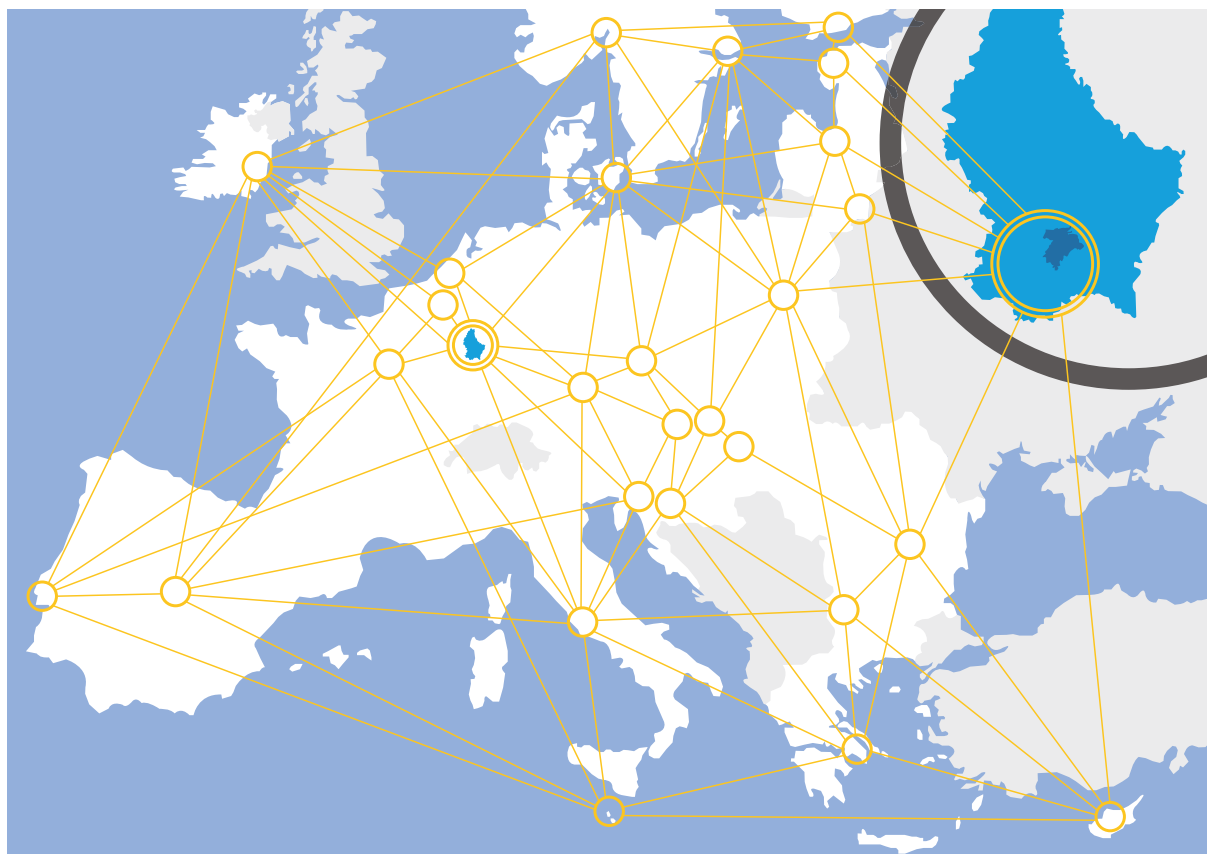


EMN

European Migration Network



LËTZEBUERG



Interpretation and distinction between labour exploitation in the context of trafficking in human beings and particularly exploitative working conditions under the Employers Sanctions Directive

May 2022

Key points to note

- **14 Member States reported to make a distinction** between labour exploitation which can be considered as trafficking in human beings covered by the Anti-trafficking Directive (Directive 2011/36/EU of 5 April 2011) and particularly exploitative working conditions under the Employers Sanctions Directive (Directive 2009/52/EC of 18 June 2009). In general, the **conditions to qualify an offence as labour exploitation in the context of human trafficking are more stringent**.
- Several Member States referred to the **close link between the two phenomena and difficulties of differentiation in practice**.
- Most Member States reported that the **respective labour inspectorate is**, in a first step, **competent for the control regarding labour law violations and working conditions**. In the case of reasonable grounds for suspicion of particularly exploitative working conditions, **further criminal investigations take place**.
- **Nine Member States reported to have a specific procedure when confronted to particularly exploitative working conditions to grant a residence permit** to an individual who is in an irregular situation.

Eight Member States reported not to have a specific procedure.

- **In seven Member States, assistance similar to the aid and assistance under Directive 2011/36/EU is also provided** to victims covered by the Employers Sanctions Directive. At the same time, seven Member States reported that no similar assistance is provided.

1. Introduction, aim and scope¹

The aim of this EMN Luxembourg inform is to map the Member States' legislative and procedural frameworks with regards to the interpretation and distinction between "labour exploitation" which can be considered as trafficking in human beings covered by the Anti-trafficking Directive (Directive 2011/36/EU²) and "particularly exploitative working conditions" under the Employers Sanctions Directive (ESD) (Directive 2009/52/EC³).

Article 2 of the Anti-trafficking Directive stipulates that "[e]xploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs."

¹ DISCLAIMER: This inform is based on the responses of the contributing Member States regarding EMN ad-hoc query 2021.73. These responses have been provided primarily for the purpose of information exchange among the EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided information that is to the best of their knowledge up-to-date, objective and reliable. However, the information provided in the present summary is produced under the exclusive responsibility of EMN Luxembourg and does not necessarily represent the official policy of an EMN NCP's Member State.

² 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. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036>.

³ 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. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0052>.

Article 2 (i) of the Employers Sanction Directive defines particularly exploitative working conditions as “[...] working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers’ health and safety, and which offends against human dignity.”

It is in this context that EMN Luxembourg, in consultation with the Luxembourgish Ministry of Justice and the Directorate of Immigration of the Ministry of Foreign and European Affairs, launched a request for information to Member States via the EMN ad-hoc query system in order to find out how Member States differentiate between the two situations and which procedures are implemented. A total of 20 Member States answered the ad-hoc query.⁴ In the following, the inform provides an overview on: i) if and how Member States make distinctions between labour exploitation relating to trafficking in human beings and particularly exploitative working conditions under the Employers Sanctions Directive; ii) the respective authorities involved and the determination process connected to the detection of particularly exploitative working conditions; iii) procedures in place when confronted with cases of particularly exploitative working conditions; and iv) aid and assistance provided to victims covered by the Employers Sanctions Directive.

2. Distinctions between labour exploitation relating to trafficking in human beings and particularly exploitative working conditions under the Employers Sanctions Directive

14 Member States⁵ reported to make a distinction between labour exploitation which can be considered as trafficking in human beings covered by the Directive 2011/36/EU of 5 April 2011 **and particularly exploitative working conditions** under the Employers Sanctions Directive (ESD) (Directive 2009/52/EC of 18 June 2009).

Five Member States⁶ reported not to make such a distinction. However, in the Slovak Republic a legislative proposal which aims to introduce a clearer differentiation between the two situations is under preparation. Belgium specified that the concept of exploitation is not defined in its law. Therefore, the concept of dignity is the key criterion to distinguish between **exploitation** in terms of labour law violations, on the one hand, and exploitation amounting to labour trafficking.⁷

Croatia reported that if during the criminal investigation elements of the criminal offense of trafficking in human beings for the purpose of labour exploitation are determined, regardless if it is undeclared work or irregular status of third-country nationals, they will be identified as victims of human trafficking (VHTs).

In general, **the conditions to qualify an offence as labour exploitation in the context of human trafficking are more stringent.** However,

⁴ BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IT, LV, LT, LU, NL, PL, SI, SK.

⁵ CY, EE, EL, ES, FI, FR, HU, IT, LV, LT, LU, NL, PL, SI.

⁶ BE, BG, CZ, DE, SK.

⁷ Article 433quinquies of the Belgian Penal Code states “The offence of trafficking in human beings shall be constituted by the recruitment, transportation, transfer, harbouring, reception, taking or

transferring control over him or her:

1° for the purpose of exploiting prostitution or other forms of sexual exploitation

1° for the purpose of exploitation of prostitution or other forms of sexual exploitation;

2° for the purpose of exploitation of begging

3° for the purpose of work or services, under conditions contrary to human dignity.

the reported **differences vary among the Member States.**

France stated that labour exploitation and serious labour exploitation in trafficking in human beings are distinguished in its Criminal Code. For the offence of trafficking in human beings to be materialized, it must qualify with regards to an act, a means, and a purpose. If the offence of trafficking cannot be qualified, the target offences mentioned above can be identified separately and cumulatively. However, a victim in an irregular situation will not be able to benefit from the specific victim protection regime when it is not identified as a VHT. France further specified that the Criminal Code defines serious labour exploitation as "obtaining from a person, whose vulnerability or state of dependence is apparent or known to the perpetrator, the provision of services without remuneration or in exchange for remuneration that is clearly unrelated to the importance of the work performed."

Similarly, **Slovenia** stressed that the conditions for crimes of trafficking in human beings must include all three components: an action, the use of certain means and the purpose of exploitation. Moreover, referring to the ILO Forced Labour Convention, 1930 (No. 29), the concept of forced labour requires two elements: a work or service is awarded to someone under threat of punishment, and the work is carried out involuntarily.

Several Member States, including **Estonia, Finland, Latvia** and **the Netherlands**, further reported that particularly exploitative working conditions might possibly but not necessarily amount to trafficking in human beings, therefore constituting a less stringent condition.

Estonia specified that, while there is no specific definition of "particularly exploitative working conditions" under the ESD, they use the content of the ESD definition in their Penal Code to provide penalties for trafficking in human

beings and against employers for having employed irregularly staying third-country nationals, subjecting them to inhuman or degrading treatment. Thereby, the Estonian Penal Code provides a much broader wording also including less exploitative working conditions going beyond the minimum requirements of the ESD.

Finland and Latvia reported that no clear distinction between exploitative working conditions and labour exploitation relating to trafficking in human beings is made in their respective Criminal Codes. **Finland** specified, however, that if the employer has committed offences against the employee, such as exploitative working conditions, the offence is classified accordingly in the preliminary investigation. If the employer is guilty of particularly exploitative working conditions (aggravating conditions), the classification of the offence may be trafficking in human beings or extortionate work discrimination, depending on the situation. **Latvia** reported that it is possible to prosecute persons for activities corresponding to exploitative working conditions. If the conditions do not qualify as trafficking in human beings, another offense can be applied (Violation of Provisions Regarding Employment of Persons).

The Netherlands mentioned that while they make a distinction between the two terms, it depends on the circumstances in specific cases. While particularly exploitative working conditions (as referred to in the ESD) may amount to labour exploitation as a form of human trafficking, it is also possible that not all criteria are met and it only meets the requirements of serious disadvantage to the employee – in which case administrative sanctions or violations of other articles of the Criminal code can be imposed. In addition to (possible) labour exploitation in a criminal sense, there are labour situations with serious abuses and poor employment practices, which are regarded as serious disadvantage. For example, situations without (demonstrable) coercion

and/or situations in which the employer does not (demonstrably) act with the intent of exploitation.

Italy highlighted the risks involved for the respective victim as a main difference. In case of victims of trafficking and serious exploitation, including labour exploitation, this risk is described as totally pervasive, so much that it compresses the personal freedom of the individual and unravels beyond the work activity. On the other hand, in the case of particular exploitation, the circumstances described are limited to the phase in which the work is carried out. In Italy, the circumstances defined as "particularly exploitative" employment include: i) more than three workers being employed under such conditions; ii) employed workers being discovered who are minors of non-working age; and iii) the hypothesis that the employed workers have been exposed to the following exploitative situations: the repeated payment of wages in a manner clearly different from the national or territorial collective agreements or disproportionate to the quantity and quality of the work performed; the repeated violation of regulations on working hours, rest periods, weekly rest, compulsory leave and holidays; the existence of violations of safety and hygiene regulations at the workplace; and the subjection of the worker to degrading working conditions, surveillance methods or housing situations.

Lithuania reported that the key difference between the two phenomena is the presence of the exploited person's free will: labour under particularly exploitative working conditions will not be considered as trafficking in human beings if the person voluntarily consented to work under such conditions. However, the consent is irrelevant where it was achieved by using means of coercion, abduction, fraud, deception, the abuse of power, a position of vulnerability or the giving or receiving of payments or benefits. In sum, the difference be-

tween labour exploitation as a form of trafficking and labour exploitation as such is not a matter of the stringency of working conditions but rather lays on the presence or the absence of the exploited person's consent. Moreover, the legal provisions of the Criminal Code regarding particularly exploitative labour conditions only apply to illegally staying third-country nationals, while the legislature regarding the trafficking in human beings applies to all persons within the jurisdiction, regardless of their nationality or legal status.

In a similar trend, **Luxembourg** reported that labour exploitation in the context of human trafficking puts an emphasis on forced or compulsory labour or services, servitude, slavery and on the fact that the general conditions are contrary to human dignity. In contrast to that, when it comes to "particularly exploitative working conditions", there is a labour relationship. However, the working conditions are totally disproportionate compared to legally employed workers. In this case, the employee entered into the relationship willingly because of his/her precarious condition and the employer is taking advantage of the victim because of his/her immigration status.

Poland reported that one of the main criteria distinguishing between human trafficking for the purposes of forced labour and particularly exploitative conditions is that in the first case the perpetrator gains control over the employee or another person performing work, which results in a human rights violation. In the second case, under relevant provisions of the national regulations, the level of the employee rights violation can hardly be regarded as one of these criteria.

Further distinctions reported by Member States involve **differences with regards to imposed penalties and the issuance of residence permits**.

Cyprus reported that the imposed penalty in the case of particularly exploitative working

conditions under the ESD is less stringent with a maximum of 5 years in prison or/and a €20,000 fine while it is a maximum of 25 years in prison for labour trafficking. **Spain** described that the actual labour exploitation is punished separately when the aim of the trafficking is labour exploitation. Therefore, sanctions are added instead of having to choose between trafficking and crimes against workers.

In **Finland**, a distinction is made between the two cases concerning the delivery of residence permits. A specific residence permit for VHTs can be issued temporary or, if the person is in a particularly vulnerable position, on a continuous basis. In labour exploitation cases, a separate residence permit can be issued to a third-country national who has resided and worked in the country illegally. One of the conditions for the issuance of this temporary residence permit is that the third-country national was a minor while working, or his or her work was performed under working conditions that indicate specific exploitation.

Concerning the abovementioned distinctions, **France** and **Luxembourg** further referred to the close link between the two phenomena and difficulties of differentiation in practice. France stressed that the two forms of exploitation remain closely linked, particularly in the context of the fight against these offenses. In this context, Luxembourg reported that there are cases in which it is difficult for an authority to distinguish between both situations on the ground as both share similar elements and the victims in most of the cases are not willing to talk with the authorities.

3. Detection and determination process of particularly exploitative working conditions

Most Member States reported that the **respective labour inspectorate is**, in a first step, **competent for the control regarding labour law violations and working conditions**. This mainly takes place by the means of various forms of inspections and control visits. In the case of reasonable grounds for suspicion of particularly exploitative working conditions, further criminal investigations by police and the public prosecutor take place. In this sense, there is a distinction between administrative (inspections) and criminal proceedings (criminal investigations) on the level of competent authorities. The definite determination whether or not the working conditions are particularly exploitative thereby takes place in the framework of the criminal investigations.

Germany, for example, stated that the Financial Control of Undeclared Work Unit (*Finanzkontrolle Schwarzarbeit*) is responsible to determine/detect if the working conditions are particularly exploitative by the means of inspections (that might be with or without prior notice). If irregularities are detected during the administrative procedure, they result in a subsequent criminal investigation. Germany further specified that other authorities might also come across (particularly) exploitative working conditions in connection to their regular work, without being formally assigned to do so – this includes e.g. social benefit authorities which can then initiate further investigations by the relevant authorities.⁸

In **Estonia**, regarding the risk assessment of illegal employment of third-country nationals, the main actor is the Estonian Police and Border Guard Board (PBGB) in cooperation with Estonian Tax and Customs Board and Labour

⁸ In case other authorities not formally assigned to determine exploitative working conditions (like e.g. the social

benefit authorities) come across such a case, they inform the relevant authorities.

Inspectorate. Based on the joint risk assessment, the PBGB establishes an annual work plan which includes specific targeted actions as well as joint inspections with the Labour Inspectorate and Tax and Customs Board. Criminal investigations related to trafficking in human beings or under the ESD are conducted by the Estonian Police and Border Guard Board (PBGB).

France additionally reported that besides the national authorities competent for labour inspections and the police which is competent of subsequent criminal investigations, an additional important authority is the Central Office for Combatting Illegal Employment (OCLTI) within the Ministry of the Interior. The OCLTI acts as the lever for a comprehensive and efficient inter-ministerial approach regarding the fight against serious forms of labour exploitation and social fraud.

Concerning the criminal investigation, **Finland** specified that the police does not define what constitutes particularly exploitative working conditions. If the police suspect that the employer has committed additional offences to hiring an illegal employee, these offences are assessed in a preliminary investigation. Based on the classification of the police, the Finnish Immigration Service may issue a specific residence permit. In contrast to other Member States, whether there have been particularly exploitative working conditions or not is determined when deciding if a residence permit will be issued. However, particularly exploitative working conditions have not been specifically defined. Instead, they are assessed on a case-by-case basis.

In **Luxembourg**, the detection or determination of “particularly exploitative working conditions” is principally done by the inspectors of the Inspectorate of Labour and Mines, by the officers and agents of the Grand Ducal Police, by the Customs and Excise Officers from the

grade of senior brigadier upwards and by public servants of the Directorate General of Small and Medium-Sized Businesses. However, Luxembourg stressed that the labour inspectors and the agents of the Directorate General must act in their legal framework. The main task of the labour inspectors is to ensure that national legislation is applied and to put an end to situations that are in contradiction with the legal, regulatory, administrative and contractual provisions in the field of labour law, health and safety at work.

Poland clarified that the National Labour Inspectorate (NLI) has been incorporated in the system of authorities cooperating in the area of prevention of human trafficking (including forced labour). Therefore, the array of tasks of the NLI was extended to include inspections of the legality of employment of foreigners. Nevertheless, taking direct actions in cases related to the crime of trafficking in human beings, including for the purposes of forced labour, as well as crimes related to the employment of foreigners staying in the territory of Poland without a valid residence document, falls outside the remit of the National Labour Inspectorate. In particular, a labour inspector is not authorised to conduct operational and investigative activities but has to inform the competent law enforcement authorities.

The Netherlands reported that the Netherlands Labour Authority (NLA) combats cases of labour exploitation by identifying and detecting them. The Inspectorate assesses all reports containing indications of labour exploitation and serious disadvantage. After a report leads to a case, an inspector investigates. If it appears after the preliminary investigation that there are indications of serious disadvantage, further investigative measures will be taken. As basic principles, human trafficking is tackled in an integrated manner (with partners, through administrative and criminal law), detected signals of human trafficking are picked up in all cases, and victim care takes a central

place. These rules and principles also apply to criminal investigations into labour exploitation that the Inspectorate carries out under the authority of the Functional Public Prosecutor's Office of the Public Prosecution Service.

Slovakia reported that the National Unit for Combatting Irregular Migration of the Bureau of Border and Foreign Police is the only unit within the Ministry of Interior, which investigates the human trafficking criminal offence – including human trafficking connected to labour exploitation. In practice, this means that it is also the unit which detects, checks and investigates the cases where exploitative labour conditions occurred. To determine if the labour conditions are exploitative is the responsibility of the law enforcement authorities.

Italy reported a more comprehensive array of actors compared to the other Member States. The process of identification and determination of victims of labour exploitation generally consists of a preliminary and a formal phase including multiple actions implemented by different actors. Hereby, the aim is to ensure immediate support measures that meet the needs of workers who are victims of exploitation. Preliminary identification can be carried out by anyone who has reasonable doubt that they are dealing with a potential victim of labour exploitation (public authorities, personnel of all supervisory and inspection bodies, officials or magistrates belonging to the investigating magistracy, law enforcement agencies, immigration offices located in the Police Headquarters and Prefectures, operators of local social and health services, staff of third sector organisations and of the reception system, trade unions, staff in the field of recognition of international protection, guardians of unaccompanied foreign minors, anti-violence centres, and in general, all those who have contact with po-

tential victims). In the case of third-country nationals who are victims of trafficking for the purpose of labour exploitation or of serious exploitation in the labour context, the formal identification is carried out by the prosecuting authority within the framework of criminal proceedings (following a complaint by the victim or a body in charge of assisting the victim of serious exploitation).

Only in **Finland** and **Italy**, immigration authorities were mentioned as being a part of the detection and determination processes with regards to particularly exploitative working conditions.

4. Procedural framework after the detection of particularly exploitative working conditions

4.1 Issuance of a residence permit

Nine Member States⁹ reported to have a **specific procedure when confronted to particularly exploitative working conditions** in order to grant a residence permit to an individual who is in an irregular situation in view of avoiding that person in question is returned before the public prosecutor takes a decision to prosecute the offender (similar to the suspension of removal in the trafficking procedure).

Cyprus reported that since all exploitation cases are referred to the Anti-trafficking Police Office, as soon as there are reasonable grounds to believe that exploitation occurs, the Minister of Interior (Migration Department) is notified in order to grant a residence permit, even if the person's status is irregular, until the case is investigated.

Estonia reported that its Aliens Act allows to issue a temporary residence permit to a victim

⁹ CY, EE, EL, ES, FI, IT, LT, PL, SI.

or witness in a crime related to human trafficking, or a crime in which the employer has employed an irregular migrant which has caused a threat to the alien's life or health or has involved degrading treatment. In this case, the investigative body is required to inform the person of the conditions for obtaining a residence permit and a reflection period. The reflection period will be granted to the foreigner by a decision of the Prosecutor's Office for 30-60 days from the moment of notification. The return decision issued to an irregular migrant is suspended for the duration of the reflection period. In summary, the procedure for an irregular migrant who has worked in exploitative working conditions and the process of issuing a residence permit in this case is similar to the suspension of removal in the trafficking procedure.

In **Greece**, a residence permit is granted for humanitarian reasons to third-country nationals who are in the country and have been employed either in particularly exploitative working conditions or as minors.

Spain reported that a similar procedure to the one for VHTs, including labour exploitation, is established in the Spanish Alien Law for victims and witnesses who cooperate in criminal cases against human smuggling, labour exploitation, labour trafficking or prostitution. A key difference is that in this case no reflection period is granted.

Lithuania also reported that victims of labour exploitation do not have the right to a reflection period with all the related benefits (e.g., staying in the Refugee Reception Centre during the reflection period). Nevertheless, victims of labour exploitation who cooperate with a pre-trial investigation institution or court may be granted a temporary residence permit. The application for a temporary residence permit on

these grounds must be intermediated by the pre-trial investigation institution or court. They may be eligible for basic health insurance and social services, and they are allowed to work during the validity period of the temporary residence permit issued on the grounds of cooperation with law enforcement.

In **Finland**, two distinct categories of residence permits exist for VHTs and third-country nationals who are in Finland and worked illegally. A third-country national who is in the country and has worked illegally is issued a temporary residence permit if he or she was residing in the country illegally during the period of work, and: i) was a minor while working, or his or her work was performed under working conditions that indicate specific exploitation; ii) his or her residence in Finland is justified on account of a criminal investigation or court proceedings; iii) he or she is ready to cooperate with the authorities in apprehending suspected employers; and iv) he or she no longer has ties with any suspects in the crime.¹⁰ The residence permit will be issued for as long as the national procedure (e.g. preliminary investigation or trial) lasts. After the national proceedings have ended, the removal of the person who stayed illegally in Finland will take place. The residence permit is issued for a minimum of six months and a maximum of one year. If the national procedure lasts longer than the permit granted to the person, it may be possible to extend the permit.

The **Italian** legislation has provided for a "double track" aimed at allowing third-country nationals who are victims of situations of serious exploitation, including labour exploitation, which can be traced back to certain criminal offences to access specific protection and assistance programmes and to obtain a special res-

¹⁰ Finland has two distinct residence permits, one for VHTs (Section 52a of the Alien Act) and one for third-

country nationals who worked illegally (Section 52d of the Alien Act).

idence permit. A residence permit can be issued both in the event that criminal proceedings have been initiated in relation to the facts of violence or serious exploitation, following a complaint by the victim ("judicial path") and in the case that the person does not denounce and adheres to a program of assistance and social integration, relying on a body specifically responsible for assisting victims of serious exploitation, which may be a local authority, an association, or an officially registered private organization ("social pathway"). In the case of particular labour exploitation, a specific residence permit is issued. This permit is delivered by the Questore (Police Commissioner/Prefecture), upon proposal or with the favourable opinion of the Public Prosecutor, to the foreigner who has filed a complaint and cooperates in the criminal proceedings brought against the employer.

Poland and Slovenia further reported that possibilities exist for issuing subsequent residence permits for certain other reasons.

Poland reported that a foreigner may be granted a temporary residence permit for the duration of criminal proceedings related to the performance of work under particularly exploitative working conditions. Additionally, the Act on the Foreigners provides for the option to grant a subsequent temporary residence permit for the purpose of the receipt of outstanding remuneration from an entity entrusting the performance of work or its subcontractor. Foreigners can apply for this subsequent temporary residence permit when they were staying within the country's territory on the basis of a residence permit related to labour exploitation just before.

In **Slovenia**, the police shall allow a victim of illegal employment, who is staying illegally in the Republic of Slovenia, ex officio or upon the victim's request, to stay for a period of 90 days

in order to decide whether or not to cooperate as a witness in criminal proceedings against the employer. A victim of illegal employment must apply for a temporary residence permit with the competent authority in the Republic of Slovenia prior to the expiry of this period of permitted stay. With regard to a victim of illegal employment whose employer failed to pay the sums due, a temporary residence permit may be extended beyond the conclusion of the criminal proceedings for a period of up to one year, at the victim's request. A subsequent temporary residence permit may be issued to a victim for another reason for residence if he or she complies with the conditions for being issued such a permit.

Eight Member States¹¹ reported not to have a specific procedure.

Hungary reported that there is a single procedure to be followed by the authorities in case a third-country national is identified as victim of work-related exploitation.

Luxembourg specified that irregularly staying migrants can obtain the same residence permit as the one granted to VHTs when they are victim of illegal employment which occurred in particularly exploitative working conditions or where a minor is involved. However, there is no specific procedure for granting them a suspension of removal or any other similar measure in order to avoid that the third-country national is returned before the public prosecutor decides to press charges.

Croatia, the Czech Republic, France, the Netherlands and Slovakia solely referred to the procedures in place in the context of (presumed) victims of trafficking in human beings.

¹¹ CZ, DE, FR, HU, LU, LV, NL, SK.

4.2 Provision of aid and assistance to victims covered by the ESD

Seven Member States¹² reported that assistance similar to the aid and assistance under the Anti-trafficking Directive (Directive 2011/36/EU) is also provided to victims covered by the ESD.

Cyprus reported that in the case a person is not identified as a trafficking victim, but exploitation has been proven, this person is allowed to change the employer and is granted a residence permit. Further the person receives compensation by the employer, based on the Decision of the Interdepartmental Committee.

In **Spain**, aid and assistance is provided, although the measures are not as extensive as in trafficking cases.

In **Estonia**, the Social Insurance Board provides aid and assistance to foreigners who are either a victim or witness in a crime related to human trafficking, or a crime in which the employer has employed an irregular migrant which has caused a threat to his/her life or health or has involved degrading treatment. This aid and assistance are provided during the reflection period and within the duration of the temporary residence permit. The services include the counselling of victims, assisting victims in communicating with state and local government authorities and institutions, ensuring safe accommodation, food, and access to necessary health services. They also provide necessary material and psychological assistance, as well as translation and interpretation services within the framework of victim support services and physical and psycho-social rehabilitation services for the victims.

Greece reported that pursuant to the ESD, measures to protect illegally residing third-

country nationals are provided, such as obliging employers to pay all due wages, facilitating the complaints made by illegally employed migrants, and ensuring the right of access to the competent courts and authorities to assert their legal rights in accordance with current labour law and the enforcement of any court decisions against their employers – even if they have returned or have been forced to return to their home country. In addition, protection of victims is offered by the competent authorities, who must provide them with translation and interpretation services, inform them about their legal rights and provide any necessary legal assistance. Moreover, the legislative provisions provide for fines and penalties for violating the legislation on the principle of equal treatment at work and include provisions for appeal, judicial protection and reversal of the burden of proof.

France reported that the measures provided are those intended for victims of human trafficking who are beneficiaries of the residence permit issued on the basis of the immigration law. In addition to the right to work, the temporary residence permit issued allows its holder to benefit from the protection, reception and accommodation system through legal assistance, social support, access to the reception system in an accommodation centre, the coverage of health costs, the granting of the asylum seeker's allowance (if they file an asylum application and fulfil the conditions) and police protection throughout the criminal proceedings in case of danger.

In **Italy**, third-country nationals who are victims of trafficking for the purpose of labour exploitation as well as victims of serious labour exploitation who find themselves in a situation of imminent danger to their safety may adhere to the aid and assistance measures provided

¹² CY, EE, EL, ES, FR, IT, SI.

for by the Single Programme of Emergence, Assistance and Social Integration. This Programme provides adequate accommodation, board, health care and a customised path of social integration. With reference to the cases covered by the ESD, third-country nationals who are victims of particular labour exploitation can be lodged by the local authorities which are part of the Reception and Integration System (SAI) for applicants and beneficiaries of international protection – depending on the availability of places and if they do not have access to specifically dedicated protection systems.

Slovenia reported that during the authorised period of stay, victims of illegal employment enjoy the rights guaranteed to third-country nationals with a temporary residence, as well as the right to free translation and interpretation. The police and non-governmental organisations must inform such victims of the possibility of and conditions for acquiring a residence permit. In the case that the victim of illegal employment is an unaccompanied minor, they shall make every effort to establish contact with his or her family. A victim of illegal employment who has been issued a temporary residence permit and has no means of subsistence has the right to emergency health care and to financial assistance in the amount and manner specified for financial assistance in the Act governing social security benefits. Funds for the payment of financial assistance are provided by the social work centre in the area where the victim resides. A victim of illegal employment may take up employment or work with another employer during the validity of the temporary residence permit under the same conditions.

On the other hand, **seven Member States¹³ reported that no assistance similar to the aid**

and assistance under Directive 2011/36/EU is provided to victims covered by the ESD.

Belgium reported that, while third-country nationals covered by the ESD do not get the same aid and assistance as victims of trafficking in human beings for the purpose of labour exploitation, certain organizations and the illegal workers themselves can institute legal procedures. Moreover, Belgian law imposes certain obligations on employers who must verify whether the employee has a valid residence permit and provides for a joint liability concerning the payment of wages along the chain of contractors and subcontractors.

In **Finland**, there are no special support systems in place for third-country nationals who have worked illegally in Finland and have been victims of particularly exploitative working conditions. However, they can also be part of the assistance system for victims of human trafficking if it is determined at a later stage that they have been victims of human trafficking. Additionally, the employer is liable to pay any outstanding remuneration to the employee, but the employee must claim the remuneration themselves since there is no automatic procedure for doing so.

Lithuania reported that in the case of VHTs the assistance provided by the state is more comprehensive. Nonetheless, if a victim of exploitation decides to cooperate with law enforcement, depending on their financial situation, the municipality may provide basic health insurance and some social benefits.

In **Luxembourg**, besides the possibility of obtaining a residence permit, the only additional aid and assistance is that illegally staying third-country nationals who are illegally employed shall, before the enforcement of any return de-

¹³ BE, CZ, DE, FI, LV, LT, LU.

cision, be systematically and objectively informed by the controlling officers¹⁴ of the rights conferred on them by the Labour Code, including the possibility of having recourse to free legal aid. However, this assistance is limited in the large majority of cases to recover the unpaid salaries that are owed to the third-country national.

The answers provided by **Croatia, Hungary, the Netherlands, Poland** and **Slovakia** solely referred to the protocols and procedures in the context of (presumed) victims of trafficking in human beings. Bulgaria reported that no such information is available.

¹⁴ The detection or determination of “particularly exploitative working conditions” is principally done by the inspectors of the Inspectorate of Labour and Mines, by the

officers and agents of the Grand ducal police, by the Customs and Excise officers from the grade of senior brigadier upwards and by public servants of the Directorate General of Small and Medium-Sized Businesses.

Notes

Notes

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- Integration of asylum applicants in the labour market
- Reception conditions of applicants of international protection: challenges, policies and practices in EU Member States and associated costs

The European Migration Network, created by Decision no 2008/381/EC of the Council of 14 May 2008, has the aim of providing up-to-date, objective, reliable and comparable information on migration and asylum to Union institutions, authorities and institutions of Member States and the general public with a view to support policymaking and facilitate the decision-making process within the European Union.

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