see Box 13). In Poland, regular anti-trafficking training is provided to police and border guards, as well as to prosecutors, labour inspectors, social security personnel and staff working in refugee centres. The EU Trafficking Directive requires member States to promote regular training of officials likely to come into contact with victims or potential victims (Article 18(3)). In its preamble it calls on States to promote such training not only for the police, but also for other officials, including border and immigration officers, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, health and social welfare personnel and consular staff.¹⁰⁷

¹⁰⁷ ILO: *Strengthening action to end forced labour*, Report IV(1) presented at the International Labour Conference at its 103rd session, 2013.

► **Box 13. Training of law enforcement officials**

In the **countries of the EU**, the European border and coast guard agency (FRONTEX) has developed an anti-trafficking training manual for border guards and used it in its Train-the-Trainer Programme. This manual consists of three modules on awareness, identification, and interviewing plus a practical tool that explains the indicators of trafficking and provides a model of structured interview for victims (Pegasus), together with examples of *modus operandi*. Since 2015, the European Police College (CEPOL) — responsible for organizing training for police officers of EU member States — has organized training on trafficking for labour exploitation. The content of the training revolves around the causes and effects of trafficking for labour exploitation, domestic and international measures and legislation, opportunities for multidisciplinary cooperation, methods for detection and investigation of cases and challenges in prosecution. **Austria** is home to a large diplomatic community and it has put emphasis on preventing trafficking in human beings among private domestic staff in diplomatic households. The Federal Ministry for Europe, Integration and Foreign Affairs of this country offers training to diplomatic and consular staff on trafficking, including the prevention of exploitation of domestic staff in diplomatic households. The training is part of the curricula for young diplomats and it is also delivered within the framework of the annual consular conference. In **Italy**, the ILO and the Department for Equal Opportunities of the Prime Minister's Office have developed a training manual for labour inspectors on how to prevent and tackle labour exploitation, particularly for victims of forced labour and human trafficking.

The **United States'** Department of Justice's Office for Victims of Crime and the Bureau of Justice Assistance, developed an electronic guide that provides guidance to agencies for the development and day-to-day operations of an anti-human trafficking task force. The guide provides a step-by-step template, beginning with the basics of human trafficking and progressing to task force formation, operation and guidance on how to carry out a victim-centred response, deliver victim services, and build strong cases for the investigation and prosecution of human trafficking. This guide consists of six modules: (i) understanding human trafficking; (ii) forming a task force; (iii) operating a task force; (iv) supporting victims; (v) building strong cases and (vi) the role of courts. The content is continuously informed by anti-human trafficking victim service providers, law enforcement officials and prosecutors.

Source: Kingdom of the Netherlands: [Teamwork against trafficking for labour exploitation](#); Italy: [Il lavoro forzato e la tratta di esseri umani: Manuale per gli ispettori del lavoro](#), Rome, 2011; US Department of Justice's Office for Victims of Crime: [Human trafficking response e-Guide. Strengthening collaborative responses](#).

► 6 Conclusions and policy implications

6.1 Conclusions

This paper reviews the policies and measures put in place by EU countries and other advanced economies to prevent and tackle labour exploitation and forced labour. It analyses the existing frameworks and implementation mechanisms on the basis of the “prevention, protection and remedies” paradigm that is set out in international instruments and guidelines (e.g., ILO Protocol to the Forced Labour Convention, UN Guiding Principles on Business and Human Rights) and the legal and policy instruments of regional organizations (e.g., EU Directives and Conventions of the Council of Europe).

A finding of this review revolves around the underpinnings that led countries to establish a system to tackle labour exploitation according to the types, reasons and situations of vulnerability that result in exploitation (e.g., trafficking, forced labour, child labour). In general, the systems that are in place in most EU countries are more endowed to tackle labour exploitation stemming from trafficking, although over the past decade they have expanded their reach to cover forced labour and other situations of vulnerability (e.g., migrant workers in irregular situations) that may result in labour exploitation. Based on these developments, this paper argues that there is scope for countries to establish a policy framework and enforcement mechanisms that cater for different forms of labour exploitation. Within this framework, labour and human rights violations can be addressed according to their specificities. This could be done through an integrated approach that is flexible enough to accommodate the prevention and elimination of labour violations or through a coordination mechanism that ensures that no exploited worker is left behind. Such a framework would have the benefit of responding to both severe and less acute forms of exploitation. In general, the overall approach, the main pillars of prevention, protection and remedies, which are envisaged by the international and regional instruments analysed in this report, can be flexibly applied to prevent and eliminate different forms of labour exploitation or unacceptable forms of work that are grounded on situations of vulnerability and on the state of need of the victim. These forms comprise conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty.¹⁰⁸

Over the past two decades, EU countries have made significant progress through the enactment of specific laws and other policy measures to prevent and eliminate exploitative labour practices. They extended prevention measures beyond awareness raising for vulnerable workers to approaches that address broader causal factors, such as perpetrator impunity, gaps in legal provisions, coordination bottlenecks and consumer choices. Some countries address demand factors through joint liability schemes, due diligence legislation and corporate social responsibility initiatives (e.g., social labelling and certification mechanisms). There are also examples of reforms of the legal framework governing labour recruitment and the requirements for the operations of private labour intermediaries. Approaches that tackle simultaneously the full range of systemic and structural issues which determine labour exploitation, forced labour and related practices are less frequent. Gaps exist in terms of collection and analysis of reliable statistics to guide the design of evidence-based policies, the development of comprehensive prevention measures to discourage the recourse to cheap labour and the implementation of persuasive law enforcement activities.¹⁰⁹

With respect to the protection and assistance, support measures for victims of exploitation are fairly developed in many EU countries, although they tend to prioritize immediate needs over longer-term social and labour market inclusion, which is key to avoid re-victimization. Many countries recognize the importance of security of victims, also to encourage their cooperation in legal proceedings, which in

¹⁰⁸ See ILO, *Unacceptable Forms of Work: A Global and Comparative Study*, Geneva, 2015.

¹⁰⁹ ILO: *Strengthening action to end forced labour*, Report (IV)1, International Labour Conference 103rd Session, 2014.

some cases are extended to witnesses and family members. Non-punishment provisions are becoming a common feature of victims' protection measures. Often, however these provisions are limited to immigration offences and to persons identified as victims of trafficking, rather than being applied to all offences perpetrated against any victim of labour exploitation.

As far as access to justice is concerned, the criminal aspects of labour exploitation are generally well covered by the laws of EU countries, while civil and labour violations are less regulated by the relevant legislation. There are however several complexities that relate to both access to complaints by victims and difficulties in investigating and prosecuting cases of exploited labour. With respect to the first issue, several EU countries have given to third parties (e.g., trade unions) the possibility to act on behalf of victims. The second issue could be reduced by a greater coverage of targeted workplace inspections. For this, a clear mandate, training and adequate resources of inspection authorities, together with a firewall between labour and immigration, would improve effectiveness and coverage of inspections, thus acting as a deterrent for perpetrators due to higher risk of being caught and sanctioned.

Despite the internationally recognized right to compensation, the number of victims in the countries of the EU receiving any form of compensation is rather low. In most of these countries, criminal law is the most common means to address labour exploitation and forced labour offences. Criminal proceedings, however, are often long and the damages recognized to victims do not always include compensation for under- or un-paid wages or other violations of labour law and collective agreements. Only few countries have dedicated wage guarantee or other compensation funds for victims of labour exploitation and, where these funds exist, they primarily target victims of human trafficking. The recourse to joint liability among contractors and subcontractors for back payment of wages and other compensation is a growing trend in the legislation of several EU member States. This is mostly the result of the transposition of the joint liability provisions of the Employers Sanctions' Directive of 2009.

6.2 Policy implications

This section summarizes the main policy implications that stem from the law, policies and practices that were reviewed in this paper. It captures the key areas of possible interventions that may be of relevance for the ongoing work of the Italian government.

1. *Policies and measures to prevent and tackle labour exploitation should encompass all unacceptable forms of work and protect all workers.* The framework that is based on the pillars of prevention, protection and remedies — as required by international guidelines and instruments on business and human rights and forced labour — can be flexibly applied to prevent and eliminate different forms of labour exploitation. These unacceptable forms of work comprise conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty. An approach that integrates the different aspects of labour policies (e.g., policies for decent employment, wage and other working conditions, social protection) would ensure equality in the protection of all workers against the continuum of labour exploitation.
2. *Gender equity should be a cross-cutting issue of any strategy and measure to prevent and tackle labour exploitation.* Despite the paucity of gender-disaggregated data, it is indisputable that, in situations of labour exploitation, women workers are more exposed to situations of vulnerability as they may combine, in addition to labour abuses, different forms of exploitation that are the cause and consequence of norms and stereotypes entrenched in society and of inequalities between women and men in the world of work, including in terms of bargaining power, voice and representation. The combination of these causes means that, for example, female workers receive lower wages than their male counterparts or are more exposed to violence and harassment at work, including sexual harassment. These gender-related imbalances, differences and specificities must be considered by any strategy or plan that aims to effectively prevent and tackle labour exploitation. The resulting implication for public authorities revolves around the development and implementation

of measures or delivery of services that account for the intersection of the various vulnerabilities and profile the interventions based on individual characteristics, rather than devising action in a neutral manner (e.g., the same intervention for all male and female workers) or through macro-categories (e.g., the same intervention for all women workers).

3. *The improvement of legislation to prevent and tackle labour exploitation should go hand-in-hand with the strengthening of enforcement capacity.* The modernization of labour legislation and the elimination of statutory loopholes that ensure access to rights and equal treatment for all victims of labour exploitation are a necessary but not sufficient condition to prevent and tackle unacceptable forms of work. It is equally important for national strategies to focus on the translation of legislation into action through the strengthening of enforcement and compliance mechanisms. These strategies should include: (i) the development of operational tools and indicators to enforce the legal provisions and sanctions relating to labour exploitation and forced labour; (ii) a clear mandate, training and sufficient resources for labour inspectorates, judges and other public authorities responsible for law enforcement; and (iii) a sanctioning regime to deter unlawful behaviours, discourage non-compliance and restore victims.
4. *Data collection and research capacity are key to inform the design of evidence-based policies and targeted interventions.* An integrated management information system is key to inform policy design, implementation and monitoring, as well as to steer the development of evidence-based measures that target workers in the most vulnerable situations. This requires the availability of administrative data (records of victims and perpetrators, disaggregation by variables such as sex, age, type of exploitation, national origin) and reliable estimates on the prevalence of labour exploitation and forced labour. The collection and analysis of labour force survey and other household-based data on informal employment, labour migration and labour exploitation are required to: (i) estimate the number of workers in situations of labour exploitation and their geographical location; (ii) define personal characteristics and (iii) identify labour market determinants. This data would also help: (i) identify the risk factors related to occupations and sectors particularly exposed; (ii) organize labour intermediation and other services (e.g., transport and housing); and (iii) monitor law enforcement, including through action by inspection services.
5. *National plans of action can foster a coherent approach and combine long-term strategies with immediate action to address the violations of workers' rights.* National plans that are based on the main pillars of prevention, protection and remedies can be instrumental to devise priorities and action, as well as to overcome fragmented or partial responses. These plans should: (i) examine the incidence of various forms of labour exploitation and forced labour (e.g., groups of workers in situations of vulnerability, occupation and sectors more exposed to exploitation); (ii) define implementation priorities and actions with realistic targets and indicators; (iii) combine long-term policy initiatives on prevention, protection, remedies and law enforcement with specific and time-bound measures to address the most pressing situations and/or violations; (iv) outline the implementation strategy with roles and responsibilities of national and local institutions and organizations; (v) identify human and financial resources for implementation; and (vi) establish partnerships among different institutions and with the social partners and other actors.
6. *Strategies to address exploitation should focus on both the demand and supply of labour.* Strategies that are solely reliant on the supply side and on criminal justice may not be so effective in tackling the root causes of labour exploitation. Reducing the factors that contribute to the demand of goods and services tainted by exploitation of labour should focus on the erosion of the benefits of non-compliance through the increase of the risks connected to the breach of the law and the evasion of wages and other labour costs. Policy actions that were reviewed in this paper include: (i) ensuring that labour laws apply to all workers, regardless their migration status; (ii) strengthening labour standards and prohibiting unfair competition; (iii) monitoring law enforcement through inspections and applying sanctions for non-compliance that outweigh any benefit of recurring to cheap labour; (iv) introducing due diligence and joint liability schemes for contractors and subcontractors in the supply chain; (v) promoting social labelling initiatives through independent certification; and (vi) rolling out awareness raising and information campaigns. Many of these

actions can yield better results when supported by a solid system of industrial relations that can contribute to the implementation of the strategy through a series of initiatives, including the development of codes of conduct that promote ethical behaviour and ban the recourse to exploitation of workers.

7. *Action needs to be taken to put an end to unlawful intermediation and strengthen the efficiency and transparency of the matching between demand and supply of labour.* Labour exploitation is often connected with (or the resultant of) labour intermediation of private actors that do not operate in accordance with the law and the obligation of States to respect, protect and fulfil internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards. In order to ensure the principle that labour is not a commodity, these standards envisage the provision of public employment services (national authority, a system of employment offices and a network of local offices) and the regulation and monitoring of private intermediation, including through: (i) the requirement for private agencies to register and obtain a license; (ii) the prohibition to charge any recruitment fee to workers, and (iii) the application of transparency processes and equal treatment to all workers. In parallel to sanctioning recruiters who do not comply with the law, public authorities should improve the efficiency and equity of the matching function and increase outreach and coverage of public services, including through: (i) tailored intermediation for occupations and workers at high risk of exploitation; and (ii) delivery of services in proximity to the communities and places of work.
8. *Prevention measures should aim to reduce the risks of exploitation, including by targeting economic activities and workers in most vulnerable situations.* Policy initiatives in this area should aim to foster the fairness, efficiency and organization of the supply chains, promoting decent work and economic and social sustainability of enterprises, strengthening labour standards, improving labour law enforcement and compliance, expanding channels for the management of regular migration and for employment in the formal economy, enhancing the effectiveness and transparency of labour intermediation, reducing the vulnerabilities of at-risk workers (e.g., migrant labour, workers in the informal economy, domestic workers), including through information, awareness raising, training on rights at work, and employability measures. The dissemination of information on rights at work can also be enhanced by the use of technology (e.g. applications for mobile phones) and other dissemination modalities (services by employer organizations, trade unions, consulates and embassies).
9. *Protection measures should focus on fulfilling the immediate needs of victims and avoiding revictimization.* These measures should strike a balance between immediate needs of victims and their families (sheltering, health and psychological support, legal and other material assistance) and long-term social and labour market reintegration. They should include (i) the enhancement of victim identification means; (ii) the establishment of national referral mechanisms to ensure the needs of victims are met in a coordinated and integrated manner; (iii) the enactment of legal provisions for the non-prosecution of offences committed as a direct result of a victim's status; (iv) the issuance of temporary residence permits to encourage migrant workers' cooperation with the authorities; and (v) the right to a reflection period for the victim to decide about her/his future.
10. *Access to remedies should be available to all victims as means to redress the wrongs arising out of labour exploitation.* Any strategy that aims to end exploitation should include easy access to grievance mechanisms that ensure justice to all victims of labour abuses, regardless of their legal status, and avoid carousel situations that put former victims in a vortex of old and new abuses. Both procedural (e.g., information, access to justice including legal assistance, recognition of residence status) and substantive rights (compensation for injury, wage arrears or other material and moral damages) play the important function of helping the labour and social inclusion of victims and can provide more self-confidence to report to the authorities. Access to justice should go beyond criminal aspects of labour exploitation and encompass civil and labour litigation, including simplified settlement of disputes and compensation through labour inspectorates or mediation of labour disputes through industrial relations mechanisms. Together with access to legal aid, a review of the requirements established for claims (e.g., maximum period, access conditional to the exhaustion of criminal proceedings; activation of grievance mechanism by third parties such as worker organizations) could increase the number of victims who receive justice and respond to

one of their top priorities of obtaining back payments of under- or un-paid wages. This could also be made it easier by expanding the capacity of labour inspectorates to settle wage claims through mediation of labour disputes with the employer or through industrial relations and amicable settlement. In cases workers cannot get the fair share of the benefits of their labour, joint liability schemes and wage guarantee funds could help restore victims in cases back payments cannot be obtained from the former employer within a reasonable period.

11. *Social and labour market inclusion measure should support the transition of former victims to decent work.* Measures that provide pathways for the transition from abusive and exploitative labour to work that is productive, guarantees labour rights and delivers a fair income, security and social protection are the best support for victims to regain their dignity and freedom, improve their prospects of personal development and integrate in society. Together with protection and assistance, social and labour market inclusion supports the realization of independent life and prevents the re-victimization. With a view to maximizing the benefits of the action of a multitude of public and private actors that contribute to the implementation of social and labour market inclusion measures at both central and local levels and to ensuring equal treatment and access to programmes and services, public authorities should focus on the: (i) definition of national integration models within or outside of national referral mechanisms; (ii) identification of standard programmes and services to be combined with need-based support; and (iii) formulation of quality standards and operating procedures to be followed during the implementation of measures, regardless of the public or private provider that delivers the programmes or services.
12. *Social dialogue, industrial relations and partnerships are instrumental to prevent and eliminate labour exploitation.* Policies and strategies to prevent and eliminate unacceptable forms of work should be crafted and implemented with the involvement of representative organizations of businesses and workers. Their convening power and capacity to balance the interests of enterprises and workers through sound industrial relations are key to building consensus and devise action for the respect of labour rights, the promotion of ethical behaviours and responsible business conduct, and the implementation of socially responsible practices. Because of their capillary structure and operational networks, employer and worker organizations can also contribute to the delivery of programmes and services at the local level. The engagement of several public and private actors through multi-level and multi-partner implementation modalities can leverage human and financial resources from the national and local levels, as well as from the public and private sectors, for the successful implementation of measures that prevent and tackle unacceptable forms of work.
13. *International cooperation is essential to ensure fair recruitment practices, equal treatment and non-discrimination, and address the root causes of exploitation of foreign labour.* Cooperation between countries of origin and destination is essential to prevent labour exploitation of migrant workers. National policies and strategies should include international collaboration and action to: (i) expand the channels for fair and regular migration; (ii) develop bilateral agreements on fair labour recruitment, seasonal work programmes, pre-departure information and services, including on workers' rights, wages and conditions of work; and (iii) develop action programmes and international technical cooperation and mutual assistance, including knowledge and information sharing.

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► Annex

► Table A1 Instruments of the International Labour Organization

Instrument	Identification	Reflection period	Collaboration with authorities	Protection and assistance Type	Organization	Remedies
Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)	Effective measures for the identification, (Article 3)	NA	NA	NA	NA	Access to appropriate and effective remedies, irrespective of the presence or legal status of the victim in the national territory (Article 1 e 4)
Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)	Members should strengthen efforts to identify victims, including by developing indicators of forced or compulsory labour for use by labour inspectors and law enforcement services	Reflection and recovery period (Article 11(a) and temporary residence permits (Article 11 (b))	Protection should not be made conditional on the victim's willingness to cooperate in criminal or other proceedings (Article 5(2))	- Adequate and appropriate accommodation (Article 9(b)) - Health care and medical assistance (Article 9(c)) - Material assistance (Article 9(d)) - Social and economic assistance, including access to educational and training opportunities and access to decent work (Article 9(f)) - Access to legal assistance, preferably free of charge (Article 12(d))	NA	- Access to effective remedies such as compensation and damages, including unpaid wages and statutory contributions (Article 12 (a) and (b)) - Administrative, civil and criminal remedies, irrespective of the legal status of the victim, under simplified procedural requirements (Article 12(e))

► Table A2. Instrument of the United Nations

Instrument	Identification	Reflection period	Collaboration with authorities	Protection and assistance Type	Organization	Remedies
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime(Palermo Protocol) (ratified by Italy with law No. 146, 16 March 2006)	NA	Measures that permit victims to remain in the State territory, temporarily or permanently (Article 7(1))	NA	• Measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, and the provision of (Article 6(3)); • Appropriate housing; • Counselling and information in a language that the victims can understand; • Medical, psychological and material assistance; and • Employment, educational and training opportunities.	NA	• Possibility of obtaining compensation for damage suffered (Article 6(6)) • Right to return in own country (Article 8(1)) • Issuance by receiving State of travel documents or other authorization to enable the person to travel to and re-enter its territory (Article 8 (4)).

► Table A3. Instrument of the Council of Europe

Instrument	Identification	Reflection period	Collaboration with authorities	Protection and assistance Type	Organization	Remedies
Council of Europe Convention on Action against Trafficking in Human Beings (ratified by Italy with law No. 108, 2010)	- Each Party shall provide its competent authorities with persons who are trained and qualified and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations (Article 10(1)) - Each Party shall adopt legislative measures to identify victims - Each Party shall ensure that a person shall not be removed from its territory until the identification process has been completed (Article 10(2))	- Recovery and reflection period of at least 30 days (Article 13(1)). - During this period, the persons concerned shall be authorized to stay in the territory (Article 13(1))	- Adopt measures to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness (Article 12(6)) - Issuance of a renewable residence permit to victims when the competent authority considers that their stay is necessary owing to their personal situation and when the stay is necessary for the purpose of the co-operation with the competent authorities in investigation or criminal proceedings (Article 14(1)) - Issuance of a residence permit shall be without prejudice to the right to seek and enjoy asylum (Article 14(5)) - Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim (Article 27(1))	Assistance shall include (Article 12(1)): - Appropriate and secure accommodation psychological and material assistance; - Access to emergency medical treatment; - Translation and interpretation services; - Counselling and information in a language that victims can understand; - Legal assistance during the criminal proceedings; - Access to education for children. Victims lawfully resident within the territory shall be authorised to have access to the labour market, to vocational training and education (Article 12 (3) e (4)).	Each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care (Article 12(7))	- Right to legal assistance and to free legal aid (Article 15(2)) - Right of victims to compensation from the perpetrators (Article 15(3)) - Measures to guarantee compensation for victims, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims (Article 15(4)) - Measures to facilitate voluntary return of victims (Article 16(5)) - In case of return, provision of travel documents (Article 16(4)) and information on support structures in the receiving territory. (Article 16(6))

► Table A4. Instruments of the European Union

Instrument	Identification	Reflection period	Collaboration with authorities	Protection and assistance Type	Organization	Remedies
Directive 2004/81/CE on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities	NA	Member States shall ensure that the third-country nationals are granted a reflection period so that they can take an informed decision as to whether to cooperate with the competent authorities. (Article 6(1))	- Member States shall consider (a) the opportunity the victim's stay on its territory for the investigations or the judicial proceedings, (b) whether he/she has shown a clear intention to cooperate and (c) whether he/she has severed all relations with those suspected of offences (Article 8(1)). - The residence permit shall be valid for at least six months (Article 8(3)).	- Guarantee standards of living capable of ensuring victims' subsistence and access to emergency medical treatment, including psychological assistance (Article 7(1)), and translation and interpreting services (Article 7(3)). - Option to provide free legal aid (Article 7(4)). - Definition of rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education (Article 11(1)). - Issuance of the residence permit or its renewal conditional upon the participation in programmes for the recovery of a normal social life and improve professional skills (Article 12(2)).	NA	NA

Instrument	Identification	Reflection period	Collaboration with authorities	Protection and assistance Type	Organization	Remedies
Directive 2011/36/UE on preventing and combating trafficking in human beings and protecting its victims	• The consent of a victim of trafficking in human beings to the exploitation shall be irrelevant (Article 2(4)) • Member States shall take measures to establish appropriate mechanisms aimed at the early identification (Article 11(4))	• In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period (Recital 18)	• Investigation and prosecution should not depend on reporting or accusation by the victim (recital 15) • Member States shall ensure that investigation into or prosecution of offences is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement (Article 9(1)) • Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules (Article 11(3))	• Assistance and support should be available to victims before, during and for an appropriate time after criminal proceedings (recital 18) • Measures to ensure that a person is provided with assistance and support from the moment of the preliminary identification (Article 11(2)) • Provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services (Article 11(5)) • Access to legal counselling (free of charge where the victim does not have sufficient financial resources), including for the purpose of claiming compensation (Article 12(2)) • Individual risk assessment, access to witness protection programmes (Article 12(3))	NA	• Measures to ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. (Article 17(1))

Instrument	Identification	Reflection period	Collaboration with authorities	Protection and assistance Type	Organization	Remedies
Directive 2009/52/CE providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals	NA	NA	- Member States shall ensure that there are effective mechanisms through which third-country nationals may lodge complaints against their employers, directly or through third parties such as trade unions or other associations (Article 13(1)) - 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 who have been subjected to particularly exploitative working conditions and who cooperate in criminal proceedings against the employer (Article 13(4))	NA	NA	- The employer shall be liable to pay any outstanding remuneration and an amount equal to any taxes and social security contributions. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, unless either the employer or the employee can prove otherwise - The employer shall be liable to pay any cost arising from sending back payments to the country to which the third-country national has returned or has been returned (Article 6(1)). - Member States shall enact mechanisms to ensure that third-country nationals may recover any outstanding remuneration (Article 6(2)) - Member States shall provide that an employment relationship of at least three months duration be presumed in order to establish outstanding remuneration (Article 6(3)).

Instrument	Identification	Reflection period	Collaboration with authorities	Protection and assistance Type	Organization	Remedies
Directive 2012/29/UE establishing minimum standards on the rights, support and protection of victims of crime The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status. (Article 1(1))	NA	NA	Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint (Article 8(5))	- Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs (Article 22(1)) - Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge (Article 5(3)) - Victim support services shall provide information, advice and support including on accessing national compensation schemes for criminal injuries, and preparation for attendance at the trial (Article 9(1)) - Psychological support, advice relating to financial and practical issues arising from the crime, advice relating to the risk and prevention of secondary and repeat victimisation - Shelters or any other appropriate interim accommodation for victims in need of a safe place, targeted and integrated support for victims with specific needs, such as victims of sexual violence and victims of gender-based violence (Article 9(3))		- Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings (Article 13) - Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred (Article 14) - Member States shall ensure that victims are entitled to obtain a decision on compensation by the offender, within a reasonable time (Article 16)

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